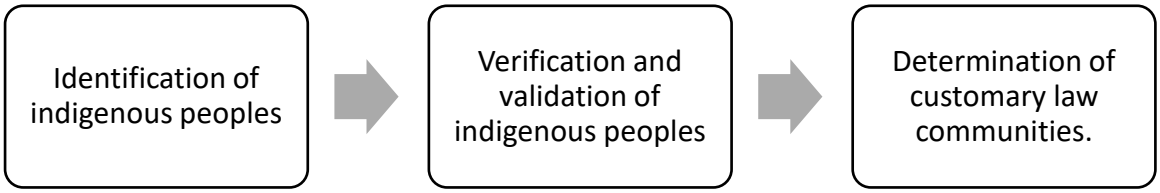
Annex 4.4. Recognition of Indigenous Peoples in East Kalimantan

Article 50 of Regional Regulation of East Kalimantan No. 1 of 2016 concerning East Kalimantan Spatial Plan for 2016-2036 stated that in each zoning of the Spatial Pattern Area it is necessary to solve tenure conflict related to the adat rights and control of land by communities within the forest area, based on laws and regulations. Based on Article 54 of Regional Regulation of East Kalimantan No. 1 of 2015, in utilizing space and natural resources, carried out based on ownership, control, or the granting of certain rights based on laws and regulations or on customary laws and customs that apply to space in the local community.

The process of recognition of customary communities in East Kalimantan, is based on East Kalimantan Regional Regulation No. 1/2015. Customary lands/territories are those that fulfill the daily needs of the indigenous people concerned, are communal and cannot be transferred to other parties, except for the public interest. The use of customary lands/territories is carried out through joint decision-making mechanisms with customary law communities. Determination of ulayat land across district/cities in the province is carried out by the Governor, while in regencies/cities it is carried out by the Regent/Mayor. Recognition and protection of the district/city customary law community through the district/city Customary Law Community Committee, with the structure of the Customary Community Committee consisting of: district/city Regional Secretary (Chair), Head of SKPD in charge of community empowerment (Secretary), Head of Legal Section District/City Secretariat, Camat (head of sub-district), Head of the relevant government office according to the characteristics of the customary community.

The mechanism of recognition and protection of indigenous peoples is carried out through:



Identification of customary law communities;	History of indigenous communities
	Location and boundaries of indigenous territories
	Customary law
	Assets and/or traditional objects
	Customary government institutions/systems
Verification and validation of indigenous peoples	Verification by the Customary Committee
	The results of the verification are announced to the customary law community within 1 (one) month
	Submission of recommendations from the Customary Committee to Regent/Mayor
Determination of customary law communities.	Determination of recognition and protection of the Customary Community based on the results of verification and validation of the Customary Committee by Decree of the Regional Head (Regent/Mayor)
	When the customary law community is cross district/city, the determination is made by a Governor Decree

The Ministry of Agrarian and Spatial Planning issued the Regulation of the Minister of Agrarian and Spatial Planning No. 10/2016 concerning Procedures for Determination of Communal Rights on Land of Customary Law Communities and Communities in Certain Areas (Forest or Plantation Areas), which are through the National Land Agency and the Team for Inventory of Control, Ownership, Use and Utilization of Land (IP4T) for those who are in the forest area. Land rights are granted in the form of Communal Rights.

For Customary Law Communities to be recognized, they must fulfill the following requirements::

a) The community is still in the form of a community
b) There is a traditional institution
c) There is a clear customary law area, and
d) There are legal institutions and devices, which are still adhered to

Requirements for community groups within certain areas (forestry or plantations) are:

a) Occupying the land at least 10 years or more in a row
b) Still collecting crops or using land directly in certain areas and surrounding areas to fulfill their daily needs
c) Areas are a major source of community life and livelihood
d) There are social and economic activities that are integrated with people's lives

Verification is carried out based on the analysis of physical and juridical data on land areas of customary law communities and communities within certain areas. After receiving recognition of communal land, the process of revising the provincial and district/city spatial plans is carried out.

Initial Identification of Community social-cultural area/Customary land

Sulistioadi, et.al. (2017) has made an initial identification of the existence of economic, social and cultural areas of the community, including indigenous peoples in East Kalimantan, using the High Conservation Value Forest toolkit and field validation (Table 1).

Table 1: Initial Identification of Community social-cultural area/Customary land, hectares (Sulistioadi, et.al., 2017)

District	No Permit Non Forest	Protected forest	Natural Forest Concesion	Timber Plantation	No Permit Forest area	Conservation area	Estate crops	Social forestry	Mining	Total
Balikpapan	-	-	-	-	-	-	-	504,50	-	504,50
Berau	20.599,51	127.758,36	78.012,68	323,44	43.812,44	-	14.577,19	8.376,26	5.516,34	298.976,22
Kutai Barat	21,10	11.719,72	108,73	5,95	11.339,50	-	3.174,06	8.091,61	7.904,50	42.365,17
Kutai Kartanegara	23.793,29	2.121,75	188,78	436,33	60.996,26	4.855,53	9.669,48	-	5.467,85	107.529,28
Kutai Timur	96,02	44.865,28	2.696,64	313,37	33.104,39	-	6.146,22	280,03	764,48	88.266,43
Mahakam Ulu	2.474,24	143.529,22	150.186,53	-	38.944,38	-	14.376,43	34.305,85	502,55	384.319,20
Paser	1.316,16	44.563,45	31.438,33	3.137,82	5.900,42	49,38	4.947,17	-	6.768,60	98.121,33
Penajam Paser Utara	-	-	-	258,38	-	-	-	-	-	258,38
Samarinda	-	-	-	-	355,00	-	-	-	-	355,00
Grand Total	**48.300,33**	**374.557,78**	**262.631,69**	**4.475,30**	**194.452,39**	**4.904,91**	**52.890,56**	**51.558,25**	**26.924,33**	**1.020.695,52**

Social Forestry as License that accommodate the interests of the community

Based on the Forestry and Environment Ministerial Regulation, No. 83 of 2015 and No. 32 of 2015, the area of forest utilization by the community is given permission by the Minister (Table 2). This licensing model is in the form of:

a) Hutan Desa (village forest): Production and/or Protected forest which has been managed and submitted by the Village Government, and managed by Village Forest Management Agency. This licensing area can be used for timber utilization, environmental services, non-timber forest products and/or forest protection.
b) Hutan Tanaman Rakyat (Community plantation forest): Production forest which has been managed and submitted by Community organization in their village, that will be used for timber plantation.
c) Hutan Kemasyarakatan (Community forestry): Production and/or Protected forest which has been managed and submitted by Community organization, that will be used for timber utilization and/or non-timber forest products.
d) Hutan Hak (Private forest): Proprietary land which will be managed for timber planting.
e) Kemitraan Kehutanan (Partnership forest): Forestry concession areas that have conflicts with the community, and have resolved conflicts, so that they can be used jointly between concession holders and the community.
f) Hutan Adat (Customary forest): Indigenous/adat area which has been recognized by the Government, and will carry out forestry utilization business.

Table 2. Indicative Target Area for Social Forestry (Not included Collaborative Forest/Kemitraan Kehutanan) (MoEF, 2017)

District	Protection Forest	Converted Production Forest	Limited Production Forest	Production Forest	Total
Balikpapan	**323,93**			**0,75**	**324,68**
Not yet licensing	323,93			0,75	324,68
Berau	**204,00**	**181,06**	**1.624,99**	**38.084,00**	**40.094,06**
Hutan Desa	0,01			0,39	0,40
Not yet licensing	203,99	181,06	1.624,99	38.083,61	40.093,66
Kutai Barat	**5.580,51**		**7.872,43**	**14.940,12**	**28.393,05**
Hutan Desa			2.493,15	128,29	2.621,44
Not yet licensing	5.580,51		5.379,28	14.811,83	25.771,61
Kutai Kartanegara	**2.139,74**	**315,67**	**11.429,32**	**53.249,88**	**67.134,60**
Not yet licensing	2.139,74	315,67	11.429,32	53.249,88	67.134,60
Kutai Timur	**13.513,51**	**0,00**	**10.313,10**	**22.388,01**	**46.214,62**

Hutan Desa	6.324,76		0,01	3.090,97	9.415,74
Hutan Kemasyarakatan				8,65	8,65
Kemitraan Kehutanan				21,58	21,58
Not yet licensing	7.188,75	0,00	10.313,09	19.266,80	36.768,65
Mahakam Ulu	**12.784,95**		**18.362,00**	**4.953,16**	**36.100,11**
Hutan Desa			16,08	4,38	20,46
Not yet licensing	12.784,95		18.345,92	4.948,78	36.079,65
Paser	**24,46**		**15.844,22**	**6.030,27**	**21.898,95**
Not yet licensing	24,46		15.844,22	6.030,27	21.898,95
Penajam Paser Utara				**392,90**	**392,90**
Not yet licensing				392,90	392,90
Samarinda				**337,32**	**337,32**
Not yet licensing				337,32	337,32
Grand Total	**34.571,09**	**496,74**	**65.446,05**	**140.376,41**	**240.890,29**

Until June 2018, there is 93.328,23 hectares social and forestry and adat forest licenses have been issued (Table 3).

Table *3*. Social forestry and adat forest licenses

Type of Social Forestry and District	Area (hectares)
Hutan Adat	**48,85**
Kutai Barat	48,85
Hutan Desa	**86.283,38**
Berau	30.371,00
Kutai Barat	8.476,38
Kutai Timur	19.056,00
Mahakam Ulu	28.380,00
Hutan Kemasyarakatan	**1.990,00**
Balikpapan	1.400,00

Kutai Timur	590,00
Hutan Tanaman Rakyat	**1.096,00**
Berau	1.096,00
Kemitraan Kehutanan	**3.910,00**
Kutai Barat	64,00
Kutai Timur	3.846,00
Grand Total	**93.328,23**