

Juridical Review Of The Term Of Land Rights In Ibu Kota Nusantara In The Perspective Of Agrarian Law

Yohana Maranatha^{1*}, Indah Dwi Qurbani², Trie Sulistiowarni³

*Corresponding author: yohanahaloho@student.ub.ac.id

¹Master of Notary Programme, Faculty of Law, Universitas Brawijaya

²³ Universitas Brawijaya

Article Info

Received: 01/01/2025

Revised: 12/02/ 2025

Accepted: 20/03/2025

Keywords:

Land Rights, Cycle

Agreement, IKN,

Business Actors

Abstrac

This study examines the juridical aspects of the term of land rights granted to business actors in the Ibu Kota Nusantara as stipulated in Article 9 paragraph (2) of Presidential Regulation No. 75 of 2024 concerning the Acceleration of the Development of the Ibu Kota Nusantara which grants the term of Land Rights of Cultivation Rights up to 190 years, as well as Building Rights and Use Rights up to 160 years. This provision contradicts Law No. 5/1960 on Basic Agrarian Principles and raises concerns about the potential monopolisation of land by private investors. This research aims to analyse the implications of the application of the land rights Cycle Agreement stipulated in Perpres 75/2024 in terms of the hierarchy of laws and regulations and analyse the granting of the land rights period in Ibu Kota Nusantara with the principle of land tenure by the State.

I. Introduction

Land in the territory of the Republic of Indonesia is one of the main natural resources, which in addition to having a deep inner value for the Indonesian people, also functions very strategically in fulfilling the increasingly diverse and increasing needs of the state and people, both at the national level and in relation to the international world.¹ Land in the legal sense is the surface of the earth. Land Law is the field of law that regulates the rights of control over land: National Rights, Right to Control from the State, Customary Rights, Management Rights, Waqf and Land Rights (Property Rights, Business Rights, Building Rights, Use Rights and land rights derived from local customary law community laws).²

In 2019, the Indonesian government announced that the new national capital would be located in East Kalimantan province. This decision was recently ratified by the government and the House of Representatives, as indicated by the enactment of Law Number 3 of 2022 on the National Capital. The capital will be built in two districts: Penajam Paser Utara and Kutai Kertanegara, with a total area of 256,142.8 hectares. The area will be divided into three clusters: the Government Centre Core Area, the State Capital Area, and the Ibu Kota Nusantara (IKN) Development Area. The newly established capital will serve as the centre of government activities, house representative offices of other countries, and serve as a location for international organizations. This law solidifies the role of the new capital city as the capital of the Republic of Indonesia and its function as a central hub for various governmental and international activities.³

In 2024 President Joko Widodo issued Presidential Regulation No. 75 of 2024 on the Acceleration of the Development of the Ibu Kota Nusantara. However, one of the controversial aspects of this project is the regulation regarding the term of land rights granted to businesses, which is very long for Business Use Rights will be granted 190 years as well as Building Use Rights, and Use Rights will be granted 160 years in two cycles.⁴

¹ Budi Harsono, *Menuju Penyempurnaan Hukum Tanah Nasional: Perkembangan Pemikiran & Hasilnya Sampai Menjelang Kelahiran UUPA Tanggal 24 September 2007* (Jakarta: Universitas Trisakti, 2019).

² Undang-undang (UU) Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria , 5 (Indonesia, issued 1960).

³ Buku Saku Pemindahan Ibu Kota Negara (Jakarta: Kementerian Perencanaan Pembangunan Nasional/ Badan Perencanaan Pembangunan Nasional Republik Indonesia Juli 2021, 2021).

⁴ Peraturan Presiden (Perpres) Nomor 75 Tahun 2024 tentang Percepatan Pembangunan Ibu Kota Nusantara (Indonesia: 75, issued 2024).

In the Indonesian legal system, there is a hierarchy of laws and regulations. Materially, there is a structure of norms. Higher norms become guidelines for lower norms. Therefore, the structure of norms is not a derivation of facts and then the incompatibility of a norm must be returned to a higher norm.⁵ The difference in land rights stipulated in Law No. 5/1960 on Basic Agrarian Principles (hereinafter referred to as UUPA) stipulates that HGU can only be granted for a maximum period of 35 years and can be extended up to 25 years. Whereas HGB and Right to Use periods on state land are a maximum of 30 years, extended for a maximum of 20 years and renewed for a maximum period of 30 years.⁶

The difference is considered not fulfilling the principles in the hierarchy of laws and regulations because it is not in accordance with Law No. 5/1960, which is a basic land regulation of a general nature, while this Presidential Regulation only regulates specifically made for the State Capital area, which is referred to as the Ibu Kota Nusantara.⁷

This regulation raises the question of whether the granting of special Land Rights to Business Actors in IKN has violated one of the basic principles in National Land Law, namely the State's Right to Control. The right to control from the state, seen from the history of the formation of the UUPA, teaches that the right to control the state (which includes the state's authority to determine the allocation and utilisation of agrarian resources including the rights of people or community groups to land).

This study aims to analyse the legal implications of the Land Rights Cycle Agreement stipulated in Presidential Regulation No. 75 of 2024 on the Acceleration of the Development of the Ibu Kota Nusantara and to find out whether the granting of Business Use Rights for up to 190 years as well as Building Use Rights and Use Rights for up to 160 years in IKN to business actors is in line with the principle of Land Tenure by the State. This research is expected to provide policy recommendations that are fairer and in accordance with the spirit of the Constitution of the Republic of Indonesia to realise social justice for all Indonesian

⁵ Hans Kelsen, *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Empirik-Deskriptif* (Jakarta: Mandar Maju, 1995).

⁶ Muh Afif Mahfud, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik, "Constitutionality of Simultaneous Extension and Renewal of Land Rights," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (April 27, 2024): 159–76, <https://doi.org/10.29303/ius.v12i1.1360>.

⁷ Iwan Permadi, Weny Almoravid Dunga, and Azhani Arshad, "Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia New National Capital City, Nusantara," *Jambura Law Review* 7, no. 1 (December 23, 2024): 30–54, <https://doi.org/10.33756/jlr.v7i1.24930>.

people and ensure that the development of IKN does not sacrifice the interests of the people.

2. Research Method

The author uses normative juridical research methods, namely legal research methods that prioritize how to examine library materials or so-called secondary data materials in the form of positive law.⁸ The approach used in this research is a statutory approach by conducting a review of all related regulations and Conceptual Approaches are used for sources analyzed through this approach derived from doctrines or views that develop in legal science. This approach is important in legal writing because it can be the basis for building legal arguments, especially in answering the issues studied.⁹ The nature of this research is descriptive research, this has the aim of making systematic, factual and accurate descriptions of existing facts.

3. Results and Discussion

Implications of the application of the Land Rights Cycle Agreement stipulated in Presidential Regulation No. 75 of 2024 on the Acceleration of the Development of the Ibu Kota Nusantara in the hierarchy of laws and regulations

The IKN Special Regional Government is established through Law Number 3 of 2022 concerning the National Capital City (UU IKN) and is run by the IKN Authority. The IKN Authority has the main task of carrying out activities to prepare, develop, and relocate the National Capital and as the organiser of the IKN Special Regional Government.¹⁰

Article 16 paragraph (6) of the IKN Law states that the IKN Authority is given land rights facilities in the form of Management Rights and Use Rights, provided that the exercise of these rights must comply with applicable laws and regulations. This means that the surface area of the earth, including land and underwater areas in IKN, can be granted the Right of Management and/or Right of Use to the IKN Authority. Furthermore, Article 16 paragraph (7)

⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Media Group, 2005).

⁹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Depok: Rajawali Press, 2013).

¹⁰ Diani Sadiawati et al., "Power of The Chairman of Authority in Preparing Development Plans for Nusantara Capital City," *Jurnal Penelitian Hukum De Jure* 23, no. 3 (2023): 325–40, <https://doi.org/10.30641/dejure.2023.V23.325-340>.

of the IKN Law authorises the IKN Authority to enter into legal relations with individuals or legal entities through land utilisation agreements at IKN, including providing guarantees for the extension of land rights and renewal of land rights on Right of Management Land.¹¹

This provision in the IKN Law is then reaffirmed in article 9 paragraph (1) of Presidential Regulation 75/2024, which states that the Ibu Kota Nusantara can provide assurance of the period of land rights through the first cycle. The IKN Authority can provide an extension in the second cycle to business actors or investors, which is contained in an agreement. The granting of Cultivation Rights is given to Business Actors (Investors / Private) for up to 95 years in the first cycle. The extension for the second cycle is also granted for a period of 95 years. Meanwhile, Building Use Rights and Use Rights are granted to business actors for up to 80 years in the first cycle and can be re-granted for the second cycle with a period of 80 years. Thus, the Cultivation Rights Title that can be granted to Business Actors in IKN can reach 190 years, while Building Rights Title and Use Rights are granted up to 160 years.¹²

The government's efforts to grant HGU for 190 years in two cycles as well as HGB and Right of Use for 160 years have actually been regulated through Government Regulation Number 12 of 2023 concerning the Provision of Ease of Doing Business and Investment Facilities for Business Actors in IKN (PP 12/2023). However, the regulation has proven to be ineffective because it is at a lower hierarchy in the legislative system and contradicts the UUPA.¹³

To strengthen its legal position, the government then revised the IKN Law, as Law Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the National Capital City (hereinafter referred to as the "IKN Amendment Law"). The author argues that although PP 12/2023 and Perpres 75/2024 have obtained a legal umbrella from

¹¹ Fahmi Kurniawan, "Konflik Agraria Dalam Pembangunan Ibu Kota Negara: Analisis Hak Guna Usaha Dan Perlindungan Hak Masyarakat Adat," *JOURNAL OF SCIENCE AND SOCIAL RESEARCH* 8, no. 1 (February 17, 2025): 1029–36, <https://doi.org/10.54314/JSSR.V8I1.2831>.

¹² Dewi Ulfa Lailatul Fitria and Fathur Rochim, "Analisis Proses Legislasi Undang-Undang Republik Indonesia Nomor 3 Tahun 2022 Tentang Ibu Kota Negara Perspektif Masalah Mursalah," *Islamic Law: Jurnal Siyasah* 10, no. 1 (March 20, 2025): 66–91, <https://doi.org/10.53429/ILJS.V10I1.1446>.

¹³ I Gusti Ayu Ketut Rachmi Handayani et al., "The Politics Settlement of Land Tenure Conflicts During Jokowi's Presidency," *Journal of Indonesian Legal Studies* 7, no. 2 (December 21, 2022): 487–524, <https://doi.org/10.15294/jils.v7i2.57539>.

the Law which is a higher hierarchy, this step still raises problems from the point of view of legal principles. Because after all, land regulations must be subject to the UUPA as the main legal umbrella.¹⁴

This shows that the changes in legal politics in the IKN Amendment Law are not in accordance with the principle of hierarchy of laws and regulations as stipulated in Article 7 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations (hereinafter referred to as "Law 12/2011"). Article 7 of Law No. 12/2011 stipulates that laws and regulations are arranged hierarchically, which the author quotes as

"Article 7

(1) Types and hierarchy of laws and regulations consist of the following:

- a. The 1945 Constitution of the Republic of Indonesia;*
- b. Decree of the People's Consultative Assembly;*
- c. Law / Government Regulation in Lieu of Law;*
- d. Government Regulation;*
- e. Presidential Regulation;*

(2) (2) The legal force of Laws and Regulations in accordance with the hierarchy as referred to in paragraph (1))."

That what is meant by hierarchy has also been defined in the Explanation of Paragraph (2) of Law 12/2011, as the author quotes as follows:

"In this provision what is meant by "hierarchy" is the ranking of each type of Laws and Regulations based on the principle that lower Laws and Regulations must not contradict higher Laws and Regulations."

In this context, Perpres 75/2024 cannot contradict the Law, because Article 9 paragraphs (1) and (2) of Perpres 75/2024 specifically regulate the granting of Land Rights for Business Actors in IKN, then the regulation in principle must be in accordance with the laws and regulations above that regulate land, in this case the UUPA which is the main legal basis for land regulation in Indonesia.¹⁵

¹⁴ Jubair Situmorang et al., "Literation of Land Rights Law in (Tola Gumi) Protection of Indigenous Peoples...", *Journal of Social Studies Education Research* 12, no. 2 (June 29, 2021): 180–209, <https://www.learntechlib.org/p/219845/>.

¹⁵ Kartika Winkar Setya, Abdul Aziz Nasihuddin, and Izawati Wook, "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform," *Volksgeist:*

Article 28 of the UUPA states that Cultivation Rights Title (HGU) can be granted for a maximum period of 35 years and can be extended for up to 25 years, so the total validity period of HGU under the UUPA is 60 years. Meanwhile, Article 35 of the UUPA stipulates that HGB can be granted for a maximum period of 30 years and can be extended for up to 20 years, and renewed for a maximum period of 30 years. Thus, the total validity period of HGB according to the UUPA is 80 years. Article 41 of the LoGA stipulates that the period of granting Right to Use is a maximum of 30 years, extended for 20 years and renewed for 30 years for state land and management rights.¹⁶

The implementation of HGU renewal in one cycle, covering twice 95 years, as well as HGB and Right to Use renewal covering twice 80 years in IKN, raises concerns of non-compliance with the provisions stipulated in the UUPA. There are indications that the implementation of HGU arrangements in IKN ignores the provisions mandated by the UUPA. The granting of land rights is very lengthy, exceeding the colonial era rules. The two-cycle clause in granting land rights is also unknown in the UUPA.¹⁷

Perpres 75/2024 clearly contradicts the provisions of the UUPA that regulate the maximum period of HGU, HGB, and Right to Use. As a consequence, the presidential regulation that grants the validity period of HGU up to 190 years and HGB up to 160 years is in principle contrary to the UUPA, which has a higher position in the hierarchy of laws and regulations. The legal basis supporting this argument can be seen from several sources, including:

1. Article 7 of Law No. 12/2011 on the Establishment of Legislation which establishes the hierarchy of laws and regulations.
2. Article 28 and Article 35 of the UUPA which regulate the maximum period of HGU and HGB.
3. Constitutional Court Decision No. 21-22/PUU-V/2007 which confirms that the granting of land rights with an extension in advance can reduce the principle of control

Jurnal Ilmu Hukum Dan Konstitusi 6, no. 1 (June 30, 2023): 89–102, <https://doi.org/10.24090/volksgeist.v6i1.7867>.

¹⁶ Muhammad Kamal, "Prospects for the New Capital City Policy in Law and Economic Perspectives," *Substantive Justice International Journal of Law* 5, no. 1 (June 22, 2022): 86, <https://doi.org/10.56087/substantivejustice.v5i1.205>.

¹⁷ Mohamad Jamin, Sapto Hermawan, and Mulyanto, "A Discourse of the Indigenous Peoples' Rights and Their Contributions to the Indonesian Development: Lessons Learned from New Zealand," *Padjadjaran Jurnal Ilmu Hukum* 10, no. 3 (2023): 346–66, <https://doi.org/10.22304/PJIH.V10N3.A3>.

by the state, thus contradicting Article 33 of the 1945 Constitution.

In terms of legal theory, the concept of hierarchy of laws and regulations is a fundamental principle in maintaining the consistency and harmony of the national legal system. In the hierarchy of Indonesian laws and regulations, Presidential Regulation No. 75/2004 does not have legal force if it contradicts the UUPA, as stipulated in Article 7 of Law No. 12/2011 on the Formation of Laws and Regulations. UUPA, which is the legal basis for land regulation in Indonesia, explicitly regulates the maximum period of Cultivation Rights Title (HGU), Building Rights Title (HGB), and Right to Use. However, Perpres 75/2024 stipulates the extension of HGU to 190 years and HGB and Right to Use to 160 years, which clearly contradicts the UUPA.¹⁸

According to Article 28 and Article 35 of the UUPA, HGU can be granted for a maximum period of 60 years, while HGB has a maximum period of 80 years. Thus, the provision in PR 75/2024 that extends the term of land rights beyond the limit stipulated in UUPA not only violates the principle of legal hierarchy, but also undermines constitutionality as stipulated in Article 33 of the 1945 Constitution. Therefore, legally, this Presidential Regulation should not be enforced because it is not in accordance with the principles of legality and constitutionality that apply in Indonesia.¹⁹

In line with Satjipto Rahardjo's view of progressive law, which is progress, the law must be able to keep up with the times, answer the challenges of change, and serve the community by prioritising morality and justice. In this context, the policy contained in Presidential Regulation 75/2024, which grants land rights for a very long period of time to investors, seems to focus more on attracting investors at the expense of land in the prospective new capital city, rather than paying attention to the interests of the wider community.²⁰

¹⁸ Haris Budiman and Suwar Akhmaddhian, "The Implications of Law No. 11 2020 Concerning Job Creation on Regional Spatial Planning and Watershed Management," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 3 (2023): 1–12.

¹⁹ Sultan Rivandi and Sidik Pramono, "Problem Identification and Policy Network on Law Number 21 Year 2023 on National Capital City," *Ganaya : Jurnal Ilmu Sosial Dan Humaniora* 8, no. 2 (February 19, 2025): 101–11, <https://doi.org/10.37329/GANAYA.V8I2.4015>.

²⁰ Xavier Nugraha et al., "Strengthening Customary Forest Rights for Indigenous People in Indonesia Green Constitution Framework," *Jurnal Kajian Pembaruan Hukum* 3, no. 2 (November 24, 2023): 217, <https://doi.org/10.19184/jkph.v3i2.43367>.

Dr Jogi Nainggolan, S.H., M.H. interpreted Satjipto Rahardjo's message as a great hope that law enforcers have the same spirit to advance the law, so that the law can provide happiness and justice for the people in the life of the state. However, the policy regarding the Land Rights Cycle Agreement for Business Actors in IKN stated in Perpres 75/2024 is contrary to this progressive legal spirit. Instead of serving the interests of the people, the policy tends to prioritise the interests of capital owners, with the risk of indigenous Indonesians becoming tenants on their own land while foreign investors enjoy huge profits.²¹

In addition, the policy of granting land rights with long-term extensions also contradicts the principle of control by the state and people's sovereignty in the economic sector as stipulated in Article 33 of the 1945 Constitution. This provision reminds us that natural resources, including land, must be controlled by the state for the greatest prosperity of the people. Therefore, policies that sacrifice people's access and control over land, especially in the IKN area, not only violate the basic principles of land law stipulated in the UUPA, but also betray the constitutional mandate aimed at the welfare of all Indonesian people.²²

Based on the hierarchy of laws and regulations, Perpres 75/2024 has no legal validity if it contradicts the UUPA, and should not be enacted because it violates the basic principles of law and constitutionality stipulated in Article 33 of the 1945 Constitution and Article 7 of Law No. 12/2011.

Prof Mahfud MD, an expert on constitutional law who has given his views on this issue, revealed that the extension of HGU, HGB, and Right to Use in IKN for up to 190 years is an irrational step and contrary to applicable legal principles. The author asked Prof. Mahfud MD's opinion in a question and answer session on 12 August 2024 at the UPNVJ PKKMB event, he stated that the HGU period of up to 190 years should be returned to the original provision, which is a maximum of 60 years. Prof Mahfud MD added that this regulation is not only detrimental to the public interest but also reflects a disproportionate policy in the

²¹ Muhammad Riandy Zentra, "Tinjauan Yuridis Alih Fungsi Kawasan Hutan Atas Pemindahan Ibu Kota Negara Berdasarkan Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan" (Universitas Islam Indonesia, 2024).

²² Wilibaldus Jampa and Donna Ramadhan Fitri, "Legal Analysis of the Impact of Nusantara Capital Development on Environmental Damage," *Hakamain: Journal of Sharia and Law Studies* 3, no. 2 (August 26, 2024): 104–16, <https://doi.org/10.57255/HAKAMAIN.V3I2.340>.

management of land rights in IKN.²³

Prof Mahfud MD's opinion strengthens the argument that Perpres 75/2024, although a product of presidential policy, must be subject to higher rules in the hierarchy of legislation. In line with the theory of administrative law put forward by Philipus M. Hadjon in "Introduction to Indonesian Administrative Law", every policy or regulation made by the government must comply with the hierarchy of laws and regulations and must not conflict with higher laws.²⁴

In this case, the legal reasoning underlying the rejection of PR 75/2024 is that the regulation not only violates the principle of legal hierarchy, but also harms the public interest and creates potential legal conflicts in the future. Thus, in order to maintain the rule of law and legal certainty, the author argues that this regulation should be revised or revoked, so that it complies with the hierarchy of laws and regulations stipulated in Law No. 12/2011. Thus, the Regulation on the Granting of Sikluas Land Rights Agreement in IKN is in accordance with the provisions stipulated in the UUPA and the 1945 Constitution.

The period of Land Rights in IKN is viewed from the Principle of Land Tenure by the State

Based on the conception that is primarily based on customary law, and supplemented by legal institutions from other sources as stated above, the tenure rights to land in the National Land Law remain organised in the following tiered structure:

- a. The Right of Nation, as referred to in Article 1 of the UUPA, is the highest land tenure right and covers all land within the territory of the state, which is communal land.
- b. The right of control of the State, as referred to in Article 33 paragraph (3) of the 1945 Constitution, is a right of control over land as an assignment of the implementation of the Nation's Right, which belongs to the field of public law and covers all land -common with the Indonesian nation.

²³ Xavier Nugraha et al., "Optimization of Environmental and Defense of the New Capital City 'Nusantara' Based on Pancasila and SDGs," *Journal of Judicial Review* 24, no. 2 (November 8, 2022): 181, <https://doi.org/10.37253/jjr.v24i2.7214>.

²⁴ Yohana Maranatha, Indah Dwi Qurbani, and Trie Sulistiowarni, "Juridical Review of the Term of Land Rights in Ibu Kota Nusantara in The Perspective of Agrarian Law," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (March 24, 2025), <https://doi.org/10.31941/PJ.V24I1.5851>.

- c. The Ulayat Rights of Masyarakat-masyarakat hukum adat (customary law communities), insofar as they still exist in reality, constitute the right of control over land-shared by certain Masyarakat-masyarakat hukum adat (customary law communities).
- d. Individual rights that authorise the use, in the sense of controlling, using and/or taking certain benefits from a particular piece of land.
- e. Mortgage, as the only security right over land in Mortgage Rights, is a right of tenure over land.²⁵

Considering that the function of the UUPA is to abolish the old dualism of land law, namely customary land law and western land law, the abolition of customary law on land does not mean that customary law is eliminated from the UUPA, but rather its existence is enhanced in the form of written law in the field of land law. Customary Law Found in the UUPA:

- a. In the Consideration:

Opinion, letter a, which states that in relation to what is mentioned in the considerations above, there is a need for a national agrarian law based on customary law on land.

- b. In the Body:

In Article 5, it is stated that the agrarian law that applies to the earth water and space is adat law, as long as it is not contrary to the national and state interests. Based on the above description, it is clear that customary law is not abolished in the sense that it is declared invalid, but rather it is placed in a higher and broader portion.²⁶

The principle of State Control is enshrined in Article 2 of the UUPA. On the basis of the provisions in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia, the earth, water and airspace, including the natural resources contained therein, are at the highest level controlled by the State. The State's right to control authorises:

- a) Regulate and organise the allocation, use, supply and maintenance of the earth, water

²⁵ Harsono, *Menuju Penyempurnaan Hukum Tanah Nasional: Perkembangan Pemikiran & Hasilnya Sampai Menjelang Kelahiran UUPA Tanggal 24 September 2007*.

²⁶ Haibati Haira, Haedah Faradz, and Sanyoto Sanyoto, "Juridical Overview of the Mechanism for the Forest Area Release and Investment Facilities for Infrastructure Development in Nusantara Capital City," *Jurnal Dinamika Hukum* 22, no. 2 (July 15, 2022): 267, <https://doi.org/10.20884/1.jdh.2022.22.2.3191>.

and airspace;

- b) Determine and regulate legal relationships between people with the earth, water and space,
- c) Determine and regulate legal relationships between people and legal actions concerning the earth, water and space.

The authority of the State's Right to Control is used to achieve the greatest prosperity of the people, in the sense of happiness, welfare and independence in society and the Indonesian State of Law which is independent, sovereign, just and prosperous.²⁷

The principle of land control by the state is regulated in Article 33 paragraph (3) of the 1945 Constitution which states that "The land, water, and natural resources contained therein shall be controlled by the state and utilised for the greatest prosperity of the people". This principle is implemented through Article 2 of the UUPA which gives the state the authority to regulate, manage, and supervise the use of land, water, and other natural resources for the benefit of the people. This state control right includes the authority to regulate the allocation, use, supply, and maintenance of the earth, water, and airspace; as well as determine the legal relationship between people and the earth, water, and airspace.²⁸

According to Boer Mauna in his book "Indonesian Agrarian Law: The History of the Formation of the Basic Agrarian Law," the main purpose of UUPA is to ensure that land in Indonesia is utilised to the greatest extent for the benefit of the people. The extension of a very long period of land rights is feared to cause land monopoly by private investors and threaten Social Justice for all Indonesian people, especially the indigenous people of East Kalimantan.

The agrarian law system in Indonesia, as outlined in the UUPA, is an integration of various elements, including legal principles, legal regulations, and customary law. In the context of IKN, ignoring customary law and the rights of indigenous peoples in the regulation of HAT will undermine the agrarian law system, which should be inclusive and equitable.

²⁷ Edy Junaidi, "Perlindungan Hukum Terhadap Kepemilikan Hak Atas Tanah Yang Termasuk Dalam Program Deliniasi Di Kawasan Ibu Kota Nusantara (IKN) Kutai," *Jurnal Akta Notaris* 3, no. 1 (June 28, 2024): 131–47, <https://doi.org/10.56444/aktanotaris.v3i1.1761>.

²⁸ Hans Raynadhi and Muhammad Sofyan Pulungan, "Settlement of Land Acquisition Disputes for The Nusantara Capital City on Former Sultan Grant Land," *Asian Journal of Engineering, Social and Health* 4, no. 1 (January 26, 2025): 122–37, <https://doi.org/10.46799/ajesh.v4i1.515>.

The customary rights of indigenous peoples are recognised in Article 3 of the UUPA, which states that customary rights and similar rights of indigenous peoples are recognised as long as in fact they still exist and must be regulated by legislation. In the case of IKN, there needs to be a guarantee that the rights of indigenous peoples are protected, and that the regulation of Land Rights does not lead to discrimination or inequality of land tenure to their detriment.

The Policy on Granting Land Rights in IKN as stipulated in Perpres 75/2024 regulates the granting of HGU, HGB and Use Rights to Business Actors with a very long period of time in the IKN area. This policy raises concerns about the monopoly of land control by private investors and the potential for agrarian conflicts in the future. As stated by Dewi Kartika, Secretary General of the Consortium for Agrarian Reform, this long period of land rights can increase the escalation of agrarian conflicts, especially because the IKN area is not empty land, but is a place where people live, including indigenous peoples. According to Dewi, the two-cycle arrangement for land rights in IKN is problematic because it is not recognised in the UUPA but it is even longer than the Agrarische Wet 1870, a colonial product that only gave concessions for 75 years.²⁹

The author argues that Perpres 75/2024, which provides special treatment for business actors in IKN with a very long Land Rights period, violates the principle of land tenure by the State and also violates the Constitutional Court (MK) decision No.21-22/PUU-V/2007 regarding the granting of a lump sum permit in advance.

In Constitutional Court Decision No.21-22/PUU-V/2007, the Court held that when such land rights (HGU, HGB and Right to Use) are granted with a lump sum extension, it reduces, though does not negate, the principle of control by the state, which includes the state's authority to supervise (*toezichthoudensdaad*) and manage (*beheersdaad*). Although there are provisions that allow the state, in this case the government, to terminate or cancel land rights on certain grounds as stipulated in Article 22 paragraph (4) of the Investment Law, the extension of rights in advance at once as stipulated in Article 22 paragraph (1) and paragraph (2) has reduced, weakened, or even in certain circumstances eliminated the

²⁹ Mira Novana Ardani, Yusriyadi Yusriyadi, and Ana Silviana, "Sustainable Environmental Management in Nusantara Capital City: Legal Perspectives and Best Practices," *Diponegoro Law Review* 9, no. 2 (October 31, 2024): 167–85, <https://doi.org/10.14710/dilrev.9.2.2024.167-185>.

sovereignty of the people in the economic field, as guaranteed by Article 33 of the 1945 Constitution of the Republic of Indonesia.³⁰

The granting of land rights with a very long term in IKN has created disharmony in the Indonesian legal system. Perpres 75/2024 gives special treatment to business actors in IKN, while indigenous people in Indonesia receive inferior treatment. This condition creates inequality that not only reduces the spirit of nationalism but also creates a feeling as if local people are just "contracting" in their own country. This disharmony violates the basic principle of land law, namely the principle of control by the state, which should ensure that land is used for the greatest prosperity of the people, not for the benefit of a handful of business actors.

Sunaryati Hartono argues that usually people only see and often even identify the law with legal regulations or even more narrowly only with laws. Whereas the rule of law is only one element of the entire legal system, which consists of 7 (seven) elements, namely:

- a. Legal principles (philosophy of law);
- b. Regulations or legal norms, which consist of:
 - 1) Law;
 - 2) Regulations implementing the law;
 - 3) Permanent jurisprudence (case law);
 - 4) Customary law;
 - 5) International Conventions;
- c. Professional, responsible and law-aware human resources;
- d. Legal institutions;
- e. Legal institutions, including:
 - 1) Its organisational structure;
 - 2) Its authority;
 - 3) Processes and procedures;
 - 4) Working mechanism;
- f. Legal facilities and infrastructure, such as:

³⁰ Mirza Satria Buana et al., "The Nusantara Capital City Project: Why Development and Human Rights Do Not Always Mix," *Law and Development Review* 16, no. 1 (February 23, 2023): 185–223, <https://doi.org/10.1515/ldr-2022-0063>.

- 1) Furniture etc., office equipment including computers and office management systems;
- 2) Arms etc., equipment (especially for Police);
- 3) Vehicles;
- 4) Salaries;
- 5) Employee welfare;
- 6) Development budget, etc.;

g. Legal culture, which is reflected by the behaviour of officials (executive, legislative and judicial) as well as that of the public (including the press).³¹

The legal system is formed by the interaction between the seven elements above, so that if one of the elements does not fulfil the requirements, then the entire legal system will not run properly, or if one element changes, then the entire system or other elements will also or must change.³²

When one of these elements malfunctions or significant changes occur, the entire legal system will be affected and may cause systemic dysfunction. Perpres 75/2024, by granting special long-term land rights to businesses in IKN, has violated the hierarchy of laws and regulations and the principles of agrarian law underlying the legal system in Indonesia. As a result, there is not only damage to the existing legal order, but also a decline in the legitimacy of the law itself in the eyes of the public.³³

Diaz argues that a legal system can be called a demeanour because the legal system is not just a collection of rules. The link that unites them so as to create such a unified pattern is the issue of validity. The rules are accepted as valid if they are issued from the same source or sources, such as the rule of law, jurisprudence, and custom.

As Diazz argues, when Perpres 75/2024 gives privileges to business actors in IKN, this not only violates higher laws and regulations, but also damages legal harmonisation in

³¹ Abdul Zaini et al., "Legal Review of Granting of Building Utilization Rights (HGB) for 160 Years to Investors in The Capital City of The Nusantara Development (IKN)," *YURISDIKSI: Jurnal Wacana Hukum Dan Sains* 19, no. 1 (June 27, 2023): 58–73, <https://doi.org/10.55173/yurisdiksi.v19i1.175>.

³² Satjipto Rahardjo, *Membedah Hukum Progresif* (Jakarta: PT. Kompas, 2006).

³³ Novriansyah Rosyid Hermawan, Arina Novizas Shebubakar, and Sadino Sadino, "Legal Aspects of Land Acquisition for the National Capital City (IKN) of the Nusantara," *Journal of Law, Politic and Humanities* 4, no. 5 (July 24, 2024): 1636–48, <https://doi.org/10.38035/jlph.v4i5.544>.

Indonesia. Because the law is not just a collection of regulations, but there are links that unite them so as to create a unified pattern. Disharmony in regulations such as Perpres 75/2024, which is not in accordance with the principle of state control, creates legal uncertainty and damages the integrity of the legal system as a whole, because regulations that should be general and apply to the entire community are now applied in a discriminatory manner.³⁴

The author argues that the granting of Land Rights in IKN, which is contrary to the principle of state control, not only damages the balance between the interests of the state and the people, but also changes social and economic dynamics that have the potential to undermine legal order in Indonesia. A healthy legal system should reflect justice and equality for all citizens, without favouring certain interests, especially those that harm other groups. However, with the disharmony of these regulations, especially giving special treatment not to Investors in IKN, Indonesia faces great challenges in maintaining the integrity of its legal system, which in turn can have an impact on public confidence in the law itself.

4. Conclusion

The Land Rights cycle agreement stipulated in Perpres 75/2024 granting rights to business actors in IKN with a period of up to 190 years for HGU and 160 years for HGB and Right to Use in two cycles is contrary to UUPA. Based on the hierarchy of laws and regulations stipulated in Article 7 of Law No. 12/2011, Perpres 75/2024 should not conflict with UUPA. The provisions of the Land Rights Cycle Agreement in Perpres 75/2024 need to be revised or revoked, in order to comply with the hierarchy of laws and regulations and by law in accordance with the provisions stipulated in UUPA and the 1945 Constitution.

The granting of Land Rights with a period of 190 years for HGU and 160 years for HGB and Right to Use in two cycles in IKN, which is regulated in Perpres 75/2024, violates the basic principle of land law, namely the principle of control by the state. The government should review the policy of granting Land Rights periods in IKN. This policy needs to be aligned with the principle of land tenure by the state, to ensure that land remains under state

³⁴ Subelo Wiyono and Saim Aksinuddin, "Right to Cultivate (Hak Guna Usaha) in the Nusantara Capital City: An Analysis of Agrarian Law Implications on the Social Function of Land and Sustainability," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (March 19, 2025): 1–18, <https://doi.org/10.31941/PJ.V24I1.5774>.

control and can guarantee that land is used for the greatest prosperity of the people, not for the benefit of a handful of business actors.

References

- Ardani, Mira Novana, Yusriyadi Yusriyadi, and Ana Silviana. "Sustainable Environmental Management in Nusantara Capital City: Legal Perspectives and Best Practices." *Diponegoro Law Review* 9, no. 2 (October 31, 2024): 167–85. <https://doi.org/10.14710/dilrev.9.2.2024.167-185>.
- Buana, Mirza Satria, Prisca Listiningrum, Prasetyo Adi Nugroho, and Ade Angelia Yusniar Marbun. "The Nusantara Capital City Project: Why Development and Human Rights Do Not Always Mix." *Law and Development Review* 16, no. 1 (February 23, 2023): 185–223. <https://doi.org/10.1515/ldr-2022-0063>.
- Budiman, Haris, and Suwar Akhmaddhian. "The Implications of Law No. 11 2020 Concerning Job Creation on Regional Spatial Planning and Watershed Management." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 3 (2023): 1–12.
- Buku Saku Pemindahan Ibu Kota Negara*. Jakarta: Kementerian Perencanaan Pembangunan Nasional/ Badan Perencanaan Pembangunan Nasional Republik Indonesia Juli 2021, 2021.
- Fitria, Dewi Ulfa Lailatul, and Fathur Rochim. "Analisis Proses Legislasi Undang-Undang Republik Indonesia Nomor 3 Tahun 2022 Tentang Ibu Kota Negara Perspektif Masalah Mursalah." *Islamic Law: Jurnal Siyasah* 10, no. 1 (March 20, 2025): 66–91. <https://doi.org/10.53429/ILJS.V10I1.1446>.
- Haira, Haibati, Haedah Faradz, and Sanyoto Sanyoto. "Juridical Overview of the Mechanism for the Forest Area Release and Investment Facilities for Infrastructure Development in Nusantara Capital City." *Jurnal Dinamika Hukum* 22, no. 2 (July 15, 2022): 267. <https://doi.org/10.20884/1.jdh.2022.22.2.3191>.
- Handayani, I Gusti Ayu Ketut Rachmi, Lego Karjoko, Abdul Kadir Jaelani, and Jaco Barkhuizen. "The Politics Settlement of Land Tenure Conflicts During Jokowi's Presidency." *Journal of Indonesian Legal Studies* 7, no. 2 (December 21, 2022): 487–524. <https://doi.org/10.15294/jils.v7i2.57539>.
- Harsono, Budi. *Menuju Penyempurnaan Hukum Tanah Nasional: Perkembangan Pemikiran & Hasilnya Sampai Menjelang Kelahiran UUPA Tanggal 24 September 2007*. Jakarta: Universitas Trisakti, 2019.
- Hermawan, Novriansyah Rosyid, Arina Novizas Shebubakar, and Sadino Sadino. "Legal Aspects of Land Acquisition for the National Capital City (IKN) of the Nusantara." *Journal of Law, Politic and Humanities* 4, no. 5 (July 24, 2024): 1636–48. <https://doi.org/10.38035/jlph.v4i5.544>.
- Jamin, Mohamad, Sapto Hermawan, and Mulyanto. "A Discourse of the Indigenous Peoples' Rights and Their Contributions to the Indonesian Development: Lessons Learned from New Zealand." *Padjadjaran Jurnal Ilmu Hukum* 10, no. 3 (2023): 346–66. <https://doi.org/10.22304/PJIH.V10N3.A3>.
- Jampa, Wilibaldus, and Donna Ramadhan Fitri. "Legal Analysis of the Impact of Nusantara Capital Development on Environmental Damage." *Hakamain: Journal of Sharia and Law Studies* 3, no. 2 (August 26, 2024): 104–16. <https://doi.org/10.57255/HAKAMAIN.V3I2.340>.
- Junaidi, Edy. "Perlindungan Hukum Terhadap Kepemilikan Hak Atas Tanah Yang Termasuk Dalam Program Deliniasi Di Kawasan Ibu Kota Nusantara (IKN) Kutai." *Jurnal Akta Notaris* 3, no. 1 (June 28, 2024): 131–47. <https://doi.org/10.56444/aktanotaris.v3i1.1761>.
- Kamal, Muhammad. "Prospects for the New Capital City Policy in Law and Economic Perspectives." *Substantive Justice International Journal of Law* 5, no. 1 (June 22, 2022): 86. <https://doi.org/10.56087/substantivejustice.v5i1.205>.
- Kelsen, Hans. *Teori Hukum Murni : Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Empirik-*

- Deskritif*. Jakarta: Mandar Maju, 1995.
- Kurniawan, Fahmi. "Konflik Agraria Dalam Pembangunan Ibu Kota Negara: Analisis Hak Guna Usaha Dan Perlindungan Hak Masyarakat Adat." *JOURNAL OF SCIENCE AND SOCIAL RESEARCH* 8, no. 1 (February 17, 2025): 1029–36. <https://doi.org/10.54314/JSSR.V8I1.2831>.
- Mahfud, Muh Afif, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik. "Constitutionality of Simultaneous Extension and Renewal of Land Rights." *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (April 27, 2024): 159–76. <https://doi.org/10.29303/ius.v12i1.1360>.
- Maranatha, Yohana, Indah Dwi Qurbani, and Trie Sulistiowarni. "Juridical Review of the Term of Land Rights in Ibu Kota Nusantara in The Perspective of Agrarian Law." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (March 24, 2025). <https://doi.org/10.31941/PJ.V24I1.5851>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Media Group, 2005.
- Nugraha, Xavier, Krisna Angela, Natasha Caecilia Lisanggraeni Rositaputri, and Amilah Fadhlina. "Optimization of Environmental and Defense of the New Capital City 'Nusantara' Based on Pancasila and SDGs." *Journal of Judicial Review* 24, no. 2 (November 8, 2022): 181. <https://doi.org/10.37253/jjr.v24i2.7214>.
- Nugraha, Xavier, Angelica Milano Aryani Wibisono, Alissa Angelia, Bryan Owen S., and Putri Riska Answendy. "Strengthening Customary Forest Rights for Indigenous People in Indonesia Green Constitution Framework." *Jurnal Kajian Pembaruan Hukum* 3, no. 2 (November 24, 2023): 217. <https://doi.org/10.19184/jkph.v3i2.43367>.
- Peraturan Presiden (Perpres) Nomor 75 Tahun 2024 tentang Percepatan Pembangunan Ibu Kota Nusantara . Indonesia: 75, issued 2024.
- Permadi, Iwan, Weny Almoravid Dungga, and Azhani Arshad. "Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia New National Capital City, Nusantara." *Jambura Law Review* 7, no. 1 (December 23, 2024): 30–54. <https://doi.org/10.33756/jlr.v7i1.24930>.
- Rahardjo, Satjipto. *Membedah Hukum Progresif*. Jakarta: PT. Kompas, 2006.
- Raynadhi, Hans, and Muhammad Sofyan Pulungan. "Settlement of Land Acquisition Disputes for The Nusantara Capital City on Former Sultan Grant Land." *Asian Journal of Engineering, Social and Health* 4, no. 1 (January 26, 2025): 122–37. <https://doi.org/10.46799/ajesh.v4i1.515>.
- Rivandi, Sultan, and Sidik Pramono. "Problem Identification and Policy Network on Law Number 21 Year 2023 on National Capital City." *Ganaya : Jurnal Ilmu Sosial Dan Humaniora* 8, no. 2 (February 19, 2025): 101–11. <https://doi.org/10.37329/GANAYA.V8I2.4015>.
- Sadiawati, Diani, Rianda Dirkareshza, Wicipto Setiadi, and Elizabet Devi Permatasari. "Power of The Chairman of Authority in Preparing Development Plans for Nusantara Capital City." *Jurnal Penelitian Hukum De Jure* 23, no. 3 (2023): 325–40. <https://doi.org/10.30641/dejure.2023.V23.325-340>.
- Setya, Kartika Winkar, Abdul Aziz Nasihuddin, and Izawati Wook. "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 30, 2023): 89–102. <https://doi.org/10.24090/volksgeist.v6i1.7867>.
- Situmorang, Jubair, Abu Sahman, Tulus Suryanto, and Zulfandi Gani. "Literation of Land Rights Law in (Tola Gumi) Protection of Indigenous Peoples..." *Journal of Social Studies Education Research* 12, no. 2 (June 29, 2021): 180–209. <https://www.learntechlib.org/p/219845/>.
- Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif*. Depok: Rajawali Press, 2013.
- Undang-undang (UU) Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria . 5. Indonesia, issued 1960.
- Wiyono, Subelo, and Saim Aksinuddin. "Right to Cultivate (Hak Guna Usaha) in the Nusantara Capital City: An Analysis of Agrarian Law Implications on the Social Function of Land and Sustainability."

Pena Justisia: Media Komunikasi Dan Kajian Hukum 24, no. 1 (March 19, 2025): 1–18. <https://doi.org/10.31941/PJ.V24I1.5774>.

Zaini, Abdul, Muhammad Syihabuddin, Wiranti Wiranti, and Wiwit Wijayanti. "Legal Review of Granting of Building Utilization Rights (HGB) for 160 Years to Investors in The Capital City of The Nusantara Development (IKN)." *YURISDIKSI : Jurnal Wacana Hukum Dan Sains* 19, no. 1 (June 27, 2023): 58–73. <https://doi.org/10.55173/yurisdiksi.v19i1.175>.

Zentra, Muhammad Riandy. "Tinjauan Yuridis Alih Fungsi Kawasan Hutan Atas Pemindahan Ibu Kota Negara Berdasarkan Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan." Universitas Islam Indonesia, 2024.