

Research Article



## Legal Inconsistency on the Right to Build: Investment, Agrarian Rights, and Constitution

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**Abstract:** The legal duration of the Right to Build (*Hak Guna Bangunan*) in the new capital city has raised concerns due to inconsistencies across regulatory frameworks. Current policies suggest that HGB may be granted for up to 160 years in two cycles, creating potential conflict with previous legal norms that provide for shorter durations. This study aims to assess the legal validity of the extended tenure of HGB within the context of national land law and to propose a justice-oriented regulatory model. The research adopts a normative legal method, utilizing primary and secondary legal materials, with a statutory and conceptual approach. The findings of this study are twofold: First, the regulation concerning HGB in the new capital lacks legal validity based on Lon L. Fuller's theory of legal systems, as it contains ambiguous provisions, contradicts existing laws, and undermines legal certainty due to the possibility of frequent changes. Second, a just regulatory model should be grounded in the broader public interest and aligned with the moral and philosophical foundations of the national ideology, particularly the principle of social justice, to ensure equitable land access and promote sustainable capital development.

**Keywords:** Investment; New Capital City; Norm Conflict; Right to Build;



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## INTRODUCTION

Indonesia is recognized as an agrarian country where land serves not only as a fundamental element in the national economic structure but also carries deep historical, social, and cultural significance. Land functions as a vital natural resource essential for fulfilling human needs and supporting nearly all development activities, including residential purposes, economic enterprises, and environmental conservation. The role of land in national development must be understood within the framework of sustainability and social justice. From the perspective of agrarian law, land is not merely regarded as a private legal object but also as a matter of public interest that must be utilized and managed in accordance with the principles of utility, justice, and sustainability. Consequently, within the national legal system, land serves a dual function as a social asset that strengthens societal cohesion and as a capital asset that acts as a strategic instrument for economic development.<sup>1</sup>

Since the enactment of Law Number 5 of 1960 concerning the Basic Agrarian Principles (commonly known as the Agrarian Law), Indonesia has established the principle that all land is essentially controlled by the state and must be used to the greatest benefit of the people (Article 2 of the Agrarian Law). Article 16 paragraph (1)

<sup>1</sup> Novri Susan, 'Scenario Building on Law No. 7 of 2012 about Social Conflict Intervention: The Possible Future of Land Conflict Management in Indonesia', *Procedia Environmental Sciences*, 17 (2013), 870–79 <https://doi.org/10.1016/j.proenv.2013.02.105>



of the same law classifies land rights into several main categories, including Ownership Rights, Right to Cultivate (Hak Guna Usaha), Right to Build (Hak Guna Bangunan), Right to Use, Lease Rights, and other rights such as the Right to Clear Land and the Right to Collect Forest Products. Over time, the Right to Build has gained strategic importance in supporting urban development and the creation of new economic zones, particularly in the context of developing the Nusantara Capital City (IKN). The Right to Build grants its holder the authority to construct buildings on land owned by the state or other parties for a specified period and under certain usage conditions determined by the government.<sup>2</sup>

In recent regulations, provisions regarding the Right to Build are not only found in the Agrarian Law and Government Regulation Number 18 of 2021 concerning Land Management Rights, Land Rights, Condominium Units, and Land Registration but are also clarified through Government Regulation Number 12 of 2023 on the Granting of Business Licensing, Ease of Doing Business, and Investment Facilities for Business Actors in the Nusantara Capital City. This regulation stipulates that the Right to Build in the IKN area may be granted for a period of up to 95 years, comprising an initial term of 30 years, an extension of 30 years, and a renewal for an additional 35 years. This scheme has sparked controversy, as it appears to contradict the spirit of the Agrarian Law, which limits the initial period to 30 years with a possible extension of 20 years. The policy raises concerns regarding the consistency of agrarian justice principles and constitutional supremacy, particularly in safeguarding the people's rights to land and preventing monopolistic control over land resources.

According to data from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) of East Kalimantan Province (2023), the total area of the Nusantara Capital City (IKN) reaches 256,142.8 hectares. This area consists of the Central Government Core Area (KIPP) covering approximately 6,671 hectares, the IKN area comprising around 56,180 hectares, and the development buffer zone spanning approximately 193,291 hectares. With such a vast land allocation scheme, the role of the state becomes highly central in ensuring that land use in IKN does not solely serve investment interests but also upholds the principles of social justice and equitable access to agrarian resources. Therefore, the granting of land rights on a large scale and for extended periods requires a comprehensive review to avoid violating the constitutional mandate as outlined in Article 33 of the 1945 Constitution of the Republic of Indonesia and the fundamental principles of the Basic Agrarian Law.<sup>3</sup>

In this context, an urgent need arises to evaluate the practice of granting the Right to Build (HGB) in IKN, which has the potential to generate agrarian inequality. The use of land within an investment framework must remain subject to constitutional norms and ensure that no form of exploitation or marginalization occurs, particularly against local communities, including indigenous peoples who maintain historical and

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<sup>2</sup> Yusran Yusran and others, 'The Empirical Visibility of Land Use Conflicts: From Latent to Manifest Conflict through Law Enforcement in a National Park in Indonesia', *Land Use Policy*, 62 (2017), 302–15 <https://doi.org/https://doi.org/10.1016/j.landusepol.2016.12.033>

<sup>3</sup> Afrizal, Eka Vidya Putra and Linda Elida, 'Palm Oil Expansion, Insecure Land Rights, and Land-Use Conflict: A Case of Palm Oil Centre of Riau, Indonesia', *Land Use Policy*, 146 (2024), 107325 <https://doi.org/https://doi.org/10.1016/j.landusepol.2024.107325>



spiritual ties to their land. Thus, the regulation of land rights, especially the Right to Build, must be oriented toward supporting the goals of equitable and sustainable development.<sup>4</sup> It must also ensure that the development of IKN serves not only as a symbol of physical progress but also as a reflection of structural justice and ecological sustainability within Indonesia's agrarian legal system.

Table 1: Land Allocation in the Nusantara Capital City

Area Classification	Size (hectares)	Description
Central Government Core Area (KIPP)	±6,671	The main administrative center of the Nusantara Capital City
Nusantara Capital City Area (IKN Area)	±56,180	The designated capital city area including KIPP
Development Buffer Zone	±193,291	Supporting areas for development surrounding the core city area
<b>Total</b>	<b>256,142.8</b>	Entire area allocated for IKN development as per ATR/BPN (2023)

**Source:** Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, Regional Office of East Kalimantan Province. *Strategic Issues Related to Land Affairs in IKN*.

The table above shows that Areas for Other Land Uses (APL) refer to terrestrial zones designated by the government as areas outside state forest boundaries. The determination of APL status is based on a Ministerial Decree from the Ministry of Forestry or through the Forest Land Use Consensus Mechanism (*Tata Guna Hutan Kesepakatan/TGHK*), which is subsequently confirmed within the Spatial Planning framework (RTRW) at both provincial and regency/municipal levels. APL areas play a strategic role in supporting cross-sectoral development beyond the forestry sector, including for settlements, agriculture, plantations, infrastructure, and economic zones. Geographically, APL areas are generally located in lowland regions and possess high potential for development into new growth centers that emphasize sustainable spatial utilization.

In the context of the development of the new national capital (IKN), the designated Nusantara Capital City Area (K-IKN) covers approximately 56,180 hectares. This area spans across two districts: Sepaku District in Penajam Paser Utara Regency and Loa Kulu District in Kutai Kartanegara Regency, East Kalimantan Province. K-IKN encompasses 13 existing villages and urban communities, consisting of 11 villages, Sungai Payang, Jonggon, Argo Mulyo, Bukit Raya, Bumi Harapan, Karang Jinawi, Semoi Dua, Sukaraja, Sukomulyo, Tengin Baru, and Wonosari and two urban wards, namely Pernaluan and Sepaku. Within the K-IKN area lies a specifically designated zone called the Central Government Core Area (KIPP), which has an estimated size of

<sup>4</sup> Takashi Kurosaki, Saumik Paul and Firman Witoelar, 'In Pursuit of Power: Land Tenancy Contracts and Local Political Business Cycles in Indonesia', *Journal of Economic Behavior & Organization*, 227 (2024), 106764 <https://doi.org/10.1016/j.jebo.2024.106764>

approximately 6,671 hectares and will be further defined according to the needs of national strategic development.<sup>5</sup>

The government plans to construct KIPP within Sepaku District, overlapping with the administrative areas of Pemaluan, Bumi Harapan, and Bukit Raya Villages, which have already undergone notable physical and social transformations due to the IKN development agenda. Furthermore, the buffer zone, officially referred to as the Nusantara Capital City Development Area (KPIKN), is being prepared to support the overall functioning of IKN. KPIKN serves important ecological and spatial functions, including acting as an environmental buffer zone, providing space for food security, serving as land reserves for urban expansion, and accommodating public service areas at the local level.<sup>6</sup> Together, these three areas—APL, KIPP, and KPIKN—constitute integral components of IKN's spatial structure, as stipulated in Presidential Regulation Number 63 of 2022 concerning the Detailed Spatial Plan for the National Strategic Area of the Nusantara Capital City. This regulation serves as the primary reference for the management, utilization, and control of spatial development in Indonesia's new capital region.

Table 2: Registered and Unregistered Land in the Nusantara Capital City, 2022

	Registered APL areas	Unregistered APL areas
Luas	42.026,18 ha	60.965,62 ha

**Source:** Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, Regional Office of East Kalimantan Province. *Strategic Issues Related to Land Affairs in IKN.*

The table above illustrates that approximately 42,026.18 hectares of the Area for Other Land Uses (APL) in the Nusantara Capital City have been officially registered. These include various land rights such as ownership rights, rights to build, rights to cultivate, rights of use, and waqf land. Meanwhile, the unregistered APL land is classified as state land, as no specific land rights have been granted over it. State land refers to land that is not held by individuals or legal entities under a recognized land title, in accordance with prevailing regulations. According to Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), such land falls under direct state control and is commonly referred to as state land. The acquisition of land rights over state land is regulated through both government regulations and ministerial decrees.

Within the national land law system, the Right to Build (HGB) constitutes a legally strong yet temporary form of land right, which may be transferred to another party. HGB grants its holder the authority to construct and own buildings on land not owned by the holder. Article 35 of the UUPA stipulates that HGB may be granted for a maximum initial term of 30 years, extendable for 20 years, and renewable upon the request of the right holder, taking into account the condition and necessity of the building. This provision was further elaborated under Government Regulation Number 18 of 2021, which allows the HGB to be granted, extended, and renewed for

<sup>5</sup> Dina Oktavia and others, 'Dynamics of Land Use and Land Cover in the Belitung Island, Indonesia', *Heliyon*, 10.12 (2024), e33291 <https://doi.org/https://doi.org/10.1016/j.heliyon.2024.e33291>

<sup>6</sup> John F McCarthy and others, 'Land Reform Rationalities and Their Governance Effects in Indonesia: Provoking Land Politics or Addressing Adverse Formalisation?', *Geoforum*, 132 (2022), 92–102 <https://doi.org/https://doi.org/10.1016/j.geoforum.2022.04.008>





successive periods of 30, 20, and 30 years respectively, with a cumulative maximum term of 80 years.<sup>7</sup>

However, the regulation of HGB underwent substantial changes in the context of Nusantara's development. Government Regulation Number 12 of 2023, which specifically governs investment incentives in IKN, stipulates that HGB may be granted for a full 80-year cycle, comprising an initial 30-year term, a 20-year extension, and a 30-year renewal. Furthermore, the regulation allows for simultaneous approval of the extension and renewal, provided the land has been effectively utilized for at least five years. In some cases, HGB may also be granted for a second cycle, bringing the potential total duration of land control by a single legal subject to 160 years. This scheme has sparked debate, as it diverges from the normative framework of the UUPA and obscures the principle of agrarian justice, which emphasizes limitations on land tenure for the public good.<sup>8</sup>

From the perspective of the hierarchy of laws and regulations, this policy presents potential disharmony. The UUPA, as the foundational land law, sets a maximum duration of 50 years for HGB (30 years plus a 20-year extension), while Government Regulation 12 of 2023 permits two consecutive cycles totaling 160 years. The inconsistency between Government Regulation 18 of 2021 and Government Regulation 12 of 2023 regarding the timeframes and procedures for HGB renewal further contributes to legal ambiguity. Government Regulation 18 of 2021 mandates a sequential process for granting land rights, whereas Government Regulation 12 of 2023 authorizes a simultaneous issuance of extension and renewal in a single decree, effectively altering the mechanism intended to protect the social function of land.<sup>9</sup>

From a comparative legal perspective, Indonesia's regulation of land rights appears relatively complex and poses a risk of long-term monopolization. For instance, Malaysia's agrarian system refers to a single comprehensive statute, the National Land Code, which offers a more consistent and straightforward framework. Malaysia does not recognize the concept of HGB; instead, it adopts a leasehold system tailored to specific purposes such as industrial or agricultural use, with a maximum lease term of 99 years. The absence of a dual-cycle system like that in Indonesia ensures greater legal certainty and minimizes the risk of exclusive land control by a small segment of society.<sup>10</sup>

<sup>7</sup> Perdinan and others, 'Translation of International Frameworks and National Policies on Climate Change, Land Degradation, and Biodiversity to Develop Integrated Risk Assessment for Watershed Management in Indonesia', *Watershed Ecology and the Environment*, 6 (2024), 1–12 <https://doi.org/https://doi.org/10.1016/j.wsee.2023.10.001>

<sup>8</sup> Rahmawaty and others, 'Land Characteristics and Land Suitability Assessment for *Styrax* Sp. in Humbang Hasundutan Regency, North Sumatra, Indonesia', *Heliyon*, 9.7 (2023), e16936 <https://doi.org/https://doi.org/10.1016/j.heliyon.2023.e16936>

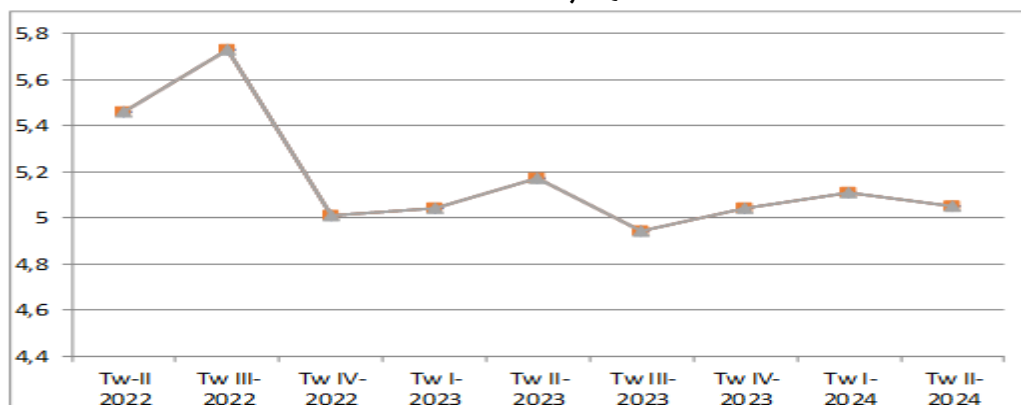
<sup>9</sup> Wiwin Ambarwulan and others, 'Modelling Land Use/Land Cover Projection Using Different Scenarios in the Cisadane Watershed, Indonesia: Implication on Deforestation and Food Security', *The Egyptian Journal of Remote Sensing and Space Science*, 26.2 (2023), 273–83 <https://doi.org/https://doi.org/10.1016/j.ejrs.2023.04.002>

<sup>10</sup> Sugeng Budiharta and Karen D Holl, 'Harnessing Opportunities to Upscale Forest Landscape Restoration in Indonesia', *Trees, Forests and People*, 21 (2025), 100917 <https://doi.org/https://doi.org/10.1016/j.tfp.2025.100917>

Therefore, it is necessary to conduct a critical evaluation of the HGB scheme in IKN, particularly in relation to its alignment with the UUPA, the principle of intergenerational justice, and the protection of local communities. Granting long-term land rights without robust control mechanisms may contradict Article 33 of the 1945 Constitution of the Republic of Indonesia, which affirms that land and natural resources are controlled by the state and must be utilized for the greatest benefit of the people. Accordingly, land policy, especially in strategic areas such as IKN, must remain within constitutional boundaries and ensure social justice for all segments of society.<sup>11</sup>

The regulatory issues surrounding the Right to Build (HGB) in Indonesia, particularly in the context of the development of Nusantara, raise critical questions about the legal validity of the current framework. The inconsistencies between Law Number 5 of 1960, Government Regulation Number 18 of 2021, and Government Regulation Number 12 of 2023 indicate normative contradictions within the land law system. This lack of harmony can be analyzed using Lon L. Fuller's theory of legal validity, which emphasizes that a legal system is valid only if it adheres to the principles of the inner morality of law. Fuller proposes eight principles of legality, including generality, promulgation, non-retroactivity, clarity, consistency, possibility of compliance, relative stability, and congruence between law and enforcement.<sup>12</sup> The current HGB regulations in Indonesia violate several of these principles, particularly the fifth and seventh, due to contradictions among rules and frequent, overlapping regulatory changes. Furthermore, laws that lack a foundation in moral principles tend to produce injustice.<sup>13</sup> Based on Fuller's theory, the current land policies related to HGB in Indonesia cannot be regarded as legally valid from either a moral or structural standpoint.

Chart 1: National Growth by Quarter since 2022



Source: Data from the National Statistics Agency

<sup>11</sup> Syamsul Bachri and others, 'Land Use Change Simulation Model Using a Land Change Modeler in Anticipation of the Impact of the Semeru Volcano Eruption Disaster in Indonesia', *Environmental Challenges*, 14 (2024), 100862 <https://doi.org/10.1016/j.envc.2024.100862>

<sup>12</sup> Euthalia H Sittadewi and others, 'Post-Landslide Restoration through Multistrata Agroforestry-Based Land Management in the West Bogor Area of Indonesia', *Trees, Forests and People*, 16 (2024), 100593 <https://doi.org/10.1016/j.tfp.2024.100593>

<sup>13</sup> Brian Bramanto and others, 'Geodetic Evidence of Land Subsidence in Cirebon, Indonesia', *Remote Sensing Applications: Society and Environment*, 30 (2023), 100933 <https://doi.org/10.1016/j.rsase.2023.100933>



The chart above illustrates that Indonesia's economy experienced stagnation in 2024. Economic growth in the first quarter stood at 5.11 percent, but in the second quarter it declined by 0.6 percent to 5.05 percent. This pattern signals a warning for the government to take stronger measures in boosting annual economic growth. Since 2022, Indonesia's economic growth has hovered around 5 percent, indicating a stagnant trajectory. According to a study conducted in 2018 by the Directorate of Macro Planning and Statistical Analysis of the Ministry of National Development Planning (*Bappenas*), several key factors have been identified as constraints to Indonesia's economic growth, particularly regulatory and institutional barriers. The study found that the existing regulations tend to be restrictive and unsupportive of business creation and development. Moreover, it revealed institutional weaknesses, including a lack of strategic alignment, weak oversight, overlapping policies, and legal uncertainty factors that have discouraged investors.

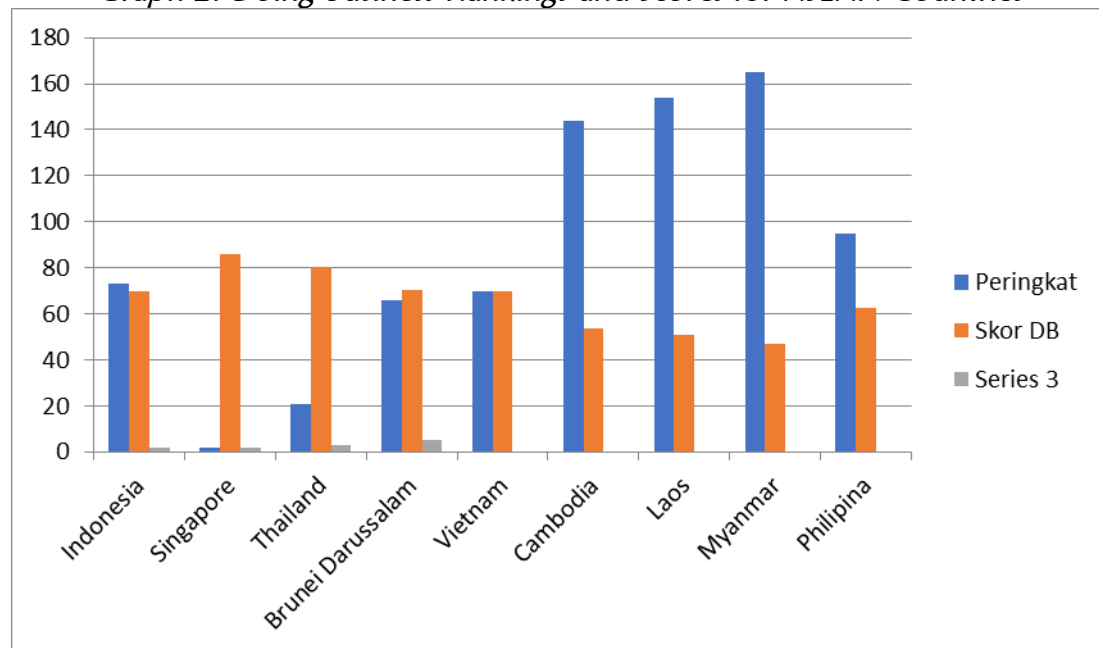
These issues have had tangible effects. For instance, although approximately 270 investors initially expressed interest in investing in the Nusantara Capital City (IKN), only 10 have committed to actual investments. This gap can largely be attributed to the lack of legal certainty and the persistence of overlapping regulations within Indonesia's investment climate. Richard A. Posner, through his framework of the economic analysis of law, offers a theoretical lens that bridges legal reasoning with economic principles to resolve legal issues. His theory aims to synthesize various legal interpretations and doctrines to achieve greater satisfaction and promote the maximization of well-being. In this view, the law is not only a normative system but also an instrument with measurable economic consequences. Posner emphasizes that legal analysis should incorporate considerations of economic value, utility, and efficiency, all grounded in the rational behavior of individuals, without neglecting justice as a fundamental aim of law.<sup>14</sup>

A regulation can be considered economically valuable if it satisfies two primary conditions. First, it must be implementable within economic activities that yield profit and provide direct societal benefits, thereby contributing to social welfare. Second, it should generate gains in both monetary and non-monetary forms, adding value at both the individual and collective levels. Hence, economically rational law is not only efficient in terms of resource allocation but also substantively just and responsive to public needs. In practice, however, not all government policies have yielded benefits for the broader population.<sup>15</sup> For instance, Indonesia's performance in the Ease of Doing Business (EoDB) index in 2020 revealed relatively poor regulatory quality in supporting business facilitation. The following statistics reflect this issue:

<sup>14</sup> Ravidho Ramadhan, Marzuki Marzuki, Wiwit Suryanto, Sholihun Sholihun, Helmi Yusraini, Robi Muharsyah, and others, 'Trends in Rainfall and Hydrometeorological Disasters in New Capital City of Indonesia from Long-Term Satellite-Based Precipitation Products', *Remote Sensing Applications: Society and Environment*, 28 (2022), 100827 <https://doi.org/https://doi.org/10.1016/j.rsase.2022.100827>

<sup>15</sup> B Handyastono and others, 'Flood Hazard Assessment in Pernaluan Village Due to Land Use Change in IKN (Ibu Kota Nusantara) as the New Capital City of Indonesia', *Case Studies in Chemical and Environmental Engineering*, 11 (2025), 101211 <https://doi.org/https://doi.org/10.1016/j.cscee.2025.101211>

Graph 2: Doing Business Rankings and Scores for ASEAN Countries



Source: World Bank Group

The low score in the Ease of Doing Business (EoDB) index has had a significant impact on Indonesia's economic performance. As previously illustrated, Indonesia's economic growth has remained stagnant at approximately 5 percent. Additionally, the national unemployment rate remains relatively high. According to data from the National Statistics Agency (Badan Pusat Statistik), as of February 2024, the number of unemployed individuals reached 7.2 million. This situation can be attributed to the persistent presence of overlapping government regulations and complex bureaucratic procedures, which continue to deter both domestic and foreign investors from investing in Indonesia. Consequently, the lack of a conducive investment climate not only hampers economic development but also imposes direct social and economic costs on the Indonesian population.

Several studies have explored the legal inconsistencies surrounding the Right to Build (*Hak Guna Bangunan*) in Indonesia, particularly in the context of investment, agrarian rights, and constitutional alignment. Putri et al. (2022) highlight that Government Regulation No. 18 of 2021 introduces ambiguities in granting HGB rights to foreign investors, revealing a vertical contradiction between this regulation, the Job Creation Law, and the Basic Agrarian Law (UUPA). They argue that while the regulation aims to strengthen investment opportunities, it risks undermining legal certainty due to its lack of consistency with foundational agrarian principles.<sup>16</sup> Supriyanto et al. (2023) further examine the application of HGB in infrastructure development and find that although HGB facilitates economic growth, it faces bureaucratic bottlenecks and overlapping institutional interests, weakening the rule of

<sup>16</sup> Arif Tri Wibowo and Dzulhidayah Kinanggi, 'Analysis of the Job Creation Act (UUCK) Mandate Through Government Regulation Number 18 of 2021', *Marcapada: Jurnal Kebijakan Pertanian*, 2.1 (2022), 1–11 <https://doi.org/10.31292/mj.v2i1.21>





law and governance transparency.<sup>17</sup> A more specific analysis by Suyanto (2023) critiques Government Regulation No. 12 of 2023, which allows HGB to be granted for up to 160 years in the Nusantara Capital City (IKN), far exceeding the 50-year limitation prescribed by the UUPA. This regulatory extension raises serious questions regarding its constitutional validity and its alignment with the principle of equitable land distribution.<sup>18</sup>

Complementing this perspective, Permadi (2024) investigates the legal uncertainty faced by HGB holders on state-managed lands (Hak Pengelolaan or HPL). His findings show that the lack of institutional clarity and procedural coherence prevents effective access to legal remedies, particularly for smallholders and local communities.<sup>19</sup> Meanwhile, Herusantoso (2024), in his study on agrarian reform, underscores the normative contradiction that emerged after the establishment of Indonesia's Land Bank. He emphasizes that overlapping regulatory frameworks have led to fragmented legal structures that contradict the constitutional mandate for land redistribution and justice. Collectively, these studies reveal that Indonesia's current legal architecture for land rights, particularly the HGB framework, is characterized by regulatory disharmony, extended durations that threaten public control, and institutional fragmentation. These inconsistencies not only undermine investor confidence but also erode the constitutional principle that land and natural resources must be managed for the greatest benefit of the people, as stipulated in Article 33 of the 1945 Constitution. Therefore, a thorough legal harmonization is necessary to realign land regulations with constitutional values, ensure legal certainty, and balance investment facilitation with agrarian justice.<sup>20</sup>

The purpose of this research is to critically examine the legal inconsistencies in the regulation of the Right to Build (Hak Guna Bangunan/HGB) in Indonesia, particularly in relation to investment policy, agrarian justice, and constitutional principles. This study aims to identify and analyze contradictions among key legal instruments, including Law Number 5 of 1960 on Basic Agrarian Principles (UUPA), Government Regulation Number 18 of 2021, and Government Regulation Number 12 of 2023, especially regarding the duration and mechanisms for granting HGB in strategic areas such as the Nusantara Capital City (IKN).

## METHOD

This research adopts a normative legal method, which involves the examination of statutory regulations and legal literature as the primary basis for analyzing specific legal issues. The central focus of this study is to evaluate the juridical validity and rationality of the regulation concerning the Right to Build (Hak Guna Bangunan or

<sup>17</sup> Supriyanto Supriyanto, Azis Budianto and Faisal Santiago, 'Implementation of Building Use Rights in State Land Management by Developers', *Jurnal Impresi Indonesia*, 3.12 (2024), 933–39 <https://doi.org/10.58344/jii.v3i12.5733>

<sup>18</sup> Suyanto, 'Duration of Land Rights in the Capital City of the Nusantara: The Perspective of National Agrarian Law', *Ijobsor*, 11.2 (2023), 215–21 <https://doi.org/https://doi.org/10.35335/ijopsor.v11i2.151>

<sup>19</sup> Iwan Permadi, 'Analysis of Causal Factors and Impact of Legal Uncertainty on Building Rights from Management Rights', *Jurnal Dinamika Hukum*, 24.2 (2024), 274 <https://doi.org/10.20884/1.jdh.2024.24.2.4783>

<sup>20</sup> Bayu Praditya Herusantoso, 'The Antinomy of Agrarian Reform Regulations After the Establishment of the Land Bank Authority', *Jurnal Ilmu Kenotariatan*, 5.1 (2024), 17 <https://doi.org/10.19184/jik.v5i1.46593>



HGB) for a duration of 80 years in the Nusantara Capital City, as stipulated in Government Regulation Number 12 of 2023. The research approach relies on the analysis of relevant legal materials, both binding and supplementary.<sup>21</sup> The legal sources utilized in this study include primary legal materials such as legislation and binding legal provisions; secondary legal materials including academic journals, legal textbooks, and expert opinions; as well as tertiary legal materials, such as dictionaries and legal indexes, which serve to support the identification of relevant sources. The collection of legal materials is conducted through library research, by reviewing written sources including statutes, legal archives, and official documents. To complement the normative analysis, the research also employs interviews with key informants in order to gain practical insights into the implementation of the HGB policy in the field. This combination of methods aims to provide a comprehensive understanding of both the normative foundations and the practical realities of legal enforcement.<sup>22</sup>

## RESULT AND DISCUSSION

### *Risk of Land Monopoly and Socioeconomic Inequality*

Legal validity refers to the degree to which a legal norm can be considered legitimate and binding upon its subjects. In the context of administrative law, a decision or *beschikking* must conform to existing legal provisions to be recognized as valid. When a decision fails to meet both formal and material requirements set by legislation, it can be classified as legally defective or invalid. This concept of legal validity is inseparable from the principle of legality, which dictates that all governmental actions must be rooted in applicable laws. Ten Berge identifies five key aspects of the rule of law: the principle of legality, the protection of human rights, government accountability under the law, the exclusive authority of the state to use power, and the role of independent judges in providing oversight.<sup>23v</sup>

Building upon these foundations, Lon L. Fuller introduced the theory of the inner morality of law, which comprises eight core principles. These include the requirement that laws must be general in nature, publicly accessible, non-retroactive, understandable, internally consistent, practically enforceable, stable over time, and applied consistently in both substance and practice. When these principles are applied to Government Regulation Number 12 of 2023, several weaknesses become evident. The regulation displays vertical inconsistencies with superior legal norms, particularly with the Basic Agrarian Law and Government Regulation Number 18 of 2021. It also contains provisions that are ambiguous and unstable, creating the potential for multiple interpretations. As a result, its legal validity should be critically examined through the lens of legality and Fuller's internal morality of law. Without such

<sup>21</sup> Dinda Aprilia and others, 'Regulatory Model for Tourism Villages in Forest Areas Based on Sustainable Tourism', *Legality: Jurnal Ilmiah Hukum*, 33.1 (2025), 286–306 <https://doi.org/10.22219/ljih.v33i1.40177>

<sup>22</sup> Mamasiddikov Muzaffarkhon Musakhonovich and others, 'The Protection of Labor Rights on the Court System', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 742–64 <https://doi.org/10.53955/jhcls.v4i1.115>

<sup>23</sup> Marissa Malahayati and Toshihiko Masui, 'The Impact of Green House Gas Mitigation Policy for Land Use and the Forestry Sector in Indonesia: Applying the Computable General Equilibrium Model', *Forest Policy and Economics*, 109.September (2019), 102003 <https://doi.org/10.1016/j.forpol.2019.102003>



scrutiny, the regulation may generate legal uncertainty and inequity in its application.<sup>24</sup>

One of the essential principles in a democratic legal system is the requirement that laws be formulated in clear and comprehensible language. However, Government Regulation Number 12 of 2023, especially Article 19 paragraphs (2), (3), (4), and (5), demonstrates normative vagueness in regulating the duration of the Right to Build or Hak Guna Bangunan (HGB) within the new capital city of Nusantara. Paragraph (2) allows for the simultaneous granting, extension, and renewal of HGB rights through a single decision letter and certification process. In contrast, paragraph (3) states that extensions and renewals may only be granted after five years of effective land use. This discrepancy introduces ambiguity in implementation and fosters legal uncertainty for rights holders.<sup>25v</sup>

This regulation sharply deviates from Government Regulation Number 18 of 2021, which explicitly requires that HGB extensions occur before the expiration date and allows a two-year grace period afterward. Government Regulation 18 of 2021 also outlines specific criteria in Article 37, including compliance with spatial planning, the legal eligibility of the rights holder, and the fulfillment of environmental and social conditions. In contrast, Government Regulation Number 12 of 2023 does not specify the substantive criteria for extension and renewal across two time cycles. It merely refers to an evaluation by the Nusantara Capital Authority without clarifying the form, content, or parameters of that evaluation. Paragraphs (4) and (5) of Article 19 permit HGB use for eighty years within a single cycle and allow for an additional cycle of equal duration. Yet the regulation fails to define the contractual framework or special conditions required to obtain this second cycle, leaving wide interpretive gaps. These omissions undermine legal certainty and blur the legal standing of rights holders who have already received official decisions. The lack of clarity creates a mismatch between written norms and their implementation, contradicting the principle of legality and Fuller's assertion that laws must be understandable, unambiguous, and not misleading to the public.<sup>26</sup>

This situation disadvantages rights holders, particularly during the initial five years after the rights are granted, as the legal certainty of their HGB status remains unclear despite the issuance of a decision letter. Furthermore, the absence of a clear legal foundation for the second cycle reinforces concerns that this policy could be exploited by vested interests. In a rule-of-law state, such regulatory ambiguity undermines

<sup>24</sup> Rebecca Meckelburg and Agung Wardana, 'The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia', *Land Use Policy*, 137 (2024), 107017 <https://doi.org/https://doi.org/10.1016/j.landusepol.2023.107017>

<sup>25</sup> Fumi Harahap, Semida Silveira and Dilip Khatiwada, 'Land Allocation to Meet Sectoral Goals in Indonesia—An Analysis of Policy Coherence', *Land Use Policy*, 61 (2017), 451–65 <https://doi.org/https://doi.org/10.1016/j.landusepol.2016.11.033>

<sup>26</sup> Hariati Sinaga, 'Intersectional Perspectives on Land Relations of Oil Palm Plantations: A Decolonial Feminist Approach on Indonesia's Bioeconomy', *Forest Policy and Economics*, 159 (2024), 103124 <https://doi.org/https://doi.org/10.1016/j.forpol.2023.103124>



rational and operational lawmaking and erodes the integrity of the national land administration system, which should instead ensure legal certainty and protection.<sup>27</sup>

Another fundamental legal principle asserts that legal norms must not contradict one another. Vertical and horizontal consistency among legal norms is essential for ensuring legal certainty. When a lower regulation conflicts with a higher one, legal disharmony arises, leading to implementation difficulties. This issue is clearly observed in the regulation of the HGB duration in Nusantara, where a normative conflict emerges among Government Regulation Number 12 of 2023, Government Regulation Number 18 of 2021, and Law Number 5 of 1960 concerning the Basic Agrarian Principles. According to Article 7 paragraph (1) of Law Number 12 of 2011 on the Formation of Laws and Regulations, all subordinate legislation must align with superior legislation. The Basic Agrarian Law clearly sets the HGB term at thirty years with a possible twenty-year extension. Government Regulation 18 of 2021 elaborates this further, allowing thirty years for the initial grant, twenty years for extension, and thirty years for renewal, to be implemented sequentially. In contrast, Government Regulation 12 of 2023 deviates from this framework by permitting an eighty-year HGB term in a single cycle, extendable to a second cycle of the same duration, totaling 160 years, and to be granted simultaneously rather than sequentially. These differences reflect a lack of normative coherence and create practical confusion for businesses and investors.<sup>28</sup>

This regulatory inconsistency has directly impacted investor interest in the Nusantara region. Of the 270 investors who initially expressed interest, only ten have proceeded, with the regulatory uncertainty cited as a primary deterrent. When legal frameworks lack coherence, investor confidence diminishes, as they cannot rely on stable legal guarantees for long-term business operations. This contributes to sluggish national economic growth, which remained at 5 percent in the third quarter of 2024, falling short of the government's expectations tied to the Nusantara development project. The overlapping of legal norms, combined with frequent regulatory changes, further exacerbates uncertainty. The legal framework governing HGB has undergone substantial changes within a short time span, beginning with the enactment of the 2020 Job Creation Law, which the Constitutional Court declared conditionally unconstitutional in Decision Number 91/PUU-XVIII/2020. The government failed to revise the law as mandated and instead issued Government Regulation in Lieu of Law Number 2 of 2022, which retained similar content and was later passed as Law Number 6 of 2023.<sup>29</sup>

Such recurrent legal shifts reveal weak legislative planning and inconsistent land policy direction. Fuller emphasizes that a sound legal system must uphold stability and

<sup>27</sup> Wouter Heijlen and Chris Duhayon, 'An Empirical Estimate of the Land Footprint of Nickel from Laterite Mining in Indonesia', *The Extractive Industries and Society*, 17 (2024), 101421 <https://doi.org/https://doi.org/10.1016/j.exis.2024.101421>

<sup>28</sup> Laurence L Delina and others, 'Are Capital Assets under Pressure? The State of and Challenges to Indigenous Rice Farming in the Cultural Ricescapes of Indonesia and the Philippines', *Journal of Rural Studies*, 106 (2024), 103235 <https://doi.org/https://doi.org/10.1016/j.jrurstud.2024.103235>

<sup>29</sup> Wikan Dinar Sunindyo and others, 'Should We Build a Metaverse for the New Capital of Indonesia?', *Heliyon*, 10.7 (2024), e29037 <https://doi.org/https://doi.org/10.1016/j.heliyon.2024.e29037>





avoid drastic changes, as they can erode public trust and undermine legal predictability. The changes in HGB regulation over the past three years have generated confusion both in normative interpretation and practical enforcement, especially when comparing the staged rights allocation under Government Regulation 18 of 2021 with the simultaneous grant permitted under Government Regulation 12 of 2023. This inconsistency affects not only business actors but also destabilizes the structure of national agrarian law and derails efforts toward sustainable development in the new capital area. Therefore, regulatory harmonization and restructuring are urgently required to ensure alignment with prevailing legal principles and to provide comprehensive legal certainty and protection.<sup>30</sup>

### ***Aligning Agrarian Law with Pancasila and the Constitution***

One of the fundamental characteristics of a state governed by the rule of law is the supremacy of law as the primary foundation for the conduct of state and societal affairs. Legal supremacy is not only manifested through fair and equitable law enforcement but also through the strengthening of three main components of the legal system: legal substance, legal structure, and legal culture. Responsive legal substance reflects the people's aspirations in regulating dynamic social life. A credible and professional legal structure serves as the cornerstone of public trust, while legal awareness within society signals the development of a healthy and sustainable legal culture.<sup>31</sup>

Within the legislative framework, several key principles ensure the consistency and hierarchy of legal norms. The principle of *lex superior derogat legi inferiori* requires that lower-level laws must not conflict with higher-level ones. *Lex specialis derogat legi generali* prioritizes specific provisions over general ones. Meanwhile, *lex posterior derogat legi priori* asserts that newer laws may replace older ones, provided they do not conflict with higher legal norms. These principles affirm that all legal products must derive their authority from, and remain aligned with, superior regulations. To ensure adherence to this principle, judicial review becomes a crucial instrument in upholding the supremacy of law.<sup>32</sup>

Law Number 12 of 2011 on the Formation of Legislation emphasizes the importance of hierarchy and consistency among legal regulations. Article 7 outlines the types and hierarchy of legal norms, beginning with the 1945 Constitution, decrees of the People's Consultative Assembly, laws and government regulations in lieu of law, government regulations, presidential regulations, provincial regulations, regency/municipality regulations, and village regulations or equivalent instruments. Articles 8 through 14 further stipulate that all legislative content must align with the

<sup>30</sup> McCarthy and others.

<sup>31</sup> Amiruddin Akbar Fisu, Ibnu Syabri and I Gusti Ayu Andani, 'Urban Dynamics and Gen-Z Mobility: The Influence of Land Use Diversity and Density on Daily Trip Patterns in Indonesia', *Sustainable Futures*, 8 (2024), 100388 <https://doi.org/https://doi.org/10.1016/j.sftr.2024.100388>

<sup>32</sup> Arief A Yusuf and others, 'Indonesian Capital City Relocation and Regional Economy's Transition toward Less Carbon-Intensive Economy: An Inter-Regional CGE Analysis', *Japan and the World Economy*, 68 (2023), 101212 <https://doi.org/https://doi.org/10.1016/j.japwor.2023.101212>





1945 Constitution, particularly in matters concerning fundamental rights, the distribution of power, territorial jurisdiction, and state finance.<sup>33</sup>

Nevertheless, in practice, a normative inconsistency arises between Government Regulation Number 12 of 2023 and Law Number 5 of 1960 on Basic Agrarian Principles. Article 35 of the 1960 Agrarian Law explicitly stipulates that a Right to Build (HGB) may be granted for a maximum period of thirty years and extended for an additional twenty years. This means that the total maximum period permitted is fifty years, with the extension process requiring an application and evaluation of land use compliance. In contrast, Article 19 of Government Regulation Number 12 of 2023 allows an HGB on land managed by the Nusantara Capital City Authority (HPL) to be granted simultaneously for a full eighty-year cycle. This includes an initial term of thirty years, an extension of twenty years, and a renewal of thirty years. Furthermore, a second cycle may be granted for a total of one hundred sixty years, provided it is agreed upon in advance and jointly evaluated by the Authority and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.<sup>34</sup>

In addition, the regulation allows for the conversion of HGB into full ownership rights for landed houses and strata title ownership for condominiums following the release of management rights by the Nusantara Authority. Although this provision aims to promote investment and legal certainty in Nusantara, it introduces fundamental legal challenges by contradicting the superior norms of the 1960 Agrarian Law. From the perspective of the principle of legality and the legal hierarchy, such inconsistency constitutes a breach of the *lex superior* principle. Therefore, for the law to function effectively within a democratic legal state, all government regulations must remain subordinate to laws from which they derive authority. Harmonizing regulations, ensuring adherence to legal principles, and maintaining consistent implementation are strategic steps toward establishing a strong and publicly trusted legal system. If the inconsistency between Government Regulation Number 12 of 2023 and the Agrarian Law remains unaddressed, the principle of legality and the rule of law will be reduced to a mere formality without substantive legitimacy.<sup>35</sup>

A closer examination of Article 19 of Government Regulation Number 12 of 2023 reveals that it permits the granting of HGB for two full cycles totaling one hundred sixty years. This provision is clearly at odds with Article 35 of the 1960 Agrarian Law, which limits HGB to a maximum of thirty years with an additional twenty-year extension, thus capping the total term at fifty years. This disparity not only violates the principle of *lex superior* but also disregards the legal hierarchy established under

<sup>33</sup> Taufik Kurrahman and others, 'Data-Driven Natural Capital Accounting Model in Indonesia: Impacts of Environmentally Related Economic Activities on Ecological Processes and Services', *Journal of Cleaner Production*, 469 (2024), 143213 <https://doi.org/https://doi.org/10.1016/j.jclepro.2024.143213>

<sup>34</sup> Umbu Reku Raya and Budy P Resosudarmo, 'Traditional Slavery Institutions and Democratization: Insights into Intercaste Human Capital Disparities in Sumba Island's Rural Areas, Indonesia', *Regional Science Policy & Practice*, 16.5 (2024), 100011 <https://doi.org/https://doi.org/10.1016/j.rsp.2024.100011>

<sup>35</sup> Ika Zenita Ratnaningsih and others, 'Validation of the Indonesian Version of the Psychological Capital Questionnaire (PCQ) in Higher Education: A Rasch Analysis', *Journal of Applied Research in Higher Education*, 17.4 (2024), 1243–58 <https://doi.org/https://doi.org/10.1108/JARHE-10-2023-0480>



Law Number 12 of 2011, which mandates that all subordinate laws must be consistent with higher legal norms.<sup>36</sup>

Moreover, the simultaneous granting, extension, and renewal of HGB within a single cycle, as stipulated in the 2023 regulation, contradicts the Constitutional Court Decision Number 21-22/PUU-V/2007. The Court asserted that granting land rights in advance and all at once (including HGU, HGB, and use rights) diminishes the state's oversight and management authority and undermines the principle of state control over land, as enshrined in Article 33 of the 1945 Constitution. The Court declared that the phrase “granted in advance all at once” within the Investment Law has no binding legal force, as it contradicts the principle of economic sovereignty by the people. Accordingly, the two-cycle provision in the 2023 regulation essentially revives a concept already deemed unconstitutional.<sup>37v</sup>

Thus, Government Regulation Number 12 of 2023 not only violates principles of legality and normative hierarchy but also repeats a legal error previously annulled by the Constitutional Court. Consequently, the two-cycle HGB scheme must undergo thorough legal and constitutional review to ensure that it does not undermine state control over land and remains consistent with the national legal framework. Public participation represents a fundamental principle in the legislative process, as stipulated in Article 96 of Law Number 12 of 2011. Individuals and groups have the right to contribute input at every stage of regulation drafting, including through public hearings, working visits, seminars, and public discussions. Unfortunately, in the drafting of Government Regulation Number 12 of 2023 concerning business licensing and investment facilitation in the Nusantara Capital City, there is insufficient evidence of broad and inclusive public involvement. According to the government's official statements, the regulation primarily aims to simplify licensing procedures and provide legal certainty for investors through the extended HGB term.<sup>38</sup>

This approach indicates that public participation in shaping the regulation was narrow and primarily limited to business stakeholders. It excluded communities that may be directly or indirectly affected by land governance in Nusantara. This imbalance may create unequal access to land rights and generate legal uncertainty for the general public, particularly regarding state control over land. From the perspective of democratic legal theory, any substantial change concerning agrarian rights, especially concerning duration and renewal mechanisms must undergo a transparent, accountable, and inclusive public consultation process. Regulatory policies that fail to

<sup>36</sup> Choirul Amin and others, ‘Navigating Urban Poverty: The Role of Livelihood Capital in the Livelihood Strategies of Urban Beggars in Indonesia’, *Social Sciences & Humanities Open*, 11 (2025), 101298 <https://doi.org/https://doi.org/10.1016/j.ssaho.2025.101298>

<sup>37</sup> Srie Nuning Mulatsih, ‘Green Intellectual Capital and Eco-Innovation in Shaping Sustainable Financial Performance: Evidence from Indonesia’, *Social Sciences & Humanities Open*, 11 (2025), 101345 <https://doi.org/https://doi.org/10.1016/j.ssaho.2025.101345>

<sup>38</sup> Fajar Fadhillatun Nisak and others, ‘Quantifying the Synergistic Effects of Social and Human Capital in Farmers’ Decisions to Adopt Organic Rice Farming: A Case Study of Lombok Kulon Village, Indonesia’, *Environmental Challenges*, 20 (2025), 101204 <https://doi.org/https://doi.org/10.1016/j.envc.2025.101204>



incorporate public participation may ultimately lose legitimacy and prioritize economic interests over the principles of social justice.<sup>39</sup>

Ideally, the governance model for Right to Build (HGB) should align with the values of Pancasila, which serves as the foundational source of law in Indonesia. In the legal-philosophical framework, Pancasila functions as the fundamental norm that embodies the nation's identity and moral foundation for the legal system. Hans Kelsen's theory of hierarchical legal norms and Nawiasky's elaboration support the idea that every legal rule must originate from, and be ordered under, a higher norm. In this context, Pancasila constitutes the highest material content underlying every legislative product. Nevertheless, the implementation of Government Regulation Number 12 of 2023 appears to deviate from the spirit of Pancasila, particularly the principles of social justice and economic sovereignty. The two-cycle HGB system, allowing up to one hundred sixty years of land use, far exceeds the Agrarian Law's provisions and risks enabling long-term land concentration in corporate and investor hands. This contradicts the economic democracy principle articulated in Article 33 of the 1945 Constitution. Furthermore, the expanded term undermines the concept of state control over natural resources, which is understood in the Indonesian legal system as regulatory stewardship aimed at maximizing public welfare.<sup>40</sup>

From the perspective of Pancasila's vision of social justice, agrarian policies must ensure equitable access to land as a vital resource for all citizens, not merely facilitate economic efficiency. Long-term corporate land control without strict and participatory evaluation mechanisms poses a significant risk of structural inequality. Therefore, the HGB regulation should incorporate considerations of equity and the economic rights of the wider public. The Constitutional Court, as the guardian of the constitution, plays a vital role in reviewing policies that may violate principles of social justice and public sovereignty over land as mandated by the Constitution and the core values of Pancasila. When analyzing the government's rationale for expanding land tenure duration under Government Regulation Number 12 of 2023 namely, to accelerate investment in the Nusantara Capital City and increase competitiveness, there is little empirical evidence that this justification is effective. As of May 2, 2025, there has been no significant realization of investment in the region. This suggests that the relaxed land control policy under the "dual cycle" scheme fails to address the root of investment challenges and instead poses serious implications for the national agrarian management system.<sup>41</sup>

One of the primary concerns is the potential for land monopolization. Allowing land control for up to one hundred sixty years not only exceeds generational limits but also threatens public access to land for social and economic needs. This policy

<sup>39</sup> Hery Winoto Tj, Joshi Maharani Wibowo and Bernard T Widjaja, 'Human Capital, Competitive Advantage, and Business Performance: A Study of Indonesian Hospitals', *Journal of Open Innovation: Technology, Market, and Complexity*, 11.2 (2025), 100515 <https://doi.org/https://doi.org/10.1016/j.joitmc.2025.100515>

<sup>40</sup> Ramadhan, Marzuki, Suryanto, Sholihun, Yusnaini, Muharsyah, and others.

<sup>41</sup> Ravidho Ramadhan, Marzuki Marzuki, Wiwit Suryanto, Sholihun Sholihun, Helmi Yusnaini and Robi Muharsyah, 'Rainfall Variability in Indonesia New Capital Associated with the Madden-Julian Oscillation and Its Contribution to Flood Events', *Quaternary Science Advances*, 13 (2024), 100163 <https://doi.org/https://doi.org/10.1016/j.qsa.2024.100163>



gradually shifts the state's constitutional obligation to ensure agrarian justice toward private entities with capital and influence. Furthermore, since the Agrarian Law allows both Indonesian citizens and legal entities domiciled in Indonesia to obtain land rights, foreign corporations may acquire land through locally established entities. This raises concerns about expanding transnational corporate control over land. The state must ensure that foreign parties do not acquire long-term land rights and must limit land holdings to prevent structural inequality. The Merauke Integrated Food and Energy Estate (MIFEE) in Papua serves as a cautionary example. That project, enabled by Presidential Decree Number 5 of 2008, allowed 46 companies to control 2.8 million hectares of customary land. Rather than supporting food and energy security, the majority of land was allocated for forestry and monoculture plantations, marginalizing local communities and enabling large-scale land grabbing.<sup>42</sup>

The Agrarian Law embodies social justice through two primary approaches. First, it provides a progressive legal framework that promotes fair land distribution to support agriculture and industry. Second, it embraces a prism-based legal philosophy that integrates modern social values, such as corporate land limits with traditional values that emphasize land's social function. This dual approach aims to prevent the accumulation and domination of land ownership by a small economic elite. The two-cycle land tenure system under Government Regulation Number 12 of 2023 clearly diverges from the Agrarian Law's core principles. It neglects land's social function and pushes Indonesia's agrarian system toward a capitalist model that fails to ensure equitable land distribution. Such a policy undermines state sovereignty over natural resources and contravenes Article 33 Paragraph (3) of the 1945 Constitution, which mandates that the earth, water, and natural resources be controlled by the state and used for the greatest benefit of the people.<sup>43</sup>

The attempt to extend land tenure for investors through Government Regulation Number 12 of 2023 mirrors the earlier policy under Law Number 25 of 2007 on Investment, which permitted HGU for up to ninety-five years and HGB for eighty years through upfront granting and renewal. The Constitutional Court invalidated this provision for undermining the state's land control and threatening national economic sovereignty. The current dual-cycle regulation reflects a similar concept, which contradicts Article 33 Paragraph (3) of the Constitution. The Constitutional Court has identified four indicators of public welfare regarding natural resources: use for the people, equitable distribution, public participation in determining use, and protection of community rights.<sup>44</sup>

<sup>42</sup> Sujung Heo and others, 'Multi-Hazard Assessment for Flood and Landslide Risk in Kalimantan and Sumatra: Implications for Nusantara, Indonesia's New Capital', *Heliyon*, 10.18 (2024), e37789 <https://doi.org/https://doi.org/10.1016/j.heliyon.2024.e37789>

<sup>43</sup> Eko Agus Prasetyo, Dita Novizayanti and Aghnia Nadhira Aliya Putri, 'Cluster Analysis of Potential Autonomous Vehicle (AV) Adopters in Indonesia's New Capital', *Transportation Research Interdisciplinary Perspectives*, 29 (2025), 101318 <https://doi.org/https://doi.org/10.1016/j.trip.2024.101318>

<sup>44</sup> Mega Ulimaz, Muhammad Ma'arij Harfadli and Bart Julien Dewancker, 'From Gateway to Strengthening Urban Identity: Discovering Satellite City Brand Vitality of Indonesia's New Capital City', *Journal of Urban Management*, 2025 <https://doi.org/https://doi.org/10.1016/j.jum.2025.05.007>





Extremely long land control periods risk treating right holders as de facto landowners under civil law rather than public stewards. From the standpoint of national legal development, this contradicts the foundational values of Pancasila, which call for a democratic legal system that promotes social justice and public participation in policymaking. Therefore, land policy harmonization must internalize Pancasila and the Constitution as the core of Indonesia's legal and political framework. This includes regulatory synchronization, equitable land redistribution, comprehensive land registration, agrarian conflict resolution, institutional strengthening, and adequate funding for agrarian reform. An ideal land law must remain stable, responsive, and rooted in the pursuit of social justice, as enshrined in Pancasila's fifth principle. All laws and policies related to land in Indonesia must therefore aim to uphold justice, prosperity, and public sovereignty over land as a vital source of life.<sup>45</sup>

## CONCLUSION

The legal basis for the duration of the Right to Build (HGB) in the Nusantara Capital City, as stipulated in Article 19 of Government Regulation Number 12 of 2023, continues to generate legal uncertainty. The ambiguous formulation of the provision, its contradiction with Government Regulation Number 18 of 2021, and its inconsistency with Article 35 of the Basic Agrarian Law indicate a weak adherence to the hierarchical structure of legislation. Moreover, the HGB scheme allowing up to two cycles over 160 years poses a significant risk of agrarian inequality and land monopolization. Such a model clearly conflicts with the spirit of social justice in Pancasila and the principle of state control over natural resources as enshrined in Article 33 of the 1945 Constitution. In comparison, Malaysia limits leasehold titles to a maximum of 99 years, rendering Indonesia's approach excessive and lacking proper regulatory control. Therefore, harmonizing agrarian regulations based on constitutional mandates and Pancasila values is imperative. This alignment ensures that investment in the new capital does not undermine the people's sovereignty and justice in land governance but instead becomes part of an inclusive and sustainable development agenda.

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<sup>45</sup> Walter Timo de Vries, Veronica Cristina Astudillo Avila and Achmad Ghazali, 'Spatial Assessment of Wastewater Requirements for the New Capital City of Indonesia', *Revue Internationale de Geomatique*, 34.1 (2025), 125–49 <https://doi.org/https://doi.org/10.32604/rig.2025.057970>





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