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Legal implications of the Indonesian President's Regulation accelerating development at IKN

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Abstract

This study aimed to investigate changes in the duration of land-use rights before and after the issuance of Presidential Regulation No. 75 of 2024 and to identify normative conflicts arising in Indonesian agrarian regulations. The research employed a normative approach, focusing on laws, regulations, legal doctrines, and relevant legal theories. This study identified a normative conflict between the restrictions in the Basic Agrarian Law of Indonesia and the provisions of Regulation No. 75, which significantly extends the duration of land-use rights. Before the issuance of Regulation No. 75 of 2024, the granting of land-use rights was regulated by Law No. 5 of 1960 "On Agrarian Principles", which stipulated a grand period of 35 years, extendable for the same period, with a maximum duration of 50 years. However, Regulation No. 75 now stipulates a grant period of 95 years, extendable for another 95 years, allowing for a maximum total of 190 years. This discrepancy creates a misalignment between existing legal provisions and the policies introduced by the Presidential Regulation, leading to legal uncertainties in its enforcement. The findings highlighted the application of the principle *lex superior derogat legi priori*, meaning that higher-ranking regulations override lower-ranking ones. Accordingly, this study emphasised the need for harmonisation between agrarian regulations and other sectoral policies to mitigate conflicts and ensure sustainable and efficient land management aligned with established legal principles

Keywords:

land-use rights; grant period; capital city; legal conflict; agrarian legislation

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Introduction

Indonesian Capital City (IKN) stands for the State Capital, which is the capital city of the Unitary State of the Republic of Indonesia. This definition aligns with Article 1, Paragraph (1), of the Law of the Republic of Indonesia No. 3 “On the State Capital”¹. In an official statement from the Ministry of State Secretariat, President Joko Widodo outlined the reasons for constructing the IKN during his remarks at the opening ceremony of the XVIII Congress of the Central Board of Muhammadiyah Youth, held at the Balikpapan Sport and Convention Centre in February 2023. According to the President, the primary reason for developing the IKN is to promote equality in terms of economic growth, population distribution, and development.

The development of the IKN is part of the National Strategic Plans, with construction taking place in Sepaku, Penajam Paser Utara Regency, East Kalimantan Province. The legal basis for implementing the National Strategic Plan is established in Law No. 3 of 2022², along with its derivative regulations, including Regulation of the President of Republic of Indonesia No. 75 of 2024³ and Government Regulation of the Republic of Indonesia No. 12 “On the Granting of Business Permits, Ease of Doing Business and Investment Facilities for Business Actors in the IKN”⁴. Following Article 33, Paragraph (3), of the 1945 Constitution of the Republic of Indonesia⁵, the state controls the earth, water, and natural resources for the greatest benefit of the people. The IKN possesses significant land potential, making it a key component of national development. Land plays a crucial role in various aspects of human life, including economic, social, political, cultural, and legal domains. Beyond serving as a place of residence, land is also a fundamental source of livelihood, supporting agricultural activities, infrastructure, and other economic sectors (Labibah *et al.*, 2024). The concept of state control means that the government, as the highest authority, has the power to regulate land-related matters but does not own the land itself (Suhariningsih, 2009). In the context of IKN development, land serves as the foundation for establishing modern, sustainable areas that prioritise community welfare. With both strategic and social significance, land management in the IKN must balance development objectives with the rights of local

communities. The regulation of land rights, including the right to cultivate (HGU), is essential for ensuring equitable and sustainable growth. A legal conflict has emerged between the Agrarian Law, which limits HGU to 25 years, and Presidential Regulation No. 75 of 2024, which extends this period to 95 years, contravening the principle of legal hierarchy and creating regulatory uncertainty.

Research by I.A.T.R. Ayunungtyas *et al.* (2024) highlights concerns regarding the extended duration of the HGU in the IKN without a mechanism for revocation or termination, which contradicts Law No. 5 of 1960⁶. The study focuses on the clarity of procedures for obtaining and extending HGU, as well as the status of land rights after the expiry of the HGU period. A. Safik’s & M. Ewinda (2023) discuss the implementation of land rights in the IKN based on Presidential Decree No. 65 of 2022⁷ and other related regulations. However, their study, limited to normative aspects, does not analyse the social and legal consequences. A.K. Murti *et al.* (2023) examine normative conflicts related to the HGU duration in the IKN and emphasise the need for regulatory harmonisation to prevent legal conflicts that could obstruct development.

Unlike previous studies, which focused on normative conflicts, implementation, and legal clarity, this study analyses significant changes in the HGU duration before and after the enactment of Presidential Regulation No. 75 of 2024⁸, including its legal implications for protecting local community rights, ensuring environmental sustainability, and optimising strategic land management in the IKN. This study also provides legal recommendations to balance the interests of the state, land managers, and the community. C. Chaerudin (2023) argues that development for national strategic projects frequently conflicts with human rights, particularly regarding the eviction of Indigenous Peoples and urban populations who lack formal land ownership documents.

The case of the Rempang Island community illustrates that 16 traditional villages, including Sembulang Village, which was established in 1834, are threatened with losing their ancestral land. The community perceives itself as being more disadvantaged than benefiting from the development. Therefore, the state must

¹ Law of the Republic of Indonesia No. 3 “On the State Capital”. (2022, February). Retrieved from <https://peraturan.bpk.go.id/Details/198400/uu-no-3-tahun-2022>.

² *Ibidem*, 2022.

³ Regulation of the President of Republic of Indonesia No. 75 “On the Acceleration of the IKN”. (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁴ Government Regulation of the Republic of Indonesia No. 12 “On the Granting of Business Permits, Ease of Doing Business and Investment Facilities for Business Actors in the IKN”. (2023, March). Retrieved from <https://peraturan.bpk.go.id/Details/244908/pp-no-12-tahun-2023>.

⁵ Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/>.

⁶ Law of the Republic of Indonesia No. 5 “On Agrarian Principles”. (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁷ Decree of the President of the Republic of Indonesia No. 65 “Land Acquisition and Land Management in the Capital City of the Archipelago”. (2022, April). Retrieved from <https://peraturan.bpk.go.id/Details/207621/perpres-no-65-tahun-2022>.

⁸ Regulation of the President of Republic of Indonesia No. 75 “On the Acceleration of the IKN”. (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

protect their rights, and the community has proposed that the development project be carried out outside the traditional village area. This issue has been examined by R. Dewi *et al.* (2024), whose research highlights that land rights violations often involve collusion between government authorities and private sector entities, weak law enforcement, and the legal uncertainty faced by landowners. In addition, victims seeking justice encounter numerous obstacles, including a long and complex bureaucratic process and an imbalance of power between the conflicting parties.

Based on this context, this study aimed to comprehensively analyse the differences in the duration of Rights to Cultivate allocations before and after the issuance of Presidential Regulation No. 75 of 2024¹, as well as its legal implications for land management in the Indonesian Capital City (IKN) and the rights of affected communities. This study focused on reforming the regulation governing the HGU allocation period, given that Presidential Regulation No. 75 of 2024 introduces significant changes to the land management system, especially within the IKN, which is a priority for national development. This regulatory shift not only affects administrative arrangements concerning the HGU allocation period but also has far-reaching legal implications for safeguarding local community rights, promoting environmental sustainability, and enhancing land use as a strategic asset. This study was intended to provide a clear understanding of the direction of policy development in the field of land management after the Presidential Decree came into force, and to propose legal recommendations that would help balance the interests of the state, land managers and local communities.

Materials and Methods

The normative legal research conducted in this study was based on an analysis of applicable legal norms, with a focus on the conceptual framework underlying specific regulations. This study relied on secondary data, which comprised primary, secondary, and tertiary legal materials. Legal research employed several methodological approaches. These approaches served as a means of obtaining information from various sources regarding the legal issues addressed in this study. Since this research adopted a normative legal framework, several approaches were applicable, including the statutory approach and the conceptual approach (Marzuki, 2010). Primary legal materials consisted of laws and regulations as sources of law with binding force. The primary legal materials in this research, relating to

the right to cultivate in the capital city of the archipelago, included Regulation of the President of the Republic of Indonesia No. 75 "On the Acceleration of the IKN"², Law of the Republic of Indonesia No. 5 of 1960 "On Agrarian Principles"³, and Law of the Republic of Indonesia No. 3 "On the State Capital"⁴. Secondary legal materials, such as books and journals, were utilised to provide theoretical perspectives and support the understanding of legal policy. Meanwhile, tertiary legal materials, such as the Great Dictionary of the Indonesian Language (Lukman, 1991), served to clarify the terminology used.

The primary approach adopted was the statutory approach, whereby this study conducted an in-depth examination of the laws and regulations relevant to its theme. Additionally, a conceptual approach was employed to identify and understand the ideas and fundamental principles underpinning the formation of the legal norms under investigation. With this approach, the study did not merely focus on the content of the regulations but also examined the concepts underlying their formation, such as justice, legal certainty, and the protection of workers' rights. This approach enabled an analysis of the relationship between applicable legal norms and the intended legal objectives within the context of legal politics and workers' rights, ensuring that the research findings offer both theoretical and practical contributions to the understanding and development of relevant legal policies.

Results and Discussion

Land possesses strategic value not only due to its physical aspects but also because of its social and defence-related functions (Sulistio, 2020). In the social dimension, land serves as an identity marker for local communities, particularly Indigenous groups who have historical and emotional ties to it as an ancestral heritage (Nurahman, 2022). In the defence dimension, effective land management can support national stability by facilitating strategic infrastructure and ensuring sustainable spatial management (Sakarwi, 2014). Therefore, land management in the IKN must maintain a balance between development requirements and the protection of local community rights. From a legal perspective, land is regulated through various rights, such as ownership rights, cultivation rights, building usufructuary rights, and use rights, which provide a legal basis for its use (Novitasari *et al.*, 2023). The regulation of land rights in the IKN is particularly significant given the complexity of developing the new national capital, which involves multiple stakeholders, including the government, local

¹ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

² Ibidem, 2024.

³ Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁴ Law of the Republic of Indonesia No. 3 "On the State Capital". (2022, February). Retrieved from <https://peraturan.bpk.go.id/Details/198400/uu-no-3-tahun-2022>.

communities, and investors. With prudent management, land in the IKN can support equitable, sustainable, and inclusive development, while also serving as a symbol of Indonesia's progress as a nation that upholds sustainability and social justice (Safik & Ewinda, 2023).

HGU can only be granted to Indonesian citizens and legal entities incorporated under Indonesian law and domiciled within Indonesian territory. Land that is eligible for HGU must be state-owned, and if it falls within a designated forest area, the right can only be granted after the land has been reclassified (Sari, 2020). The ownership of HGU is directly linked to legal protection for its holders, as land ownership disputes are prevalent in Indonesian society. As a constitutional state guided by the 1945 Constitution of the Republic of Indonesia¹, the government bears the responsibility of providing legal protection to ensure fair access to land ownership, use, and enjoyment for all citizens. However, the duration of HGU allocations has frequently been criticised for disproportionately benefiting large business actors at the expense of local communities affected by development (Lapasian, 2023).

HGU, which is regulated under Law No. 5 of 1960 "On Agrarian Principles"², grants the holder the authority to utilise the land for a specified period. Article 29 of the Agrarian Law, Paragraph 1, states that HGU may be granted for a maximum period of 25 years. Paragraph 2 stipulates that if a company requires a longer period, it may be extended to a maximum of 35 years and further extended for an additional 25 years upon expiry. This provision aims to maintain a balance between the need to utilise the land for investment and the principle of state-controlled land management for the greatest prosperity of the people, as mandated by Article 33, Paragraph (3), of the 1945 Constitution of the Republic of Indonesia³. Meanwhile, under Article 9, Paragraph 2, of Presidential Regulation No. 75 of 2024⁴ HGU is initially granted for a maximum of 95 years in the first cycle and may be extended for a further 95 years in the second cycle. In comparison to the Agrarian Law, the HGU period stipulated in Presidential Regulation No. 75 of 2024 is significantly longer. The HGU

concession period, as outlined in Presidential Regulation, appears misaligned with the fundamental purpose of law-making. According to R. Baldwin *et al.* (2012), well-designed regulations must prevent disparities in resource ownership, curb short-term exploitation, and ensure equitable access to resources in accordance with the principles of social justice. Furthermore, regulations should facilitate the redistribution of resources and enhance community access. Effective regulations must uphold justice by safeguarding the interests of all parties, providing legal certainty through clearly defined rights and obligations, and generating substantial benefits for society (Abidin, 2017). This highlights the necessity for regulations governing the HGU concession period to be carefully structured in alignment with the principles of justice, legal certainty, and public benefit.

The legal conflict between the duration of the HGU under the Agrarian Law and Presidential Regulation No. 75 of 2024⁵ constitutes a violation of the principle of *lex superior derogat legi inferiori* – the doctrine that emphasises that lower regulations must not conflict with higher ones. Article 28 of the Agrarian Law⁶ as the primary legislation, sets the maximum HGU term at 25 years, extendable by up to 35 years. This aligns with Article 33, Paragraph (3), of the 1945 Constitution⁷, which emphasises land management for the people's prosperity. However, Presidential Regulation No. 75 of 2024⁸ extends the HGU period to 95 years, potentially reaching a total of 190 years if renewed in the second cycle – a substantial deviation from the provisions of the Agrarian Law⁹. This creates legal uncertainty and undermines the principle of justice in land resource management. Such a violation of the principle of *lex superior derogat legi inferiori* highlights a fundamental legal conflict between different levels of legislation.

As a lower-ranking regulation, the Presidential Regulation¹⁰ lacks the authority to alter or override the provisions of the Agrarian Law, which holds higher legal status. This inconsistency also threatens the state's flexibility in land management, rendering it misaligned with the fundamental objective of state-controlled land governance for the greatest prosperity of the people.

¹ Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/>.

² Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

³ Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/>.

⁴ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁵ Ibidem, 2024.

⁶ Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁷ Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/>.

⁸ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁹ Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

¹⁰ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

Thus, the provisions in the Presidential Regulation require review to prevent regulatory disharmony and ensure compliance with the established legal hierarchy. The government argues that granting HGU for up to 95 years in the IKN aims to maximise investment attractiveness, both domestically and internationally. This policy is expected to enhance investor confidence by offering long-term business certainty. However, the exceptionally long HGU period raises concerns about potential land monopolisation by certain entities, leading to concentrated land control by large-scale investors. This not only restricts local communities' access to land and resources but also poses risks of exacerbating social inequality, disregarding environmental sustainability, and contradicting the principle of social justice in Article 33, Paragraph (3), of the 1945 Constitution¹,

which mandates equitable land management for the collective prosperity of the people.

The enactment of Presidential Regulation No. 75 of 2024² has far-reaching legal implications for land management and the investment framework of Indonesia's new capital city. One of the most notable changes concerns the regulation of land rights duration, particularly the right to cultivate, which has been significantly extended. Previously governed by the Agrarian Law, the HGU framework now faces new provisions that may conflict with existing regulations. The discrepancy between the regulations governing the duration of HGU is a key issue in the revised legal framework. Table 1 presents a comparison of the provisions for granting HGU under the Agrarian Law and Presidential Regulation No. 75 of 2024.

Table 1. Comparison of the granting of the HGU period between the Agrarian Law and Presidential Regulation No. 75 of 2024 on the acceleration of the Indonesian Capital City

Agrarian Law ³	President Regulation No 75 of 2024 ⁴
Article 29. (1) The right to cultivate is granted for a maximum term of 25 years. (2) For companies requiring a longer period, the HGU may be granted for a maximum of 35 years. (3) Upon the request of the rights holder, and considering the circumstances of the company, the HGU period specified in Paragraphs (1) and (2) may be extended for a maximum of 25 years.	Article 9. (1) The Indonesian Capital Authority guarantees certainty in the duration of land rights through 1 initial cycle, which may be renewed for 1 second cycle for Business Actors, as specified in the agreement. (2) The cycles referred to in Paragraph (1) are as follows: a. business use rights may be granted for a maximum of 95 (ninety-five) years through 1 initial cycle, with the possibility of renewal for 1 second cycle, extending for up to 95 years, subject to evaluation criteria and phased implementation.

Source: developed by the authors

Article 29 of the Agrarian Law⁵ regulates the right to cultivate with a more restrictive maximum term of 25 years, which may be extended to 35 years for companies requiring a longer duration. Additionally, there is an extension of up to 25 years that may be granted upon request by the rights holder, subject to an assessment of the company's condition. This regulation reflects a cautious and measured approach to land-use rights allocation. By contrast, Presidential Regulation No. 75 of 2024⁶ substantially expands the HGU period for business actors. Article 9 of the regulation grants an initial cycle of up to 95 years, with the option of renewal for a second cycle of equal duration, contingent on an evaluation of specified criteria and phased implementation. This revision aims

to provide long-term legal certainty for business actors and enhance Indonesia's investment appeal.

The normative conflict between the Agrarian Law and Presidential Regulation No. 75 of 2024⁷ can be classified as a vertical normative conflict, which arises when a lower-level regulation contradicts a higher-level regulation within the legal hierarchy. In the Indonesian legal system, the hierarchy of laws and regulations is governed by the principle of *lex superior derogat legi inferiori*, meaning that higherranking laws take precedence over lower-ranking regulations. Consequently, the Agrarian Law⁸, as a higher legal authority, should serve as the primary reference, taking precedence over Presidential Regulation No. 75 of 2024. The inconsistency between the Agrarian Law and Presidential

¹ Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/>.

² Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

³ Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁴ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁵ Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁶ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁷ Ibidem, 2024.

⁸ Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

Regulation No. 75 of 2024 raises concerns regarding regulatory harmonisation. This conflict undermines the legal legitimacy of the Presidential Regulation, particularly given that Article 33 of the 1945 Constitution of the Republic of Indonesia¹ explicitly mandates that natural resource management must adhere to the principles of justice and sustainability. If the provisions of the Presidential Regulation contradict the Agrarian Law, its implementation may be deemed legally invalid.

Therefore, any regulation that conflicts with the fundamental norm or a higher-ranking norm loses its legal validity. The normative conflict between the Agrarian Law and Presidential Regulation No. 75 of 2024 can be classified as a vertical normative conflict, which arises when a lower-ranking regulation contradicts a higher-ranking regulation within the legal hierarchy. In the Indonesian legal system, the hierarchy of laws and regulations is governed by the principle of *lex superior derogat legi inferiori*, meaning that higher-ranking laws take precedence over lower-ranking regulations. Consequently, the Agrarian Law as a higher legal authority, should serve as the primary reference, taking precedence over Presidential Regulation No. 75 of 2024². The inconsistency between the Agrarian Law and Presidential Regulation No. 75 of 2024 raises concerns regarding regulatory harmonisation. This conflict undermines the legal legitimacy of the Presidential Regulation, particularly given that Article 33 of the 1945 Constitution of the Republic of Indonesia explicitly mandates that natural resource management must adhere to the principles of justice and sustainability. If the provisions of the Presidential Regulation contradict the Agrarian Law, its implementation may be deemed legally invalid.

According to H. Kelsen's (1999) theory, the validity of legal norms is determined by their conformity with the fundamental norms or "Grundnorm" applicable within a legal system. In this context, the fundamental norm is the principle of justice and legal certainty enshrined in the Constitution. Therefore, any regulation that conflicts with the fundamental norm or a higher-ranking norm loses its legal validity. Article 29, Paragraph (1), of the Agrarian Law³ establishes that limiting the HGU period serves to preserve land function and prevent monopolisation of natural resources. This regulation aligns with the principle of justice outlined

in Article 33 of the 1945 Constitution of the Republic of Indonesia⁴, which emphasises the necessity of managing natural resources for public welfare. Accordingly, the regulation of HGU in the Agrarian Law has a strong legal foundation and cannot be disregarded by a Presidential Regulation. Conversely, the regulation in Presidential Regulation No. 75 of 2024⁵, which extends the HGU period to a maximum of 190 years, represents a divergent approach – one that prioritises greater flexibility for HGU holders.

However, this flexibility has the potential to conflict with the principles of justice and sustainability enshrined in the Constitution. If an excessively long period is granted without adequate regulatory oversight, the risk of natural resource exploitation by certain entities may increase, ultimately harming national interests. This conflict of norms also shows that the regulatory framework governing HGU requires further harmonisation. Resolution of this conflict may involve revising Presidential Regulation No. 75 of 2024⁶ to align with the Agrarian Law⁷ or pursuing judicial review at the Supreme Court to determine its legal validity. Such measures are essential to ensure that all policies concerning natural resource management uphold the principles of justice, legal certainty, and sustainability. From a legal perspective, the principle of *lex superior derogat legi inferiori* is fundamental to resolving normative conflicts. As a statutory law, the Agrarian Law holds greater legal authority than Presidential Regulation No. 75 of 2024. Therefore, the provisions in the Presidential Regulation must conform to those of the Agrarian Law, particularly regarding the HGU term. This alignment is crucial for maintaining coherence within the national legal system and ensuring that natural resource management adheres to the principles of justice and sustainability.

Additionally, the government must consider the long-term consequences of excessively extended HGU regulations. Granting HGU for up to 190 years could lead to the monopolisation of land use by specific entities, exacerbating inequalities in natural resource management. Thus, the HGU limitations set out in the Agrarian Law⁸ must be upheld to guarantee equitable and sustainable natural resource governance. As a state governed by the rule of law, Indonesia bears the responsibility of ensuring that all aspects of public life are regulated through consistent and coherent legal in-

¹ Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://surl.li/hmmvxf>.

² Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

³ Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁴ Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://surl.li/ebzhqj>.

⁵ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁶ Ibidem, 2024.

⁷ Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁸ Ibidem, 1960.

struments. The normative conflict between the Agrarian Law and Presidential Regulation No. 75 of 2024¹ underscores the need for regulatory harmonisation to safeguard the principles of justice, legal certainty, and sustainability as mandated by the Constitution.

The right to cultivate is a key instrument in the governance of natural resources, regulated within a national legal framework to ensure sustainability and public welfare. An analysis of the Law of the Republic of Indonesia No. 5 “On Agrarian Principles” and Regulation of the President of Republic of Indonesia No. 75, reveals significant differences in HGU tenure regulations, which could impact the national legal order. As a higher-ranking law, the Agrarian Law² restricts HGU to an initial maximum of 25 years with the possibility of gradual extensions, whereas the Presidential Regulation³ permits an initial term of 95 years, extendable to 190 years. This disparity gives rise to a normative conflict that requires harmonisation to uphold the rule of law.

Article 33 of the 1945 Constitution of the Republic of Indonesia⁴ asserts that natural resources must be controlled by the state and utilised to maximise public welfare. The HGU limitations in the Agrarian Law reflect a precautionary approach, ensuring the land’s social function is preserved and preventing monopolisation of management by specific entities. Conversely, the extended tenure allowed under Presidential Regulation No. 75 of 2024⁵ raises concerns about the potential for unchecked natural resource exploitation, which could negatively impact communities in the long term. This analysis underscores the need for regulatory synchronisation to maintain policy alignment with the principles of justice, sustainability, and legal certainty.

Within Indonesian positive law, the principle of *lex superior derogat legi inferiori* establishes that subordinate regulations must not contradict higher-ranking laws. Accordingly, Presidential Regulation No. 75 of 2024⁶ must conform to the provisions of the Agrarian Law so as not to prevent legal uncertainty. Such harmonisation is essential to ensure that HGU policies remain aligned with the constitutional mandate of managing natural resources for the collective prosperity of the people. This study recommends revising the regulation and

enhancing oversight mechanisms to ensure better legal integration in land and natural resource governance.

Other normative conflicts arise from provisions that require HGU holders to follow the principles of sustainable environmental management, which may at times conflict with the commercial objectives of long-term land management (Yahya, 2024). For example, some industrial sectors that rely on land for business expansion may find that the stricter environmental provisions in Presidential Regulation No. 75 of 2024 are inconsistent with those in other investment policies that comply with Agrarian Law⁷, which prioritise efficiency and rapid expansion without adequately considering sustainability concerns. On the other hand, although the extension of the HGU period is considered a step towards mitigating the conflict between investment needs and existing legal restrictions, it can exacerbate issues related to equitable land use (Sahrul, 2024). A longer period risks widening land ownership inequality, while new land management norms may not have been sufficiently disseminated or widely accepted by stakeholders in the local regions. This creates a gap between the long-term objectives of agrarian policies and their implementation on the ground, as well as potential conflicts with regional policies that impose stricter land use regulations.

The issuance of Presidential Regulation No. 75 of 2024⁸ governs land acquisition for the development of the IKN, giving rise to various legal implications related to state land control rights and the protection of affected communities. Land management by the state in the context of IKN development refers to the highest level of land control rights vested in the state. This authority not only applies to land controlled by the state but also includes mechanisms to regulate and utilise land for the public interest. In this context, land acquisition for the development of the IKN is intended to serve the public interest following the principle of “public prosperity” as stipulated in Article 33 of the 1945 Constitution⁹. The government, through Presidential Regulation No. 75 of 2024, is responsible for organising and facilitating the transfer of land rights to support broader development objectives. To achieve the aims of IKN development, land acquisition must be

¹ Regulation of the President of Republic of Indonesia No. 75 “On the Acceleration of the IKN”. (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

² Law of the Republic of Indonesia No. 5 “On Agrarian Principles”. (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

³ Regulation of the President of Republic of Indonesia No. 75 “On the Acceleration of the IKN”. (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁴ Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://surl.li/fdkrmr>.

⁵ Regulation of the President of Republic of Indonesia No. 75 “On the Acceleration of the IKN”. (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁶ Ibidem, 2024.

⁷ Law of the Republic of Indonesia No. 5 “On Agrarian Principles”. (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁸ Regulation of the President of Republic of Indonesia No. 75 “On the Acceleration of the IKN”. (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁹ Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://surl.li/snlrhl>.

carried out with due consideration for the public interest, including providing fair compensation to those who hold land rights.

As stipulated in Constitutional Court Decision No. 001-0021-0022/PUU-1/2003¹, the interpretation of Article 33 of the 1945 Constitution² mandates that the state regulate and administer natural resources, including land, to maximise public prosperity. One key implication arising from the issuance of this Presidential Regulation concerns land management, which has traditionally been part of the rights of Indigenous Peoples. Within customary law, land holds economic, cultural, and social significance essential to the survival of Indigenous Peoples. Certain Indigenous groups, such as the Kaili Tribe in Central Sulawesi, maintain a system of land ownership that differs from state law, potentially leading to conflicts in the land acquisition process. This aligns with the argument made by R. Papatungan & A. Bakhri (2023) that such processes must be carefully regulated to safeguard Indigenous land rights. Furthermore, the government should provide solutions to ensure the long-term security of land rights held by Indigenous Peoples.

The development of the Indonesian IKN, although aimed at improving community well-being, also presents environmental challenges that require careful consideration. Such a large-scale project risks contributing to deforestation, habitat destruction, and ecological disruption. Therefore, Presidential Regulation No. 75 of 2024³ must be complemented by environmental policies that support the sustainable management of natural resources. It is essential that this development not only prioritises economic growth but also ensures long-term environmental sustainability. The concept of state control over land, as outlined in the Agrarian Law⁴, grants the state ultimate authority over land use. This means that, although land may be owned by individuals or community groups, the state retains the power to regulate, manage, and, where necessary, reallocate land rights for the public interest. In the context of IKN development, land acquisition is undertaken in the public interest, as regulated in the Law of Republic of Indonesia "On Land Acquisition for Development in the Public Interest"⁵. This legal framework authorises the state to reassign land rights from individuals or legal entities for projects intended to enhance public welfare.

Legal implications of land ownership. Presidential Regulation No. 75 of 2024 provides a legal basis for the

state to control and transfer land rights for the development of the IKN. However, the transfer of land rights must be carried out through clear procedures that adhere to the principles of justice. Communities affected by land acquisition must receive fair compensation reflecting the market value of the land taken. Protection of Indigenous Peoples' rights. In Indonesia, various Indigenous groups hold land rights by their customary legal systems (Wibowo, 2022). For Indigenous communities, land is not merely an economic resource but also holds significant cultural and spiritual value. Therefore, land acquisition for IKN development must consider the inherent rights of Indigenous Peoples, whose identities and traditions are closely tied to the land.

Conflict with the Indigenous Peoples' rights. One of the challenges in acquiring land for IKN development is the potential for conflict with Indigenous Peoples who claim ownership based on customary land tenure systems (Murti *et al.*, 2023). The transfer of land rights held by Indigenous Peoples must be handled with sensitivity, respecting cultural values and ensuring that compensation aligns with established customary rights. The development of IKN will inevitably impact the environment, particularly due to the large-scale land use involved. Key concerns include deforestation, habitat destruction, and loss of biodiversity, all of which require careful consideration. Thus, sustainable environmental management policies must be implemented throughout the development process to minimise negative impacts on natural ecosystems (Mykytyuk, 2022).

Land acquisition for IKN development faces complex challenges under civil law, particularly concerning the rights of Indigenous communities and private landowners under customary legal frameworks. The process of transferring land rights must be conducted fairly, ensuring transparency and adequate compensation that aligns with recognised civil law principles. Ownership disputes may arise in the absence of legal certainty regarding the land designated for IKN development, necessitating clear regulatory provisions and legal safeguards to protect the civil rights of landowners (Orinton *et al.*, 2023).

In civil law, compensation plays a crucial role in land acquisition. The government is obligated to provide fair compensation, either through monetary payment or land replacement of equal value. The principle of fairness must be upheld to prevent undue disadvantage to any party, particularly those who have long

¹ Judgment of Constitutional Court of the Republic of Indonesia No. 001-0021-0022/PUU-1/2003. (2003, December). Retrieved from <https://mhn.bphn.go.id/index.php/MHN/article/download/168/84/>

² Constitution of the Republic of Indonesia. (1945, August). Retrieved from <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/>.

³ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

⁴ Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁵ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

inhabited or cultivated the land. The compensation process must also follow legally recognised deliberative mechanisms, ensuring that landowners are allowed to assert their rights through a fair negotiation process. Presidential Regulation No. 75 of 2024¹ carries significant legal implications for land management in IKN. This regulation outlines the procedures for obtaining and extending HGU and ensures legal certainty regarding land status upon the expiration of these rights. The policy is designed to provide clarity for landowners and business entities while safeguarding the rights of local communities against arbitrary land seizures. With a more transparent and inclusive legal framework, the risk of agrarian conflicts can be minimised, ensuring fairness in the management of land assets within the IKN project.

Conclusions

The National Capital is being developed to ensure equitable development across Indonesia. To support this objective, specific regulations governing the National Capital have been established. However, inconsistencies have emerged regarding the duration of land use rights within the National Capital, leading to discrepancies between existing regulations. These inconsistencies present a potential threat to Indigenous communities who have long relied on and managed these lands. Furthermore, the environmental impact must be a central consideration, particularly given that the land has been in use for over a century and has developed an established ecological balance. A normative conflict arises because the Agrarian Law holds a superior legal position compared to other regulations, yet the provisions concerning the duration of HGU land tenure rights in the National Capital are governed by a government-issued regulation.

The legal principle of *lex superior derogat legi inferiori* dictates that lower-tier regulations must conform to higher legal norms. Therefore, a normative review is

essential to assess whether the regulations governing land tenure in the National Capital align with overarching legal principles and do not infringe upon the rights of affected communities. The absence of such a review could lead to legal disputes, social instability, and complications within the implementation of land policies in the National Capital. Before implementing this policy, the government must carefully consider the legal, social, and environmental implications to ensure that it does not lead to injustice or adverse long-term consequences.

A balanced approach is necessary to ensure that land management policies are not only legally valid but also socially responsible and environmentally sustainable. To uphold social justice and human rights, the government must provide fair compensation and alternative solutions for affected communities. Moreover, environmental sustainability must be safeguarded through stringent land management policies that mitigate ecological risks and promote responsible resource utilisation. Given the significant implications, revising existing regulations is crucial to ensuring fairness and sustainability in land governance. Legal reforms should aim to harmonise conflicting regulations, strengthen legal protections for Indigenous land rights, and establish clear environmental safeguards. By adopting comprehensive and inclusive legal policies, the government can promote balanced and equitable land governance that respects human rights while preserving ecological integrity for future generations. Future research should explore legal conflicts between national and local regulations on land rights and assess their impact on social justice and environmental sustainability.

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None.

Conflict of Interest

None.

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¹ Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from <https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024>.

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Правові наслідки Указу президента Індонезії про пришвидшення розвитку ІКН

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Анотація

Метою цього дослідження було вивчення змін у наданні прав на землекористування до і після видання Указу президента Індонезії від 2024 року № 75, а також виявлення нормативних колізій, які виникають в аграрному регулюванні Індонезії. У цьому дослідженні використано нормативний метод, застосований для вивчення законів і підзаконних актів, правових доктрин та відповідних правових теорій. Це дослідження виявило нормативний конфлікт між положеннями Основного аграрного закону Індонезії, які є обмеженішими, й Указом № 75, що подовжує термін дії прав на землекористування. До видання Указу від 2024 року № 75 термін «надання права користування землею» було регламентовано Законом Індонезії від 1960 року № 5 «Про принципи землекористування», у якому було зазначено, що право користування землею надають строком на 35 років, його може бути подовжено на такий самий строк, щоб загальний термін становив 50 років. Водночас Указ № 75 передбачає, що право користування землею надають строком на 95 років, який може бути продовжено ще на 95 років з максимальним загальним строком до 190 років. Це створює невідповідність між положеннями, передбаченими в нормативно-правових актах нижчого рівня, і політикою, визначеною в Указі президента, що створює правові проблеми в його реалізації. Результати дослідження засвідчили необхідність застосування принципу *lex superior derogat legi priori*, тобто вищих нормативних актів до нижчих. У дослідженні акцентовано на необхідності гармонізації аграрного законодавства з іншими галузевими політиками для зменшення потенціалу конфліктів і забезпечення сталого, ефективного управління земельними ресурсами відповідно до застосовних правових принципів

Ключові слова:

права землекористування; період дії дозволу; столиця; правовий конфлікт; аграрне законодавство