

**LAND RIGHTS LICENSING ARRANGEMENTS IN THE NATIONAL  
CAPITAL (IKN) ACCORDING TO ARTICLE 16 A OF LAW NUMBER  
21 OF 2023 AND ARTICLES 29-35 OF UUPA NO. 5 OF 1960  
*SIYASAH DUSTURIYAH PERSPECTIVE***

**THESIS**

**BY  
KAFINA IMANA  
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**CONSTITUTIONAL LAW DEPARTMENT (*SIYASAH*)  
SHARIA FACULTY  
STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM  
MALANG  
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2025**

## STATEMENT OF THE AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**LAND RIGHTS LICENSING ARRANGEMENTS IN THE NATIONAL CAPITAL (IKN) ACCORDING TO ARTICLE 16 A OF LAW NUMBER 21 OF 2023 AND ARTICLES 29-35 OF UUPA NO. 5 OF 1960 *SIYASAH DUSTURIYAH* PERSPECTIVE**

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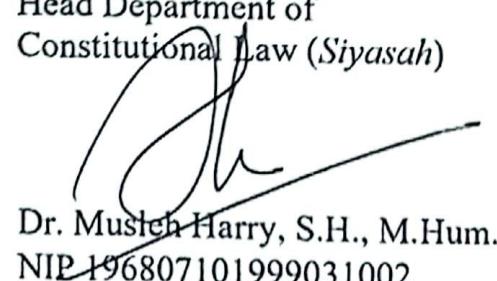
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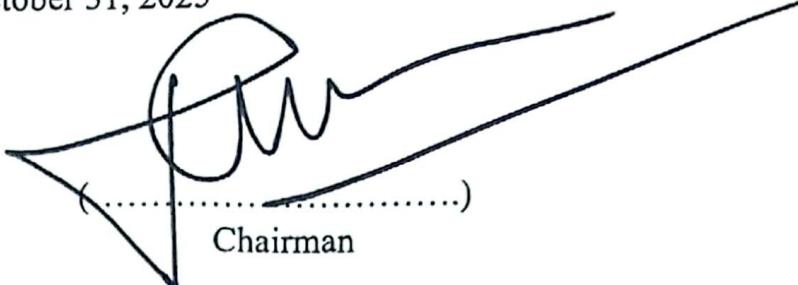
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## **MOTTO**

**"*Al-‘adlu asās al-mulk.*" — Umar bin Khattab RA**

**"Justice is the foundation of power, power without justice is destruction"**

## ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unequaled to:

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2. Prof. Dr. Sudirman, M.A, as the Dean of Sharia Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Dr. Musleh Harry, S.H., M.Hum., as the Head of the Constitutional Law Department of Faculty of Sharia of The State Islamic University Maulana Malik Ibrahim of
4. Nur Jannani, S.HI., M.H., as my thesis supervisor. The writer thanks for her spending time to guide, direct, and motivate to finish writing this thesis. The writer hopes that he and his family will be blessed by Allah.
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Malang, 10 Oktober 2025

Penulis,



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## TRANSLITERATION GUIDELINES

### A. General Understanding

Transliteration guidelines are rules that direct the process of transferring letters from one writing system to another, especially from Arabic to Latin letters. This guide has an important role in writing scientific papers, especially in Islamic studies, so that Arabic terms can be written consistently and accurately. In Indonesia, the official guidelines used for Arabic-Latin transliteration refer to certain provisions that have been set:

1. Decree of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia Number: 158/1987 and Number: 0543b/U/1987.
2. Joint Decree of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia Number: 158 of 1987 Number 0543 b/u/1987.

The purpose of this guideline is to create uniformity in the writing of scientific papers among universities, especially within the State Islamic Religious College (PTKIN). This transliteration guideline contains provisions on how to convert Arabic letters to Latin letters, including rules for writing consonants, vowels (both short and long), tasydid, adjectives, hamzah, and various other aspects necessary to ensure accuracy and consistency in writing Arabic terms with Latin letters.

## B. Konsonan

The following table presents a list of Arabic letters and their equivalent transliterations into Latin letters.

**Table 1**

Arabic Letters	Name	Latin Letters	Name
<b>alif</b>	Alif	Not Denoted	Not Denoted
<b>in</b>	Ba	B	Be
<b>t</b>	Ta	T	Te
<b>W</b>	Sùa	Ş	Ice (with the dot on top)
<b>C</b>	Jim	J	Je
<b>Going to</b>	Ha	H	Ha (with the dot below)
<b>X</b>	Kha	Kh	Ka and Ha
<b>of</b>	From	D	Of
<b>L</b>	Regret	Ż	Zet (with the dot above)
<b>t</b>	Ra	R	Er
<b>G</b>	Will	With	Move
<b>Going to</b>	Without	S	Is
<b>U</b>	Considerations	And	It's dan Ye
<b>AM</b>	Sad	Ş	Ice (with the dot below)
<b>Z</b>	Dad	D	De (with the dot below)
<b>I</b>	Ta	T	Te (with a dot below)
<b>Z</b>	Za	Ż	Zet (with the dots below)
<b>on</b>	'Ain	'	Inverted comma (above)
<b>G</b>	Gain	G	Ge
<b>P</b>	Ago	F	Ef
<b>S</b>	Sylvia	Q	Qi
<b>as</b>	Cafe	K	That
<b>for</b>	Blue	L	The
<b>M</b>	Me	M	In
<b>nun</b>	Now	N	In
<b>And</b>	Wau	In	We
<b>H</b>	Has	H	Has

A	Hamzah	'	Apostrophe
Y	Ya	And	Eat

Hamzah (ء) at the beginning of the word is written according to the vowel without being given additional signs. However, if hamzah is located in the middle or end of a word, then it is denoted by a sign (').

### C. Vowels, long pronunciation, and diphthongs

Just like in Indonesian, vowels in Arabic have both singular (monophthong) and combined (diphthong) forms. The symbols or characters used in transliteration serve to represent each vowel in Arabic.

#### 1. Single Vocals

Tanda	Name	Latin Letters	Name
Yes	Fathah	a	A
Yes	Kasrah	i	I
ُ	Dammah	u	U

#### 2. Double Vocals

Sign	Name	Letter Combination	Name
Y	fathah and yes	Ai	A and I
and	fathah and Wau	Au	A and u

### D. Maddah

Dignity and Letters	Name	Letters and Signs	Name
Y / A	fathah and alif or yes	ā	A and the line above
Y	Kasrah and yes	ī	i and the line above

and	○dammah and wau	ū	u and the line above
-----	-----------------	---	----------------------

#### **E. Ta'marbutah**

Ta' marbutah is a letter ـ that has a special shape and is generally located at the end of the word. In the process of transliteration, the pronunciation is adjusted to the context of its use.

1. At the end of the word it is read as "h"
2. In the middle of the word is read as a "t"

#### **F. Syaddah or the Sign of Tasydid**

The Shaddah or Tasydid Sign ( تشدید ) is a sign above the letter indicating that the letter should be read with repetition or emphasis. In transliteration, syaddah affects the way the letters are written. This sign indicates the repetition of consonant sounds and is transliterated by doubling the consonant letters in question.

#### **G. Words**

In Arabic, the most common noun is "(the) al," which serves as the definitive article. This adjective is used to denote that the noun after it is special or specific. In transliteration, "(the) al" is always written as "al" without undergoing any change in shape.

## **H. Hamzah**

Hamzah (Hamza) is a sign in Arabic that signifies a glottal sound or a sound beat. Hamzah can appear in the beginning, middle, or last positions. If it is at the beginning of the word, hamzah is usually transliterated using an apostrophe ('). Meanwhile, hamzah located in the middle or at the end of a word is generally not written in transliteration, but is still pronounced according to the original pronunciation rules.

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Kafina Imana 210203110039, 2025, Pengaturan Perizinan Hak Atas Tanah Di Ibu Kota Negara (IKN) Menurut Pasal 16 A Undang-Undang Nomor 21 Tahun 2023 Dan Pasal 29-35 Uupa No. 5 Tahun 1960 Perspektif *Siyasah Dusturiyah*, Hukum Tata Negara (Siyasah), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Nur Jannani, S.HI., M.H.

---

**Kata Kunci:** Hak Atas Tanah, Kepastian Hukum, *Siyasah Dusturiyah*

## ABSTRAK

Penyelenggaraan Ibu Kota Negara (IKN) Nusantara di Kalimantan Timur diatur melalui Undang-Undang Nomor 21 Tahun 2023 yang menjadi dasar hukum bagi pembangunan dan pengelolaan wilayah IKN. Pasal 16A dalam undang-undang tersebut memberikan kewenangan kepada Otorita IKN untuk menetapkan perizinan dan pemanfaatan tanah dalam jangka panjang sebagai upaya menarik investasi dan mendukung percepatan pembangunan. Akan tetapi, pengaturan mengenai pemanfaatan tanah jangka panjang tersebut dinilai belum sepenuhnya selaras dengan prinsip-prinsip agraria dalam UUPA No. 5 Tahun 1960, khususnya Pasal 29–35 yang menegaskan asas keadilan sosial, fungsi sosial tanah, batasan penguasaan tanah, serta kewajiban negara untuk memastikan pengelolaan tanah tetap berpihak pada kepentingan umum.

Penelitian ini bertujuan menganalisis keselarasan dan potensi ketidaksinkronan antara Pasal 16A Undang-Undang IKN Nomor 21 Tahun 2023 dan ketentuan hak atas tanah dalam Pasal 29–35 UUPA, serta menilai pengaturan tersebut melalui perspektif siyasah dusturiyah yang mengedepankan keadilan, kemaslahatan, dan perlindungan terhadap masyarakat. Metode yang digunakan adalah penelitian yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konseptual melalui studi kepustakaan terhadap regulasi, literatur akademik, dan prinsip-prinsip hukum Islam.

Hasil penelitian menunjukkan bahwa ketentuan dalam Pasal 16A Undang-Undang Nomor 21 Tahun 2023 memerlukan penyesuaian agar selaras dengan prinsip dasar agraria nasional. Pemanfaatan tanah jangka panjang di IKN perlu diseimbangkan dengan pengawasan negara, fungsi sosial tanah, serta perlindungan terhadap hak masyarakat adat. Dalam perspektif *siyasah dusturiyah*, kebijakan pertanahan semestinya berorientasi pada maslahah ‘ammah dan keadilan substantif sehingga mampu menjamin pemerataan manfaat dan mencegah potensi ketidakadilan struktural.

Kafina Imana 210203110039, 2025, Regulation Of Land Rights Licensing In The National Capital City (IKN) According To Article 16 A Of Law Number 21 Of 2023 And Articles 29-35 Of Uupa No. 5 Of 1960 *Siyasah Dusturiyah* Perspective, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. Supervisor: Nur Jannani, S.HI., M.H.

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**Keywords:** Land Rights, Legal Certainty, *Siyasah Dusturiyah*

## ABSTRACT

The implementation of National Capital (IKN) Nusantara in East Kalimantan is regulated through Law Number 21 of 2023 which is the legal basis for the development and management of the IKN area. Article 16A in the law gives the authority to the IKN Authority to determine long-term licensing and land use as an effort to attract investment and support the acceleration of development. However, the regulation regarding long-term land use is considered not to be fully in line with the agrarian principles in UUPA No. 5 of 1960, especially Articles 29-35 which affirm the principles of social justice, the social function of land, the limits of land tenure, and the state's obligation to ensure that land management remains in the public interest.

This study aims to analyze the alignment and potential insynchronization between Article 16A of the IKN Law Number 21 of 2023 and the provisions of land rights in Articles 29–35 of the UUPA, and assess these arrangements through the perspective of *siyasah dusturiyah* that prioritizes justice, benefit, and protection of the community. The method used is normative juridical research with a legislative approach and a conceptual approach through literature studies on regulations, academic literature, and Islamic legal principles.

The results of the study show that the provisions in Article 16A of Law Number 21 of 2023 require adjustments to be in line with the basic principles of national agrarian affairs. Long-term land use in the IKN needs to be balanced with state supervision, social functions of land, and protection of indigenous peoples' rights. From the perspective of *siyasah dusturiyah*, land policy should be oriented towards maslahah 'ammah and substantive justice so as to ensure equitable distribution of benefits and prevent potential structural injustice.

كافيانا إيمانا 210203110039 ، تنظيم ترخيص حقوق الأراضي في العاصمة الوطنية  
UUPA (IKN) ) وفقاً للمادة 16 أً من القانون رقم 21 لعام 2023 والمواد 29-35 من قانون رقم 5 لعام 1960 منظور سياسه دستوريا ، كلية الشريعة ، جامعة مولانا مالك إبراهيم الحكومية  
الإسلامية مالانغ. المشرف: نور جناني ، شيب الصحة الحية ، محمد ح.

# الكلمات المفتاحية: الحقوق الأرض، اليقين القانوني، سياسة دوستورية

## ملخص

يتم تنظيم تنفيذ عاصمة نوسانتارا (IKN) في شرق كاليمانتان من خلال القانون رقم 21 لعام 2023، والذي يعد الأساس القانوني لتطوير وإدارة منطقة IKN. تمنح المادة 16A من القانون سلطة هيئة IKN لتحديد الترخيص طويل الأمد واستخدام الأرضي كجهد لجذب الاستثمارات ودعم تسريع التنمية. ومع ذلك، يعتبر التنظيم المتعلق بالاستخدام طويل الأمد للأراضي غير متوافق تماماً مع المبادئ الزراعية في قانون UUPA رقم 5 لعام 1960، وخاصة المواد 29-35 التي تؤكد مبادئ العدالة الاجتماعية، والوظيفة الاجتماعية للأرض، وحدود ملكية الأرض، والتزام الدولة بضمانبقاء إدارة الأرضي في المصلحة العامة.

تحدف هذه الدراسة إلى تحليل التوافق والتناقضات المحتملة بين المادة 16A من قانون IKN رقم 21 لعام 2023 وأحكام حقوق الأراضي في المواد 29-35 من قانون UUPA، وتقييم هذه الترتيبات من منظور سياسة دستوريا الذي يركز على العدالة والمنفعة وحماية المجتمع. المنهج المستخدم هو البحث الفقهي المعياري مع نجح تشريعي ومفاهيمي من خلال دراسات الأدبيات حول الأنظمة والأدبيات الأكاديمية والمبادئ القانونية الإسلامية.

تظهر نتائج الدراسة أن أحكام المادة 16A من القانون رقم 21 لعام 2023 تتطلب تعديلات لتنسقها مع المبادئ الأساسية للشئون الزراعية الوطنية. يجب أن يتوازن استخدام الأراضي طويلاً الأمد في IKN مع إشراف الدولة، والوظائف الاجتماعية للأرض، وحماية حقوق الشعوب الأصلية. من منظور سياسة الدستورية، يجب أن توجه سياسة الأراضي نحو المصالحة والعدالة الجوهرية لضمان توزيع عادل للمنافع ومنع الظلم الهيكلي المحتمل.

## **CHAPTER I**

### **INTRODUCTION**

#### **A. Background**

Provisions of Article 16 A of Law (UU) No. 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the National Capital which regulates the licensing of Land Rights (HAT) in the National Capital City (IKN) of the archipelago. This article provides the Right to Use Business (HGU) for up to 95 years which can be extended to a total of 190 years, as well as the Right to Use (HGB) and the right to use for up to 80 years for two cycles, raising serious legal problems because it has the potential to conflict with the deadline for land rights regulated in the Basic Agrarian Law (UUPA) No. 5 of 1960. The law limits HGU to a maximum of 35 years with a 25-year extension, and HGB to a maximum of 30 years with a 20-year extension.

The following reads article 29 of this UUPA that paragraph (1) The right to use business is granted for a maximum period of 25 years. Paragraph (2) For companies that require a longer time, they can be granted business use rights for a maximum period of 35 years. Paragraph (3) At the request of the right holder and considering the state of his company, the period referred to in paragraphs (1) and (2) of this article may be extended for a maximum period of 25 years. In article 35, paragraph (1) The right to use buildings is the right to erect and have buildings on

land that does not belong to them, with a maximum period of 30 years. (2) At the request of the rightholder and taking into account the needs and condition of the buildings, the period mentioned in paragraph (1) may be extended for a maximum period of 20 years. (3) The right to use the building can be transferred and transferred to another party. This UUPA has the basic principle that land in Indonesia must be managed for the national interest and people's welfare fairly and should not be excessively controlled by certain parties.<sup>1</sup>

Although Law No. 21 of 2023, especially Article 16, aims to attract investors in the Nusantara Capital City (IKN), this provision has the potential to conflict with the Basic Agrarian Law (UUPA) No. 5 of 1960. The significant difference between the regulation of these two laws and their derivative regulations raises allegations of excessive authority (*ultra vires*) and potential inconsistency with the basic principles of agrarian law, namely the use of land for the greatest possible prosperity of the people and the prevention of excessive land control by certain parties.

This regulation was issued to provide investment certainty in the National Capital City (IKN) of the archipelago through licensing facilities and guarantees of land use periods, it is necessary to further study whether the policy is still within the corridor of national land law. This regulation aims to create legal certainty for investors, provide guarantees for business continuity, and accelerate the process of

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<sup>1</sup> Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. LN. 1960/No. 104, TLN No. 2043, LL SETNEG : 17 PAGE

developing infrastructure and supporting facilities in the IKN. With the ease of licensing and guarantees for land use, it is hoped that domestic and foreign investors will be increasingly interested in investing their capital in the region. In addition, Law No. 21 of 2023 is also designed to support the government's vision in building the IKN as a sustainable city based on technology and is environmentally friendly. This policy not only focuses on economic aspects, but also includes space management, urban planning, and optimal land use to support long-term sustainability. The guarantee of two long cycles for investors is considered to give a privileged position to business actors, so that it has the potential to disrupt the balance of land tenure and open up opportunities for corporate dominance in the long term. This can reduce the social function of land as outlined by the UUPA.

The UUPA basically emphasizes that land in Indonesia must be used as much as possible for the prosperity of the people and should not be controlled by certain groups in the long term without clear boundaries. One of the main principles in the UUPA is the restriction of land rights to prevent monopoly or large-scale land control by certain entities, including large business actors. In this context, Article 16 A of Law No. 21 of 2023 on Land Rights (HAT) in this case including the Right to Use Business (HGU) and the Right to Use a Building is given a guarantee of certainty for a period of time in two cycles for business actors who

have the potential to provide privileges to investors which can result in inequality of access to land in the IKN.<sup>2</sup>

The Right to Use Business (HGU) and the Right to Use Building (HGB), have a certain time limit that can be extended according to the conditions set. However, the policy in Law No. 21 of 2023 seems to provide a guarantee of the extension of rights without strict evaluation, which can potentially contradict or be inconsistent with the principles of fair land management.<sup>3</sup>

In the perspective of harmonization of laws and regulations, two laws governing the same object must be read in harmony to prevent conflicts of norms and ensure legal certainty. Law No. 12 of 2011 stipulates that every regulation formation must pay attention to the principle of integration and harmony between regulations so that there is no overlap of regulations. Therefore, if Article 16A of the IKN Law No. 21 of 2023 regulates the period of land rights that are considered not in line with the principles of land tenure according to Articles 29–35 of UUPA No. 5 of 1960, then this condition is an issue of norm disharmony that can cause legal uncertainty in land practices in the IKN area. In the Indonesian legal system, the inconsistency between laws is resolved through a material test, namely *judicial*

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<sup>2</sup> Government Regulation (PP) Number 29 of 2024 concerning Amendments to Government Regulation Number 12 of 2023 concerning the Granting of Business Licenses, Business Facilities, and Investment Facilities for Business Actors in the Capital City of the Archipelago LN 2024 (165), TLN (6980): 19 pp.; jdih.setneg.go.id

<sup>3</sup> Government Regulation (PP) Number 29 of 2024 concerning Amendments to Government Regulation Number 12 of 2023 concerning the Granting of Business Licenses, Business Facilities, and Investment Facilities for Business Actors in the Capital City of the Archipelago LN 2024 (165), TLN (6980): 19 pp.; jdih.setneg.go.id

*review* at the Constitutional Court (MK), especially if one of the provisions of the law is considered to be contrary to the 1945 Constitution or does not meet constitutional principles regarding state control over land and social justice.

In the Indonesian legal system, the principle of the hierarchy of laws and regulations functions as a guideline in the formation, application, and testing of a regulation. This hierarchy is regulated in Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, which stipulates that lower regulations must not conflict with higher regulations.<sup>4</sup> The 1945 Constitution of the Republic of Indonesia (1945 Constitution) occupies the highest position in the legal hierarchy, followed by laws, government regulations, and regulations under it. With this system, the main purpose of the formation of regulations is to create legal certainty and prevent overlap or conflict of norms in the national legal system.

In the context of Government Regulation No. 29 of 2024, especially Article 18 which regulates land rights for business actors in the Capital City of the Archipelago (IKN), it is important to ensure that these provisions are in line with higher regulations, especially the Basic Agrarian Law (UUPA) as the main legal basis in the land system in Indonesia. If there is an inconsistency between Government Regulation No. 29 of 2024 and the UUPA, then the regulation risks causing legal problems, both in terms of implementation and the validity of the norms. Therefore, an in-depth legal analysis is needed to examine whether the

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<sup>4</sup> Law No. 12 of 2011 concerning the Establishment of Laws and Regulations LN.2011/No. 82, TLN No. 5234, LL SETNEG: 51 PP

provisions in the government regulation are in accordance with the principle of the hierarchy of laws and regulations or have the potential to conflict with higher rules.

Law No. 12 of 2011 concerning the Establishment of Laws and Regulations is a legal instrument that serves as a guideline in assessing the suitability of a regulation with higher norms. In this regulation, the principles of the formation of good laws and regulations are explained, including the principle of clarity of purpose, suitability between types and content materials, and integration in the national legal system. With these principles, every regulation made must meet the applicable legal standards and must not conflict with regulations that have a higher position.<sup>5</sup>

In this study, an analysis will be carried out on Article 18 of Government Regulation No. 29 of 2024 by referring to the principles stipulated in Law No. 12 of 2011. One of the points that will be studied is whether the granting of land rights to business actors in the IKN as stipulated in the PP is in accordance with the UUPA or even exceeds the authority given to government regulations. If there is a discrepancy, then the legal consequences of the regulation need to be further studied, including the possibility of conducting *a Judicial Review* at the Supreme Court. In addition, this study will also look at how the formation of regulations can

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<sup>5</sup> "The Implementation of Legal Principles in the Formation of Participatory and Fair Laws and Regulations | Widayati | Journal of Law," accessed March 7, 2025, <https://jurnal.unissula.ac.id/index.php/jurnalhukum/article/view/11391>.

pay more attention to aspects of harmonization with the existing legal system to avoid potential conflicts of norms in the future.

The inconsistency between Article 16A of the IKN Law No. 21 of 2023 and the provisions of UUPA No. 5 of 1960 can cause various legal consequences. First, in terms of implementation, differences in regulations regarding the term and control of land rights have the potential to cause confusion for government agencies and business actors operating in the IKN area. The disharmony of these norms can result in differences in interpretation in the implementation of land law, especially when the general provisions of the UUPA must be combined with special provisions in the IKN Law. This condition can hinder procedural certainty in granting land rights, slow down the investment process, and create uncertainty for parties who need legal clarity in development planning. In addition, the insynchronization between laws can be the basis for interested parties to submit a legal test to the Constitutional Court, if it is considered that the provisions in the IKN Law are not in accordance with constitutional principles regarding state control over land and social justice as stipulated in the 1945 Constitution.<sup>6</sup>

Second, in terms of legal legitimacy, the inconsistency between Article 16A of the IKN Law No. 21 of 2023 and UUPA No. 5 of 1960 can raise the issue of the validity of norms. In the context of harmonization of laws and regulations, two laws that are not in harmony can be the basis for submitting a legal test in the

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<sup>6</sup> Annisa and Sri Setyadji, "Uupa's Perspective on the Regulation of the Term of Building Use Rights in Government Regulation No. 12 of 2023," *Legal Transparency* 8, no. 1 (2025): 1.

Constitutional Court. If the Constitutional Court considers that the provisions in the IKN Law are contrary to the constitutional principles of state control over land and social justice as stipulated in the 1945 Constitution, then the provision can be canceled or declared to have no binding legal force. A decision like this will have a significant impact on legal certainty, especially for business actors or other parties who have obtained land rights based on the provisions of the IKN Law, because the status of these rights has the potential to be questioned or require readjustment according to the Constitutional Court's decision.

Third, from an economic perspective, legal uncertainty in land policy can have an impact on investor confidence in regulatory stability in the IKN. If the rules on land rights are changed or repealed, then the legal risks for investors will increase, which could reduce investment interest in the area.

The inconsistency of norms between Article 16A of the IKN Law No. 21 of 2023 and UUPA No. 5 of 1960 not only has an impact on the implementation aspect of regulations, but also on the stability of investment policies in IKN. Business actors have the potential to face legal risks if the provisions in the IKN Law are then tested and canceled by the Constitutional Court because they are considered incompatible with the principles of state control over land and social justice in the 1945 Constitution. On the other hand, the community can experience injustice if the provisions that allow long-term land tenure are not in line with the principles of land social function that are the basis of the national land system. In the context of IKN development, legal certainty regarding the regulation of land rights is a very

important factor to ensure transparent, sustainable development governance, and does not cause potential conflicts of interest between the state, business actors, and the community.

A normative study of Article 16A of the IKN Law No. 21 of 2023 is important because this provision regulates fundamental aspects of land policy in the Capital City area of the archipelago. In the Indonesian legal system, land is comprehensively regulated through UUPA No. 5 of 1960 which emphasizes that land has a social function and must be managed based on national interests and community benefits. Therefore, any arrangement regarding the granting of land rights, including those related to the need for investment and development of new territories, must remain in line with the principles set out in the UUPA and other land regulations.

Normative analysis is needed to assess whether the provisions in Article 16A of the IKN Law are in line with or actually cause disharmony with the basic principles of land law that apply nationally. If there is a discrepancy between the IKN Law and the UUPA, it is necessary to make alignment efforts so that land policies in the IKN not only facilitate investment and development, but also respect the principles of justice, legal certainty, and the social function of the land which are the main foundations in the Indonesian land legal system.

The relocation of the State Capital (IKN) from Jakarta to East Kalimantan poses serious challenges, especially related to customary land rights and the right to use business (HGU). Indigenous communities in the region have a strong

historical and cultural attachment to their land, but often do not have legally valid ownership documents. This condition risks triggering conflicts, especially when customary land is allocated for the benefit of IKN development. This policy is considered contrary to the principles of agrarian justice in the 1960 Law, which prioritizes equal land tenure and the protection of indigenous peoples' rights.

From the point of view of agrarian law, the provision of long-term HGU to investors can override the rights of indigenous peoples who have occupied the territory for generations. This creates legal uncertainty for indigenous communities over the land that is an integral part of their lives and cultural identity. In the context of IKN development, various rights of indigenous peoples are threatened with violation, including the right to customary land, the right to give approval to impactful projects (*Free, Prior and Informed Consent (FPIC)*), the right to preserve indigenous culture and identity, the right to a decent environment, and the right to legal recognition.

Violations occur when governments or investors ignore the existence and aspirations of indigenous peoples, take over indigenous territories without consultation, damage the environment that sustains their livelihoods, and marginalize the cultural interests and values of local communities. This research emphasizes the urgency of agrarian regulations that are able to balance the protection of indigenous peoples' rights with the needs of investment and development of the IKN. To realize sustainable development, the government is required to align the policy of relocating the IKN with the recognition and

protection of the traditional rights of indigenous peoples. This requires a fair, participatory, and inclusive legal approach, to ensure that development is not carried out at the expense of the existence and rights of local communities that have long inhabited the region.

The granting of long-term land rights also raises concerns about the potential abandonment of the rights of indigenous peoples living around the IKN area. Indigenous communities have strong historical and cultural ties to customary lands, but often lack evidence of formal ownership under positive law. Long-term agrarian policies for investors have the potential to reduce the space for recognition of indigenous lands, hinder the right of communities to give consent to impactful projects (FPICs), and disrupt the sustainability of their culture and environment.

In this context, the rights of threatened indigenous peoples include the right to customary land, the right to a decent environment, the right to be involved in decision-making, and the right to maintain cultural identity. If land policy does not pay attention to the existence of indigenous peoples, agrarian conflicts in the IKN area are very likely to occur, especially related to overlapping claims between customary land and investment concessions.

From the point of view of siyasah dusturiyah, the country's land policy must reflect the principles of justice (*al-adl*), the public interest (*maslahah 'ammah*), and the protection of property rights (*hifz al-milkiyyah*). In Islamic law, land is a resource that must be managed by the state fairly, not given excessively to certain groups in the long term. The extension of HGU and HGB up to two long cycles

needs to be studied whether it is in line with the principles of preventing economic inequality and fair distribution.

Furthermore, siyasah dusturiyah also emphasized the importance of the government's role in ensuring that the policies made do not harm its people. Islam teaches that a leader has an obligation to manage state resources in a transparent, fair manner, and prioritize the public interest. Land policy in the IKN must consider deliberation (*shura*) with various parties, including indigenous peoples, so that the decisions taken truly reflect the interests of all levels of society.<sup>7</sup>

Therefore, this study aims to analyze land policy in IKN from the perspective of siyasah dusturiyah, by examining whether the extension of HGU to 190 years is in line with the principles of social justice, equitable land distribution, and the protection of people's rights in Islam. Thus, this research is expected to provide policy recommendations that are more equitable and in accordance with Islamic values in state governance.

## **B. STATEMENT PROBLEM**

1. How is the harmonization of land rights licensing in Article 16A of the IKN Law No. 21 of 2023 with Articles 29–35 of UUPA No. 5 of 1960 in the regulation of land rights in the National Capital City (IKN) of the archipelago?

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<sup>7</sup> A. Djazuli, *Fiqh Siyasah: Implementation of the Benefits of the Ummah in Sharia Signs* (Jakarta: Kencana Prenada Media Group, 2007), 80.

2. How is the harmonization of land licensing in Article 16A of the IKN Law No. 21 of 2023 with Articles 29-35 of the Law No. 5 of 1960 in the regulation of land rights in the National Capital City (IKN) of the archipelago from the *perspective of siyasah dusturiyah*?

### **C. OBJECTIVES OF RESEARCH**

1. To analyze and describe Article 16A of the IKN Law No. 21 of 2023 concerning the granting of land rights for business actors in the IKN, and assess the alignment of its regulation with Articles 29-35 of UUPA No. 5 of 1960 as the basis of national land law. This study is focused on the harmonization of norms, including an assessment of the term of HGU, HGB, and Right of Use in the IKN Law, whether it is in accordance with the principles of land social function, the principle of legal certainty, and the limits of the authority of lawmakers in the Indonesian land law system.
2. To analyze and explain the harmonization of the provisions of Article 16A of the IKN Law No. 21 of 2023 with Articles 29-35 of the IKN Law No. 5 of 1960 in the regulation of land rights in the IKN based on the perspective of siyasah dusturiyah, by assessing the extent to which the regulation of the term of HGU, HGB, and the Right to Use meets the principles of justice, public benefit, proportionality, and protection of community rights in state governance according to Islamic law.

## **D. BENEFITS OF RESEARCH**

1. Theoretical Benefits, This research is expected to provide and enrich legal studies regarding land and investment regulation, especially related to the provisions of Article 16A of the IKN Law No. 21 of 2023 in relation to Articles 29–35 of UUPA No. 5 of 1960. The analysis of the harmonization of norms between these two laws makes an academic contribution to understanding how new regulations in the field of land can affect the structure, principles, and consistency of the national land legal system. This study also adds the perspective of siyasah dusturiyah in the discussion of land policy, emphasizing that land management by the state must be based on the principles of justice, public benefit, and protection of people's rights. Through this approach, the research is expected to provide a more comprehensive theoretical foundation for academics and practitioners in examining the relationship between investment policy, state authority over land, and social justice values in Islamic law, thereby enriching the development of more inclusive and public welfare-oriented legal studies.
2. Practical Benefits. This research is useful for policymakers in assessing and improving regulations for granting Land Rights (HAT) so that they are in line with the national legal system and do not cause legal uncertainty. From the perspective of Siyasah Dusturiyah, land policy must prioritize the benefits of the people and maintain a balance between the interests of the state, society,

and investors. Therefore, the results of this research can be the basis for formulating more equitable and sustainable policies. For investors, this study provides an understanding of the legal aspects of HAT in the IKN so as to help increase certainty and reduce risks in investing. The Siyasah Dusturiyah approach also emphasizes the importance of regulations that are not only economically oriented, but reflect social justice and the responsibility of the state in managing land as a mandate for common welfare.

## **E. CONCEPTUAL DEFINITION**

There are several main terms that will be defined operationally so that they can be understood according to the context of the research. This operational definition aims to ensure consistency in the analysis as well as avoid ambiguity in the interpretation of the concepts used.

1. Licensing in the context of this research refers to the process of granting permits carried out by the government to certain parties, especially business actors, to carry out business activities in certain fields. This license includes business licenses, land use permits, and other permits related to land rights and investments. Government Regulation No. 29 of 2024 regulates the licensing scheme given to business actors, including the mechanism, period, and rights and obligations arising from the granting of these permits.
2. Land Rights (HAT) in this study is defined as the authority given by the state to individuals or legal entities to utilize and use land for a certain period of time

in accordance with the provisions of laws and regulations. In the context of Government Regulation No. 29 of 2024, Land Rights include the provision of land use facilities to business actors in the Capital City of the archipelago, including the duration, purpose of use, and limits set by the government. This operational definition is used to assess how the granting of these rights is regulated, implemented, and has the potential to affect the national agrarian system. Thus, Land Rights became a key variable in the analysis to see the suitability of the new policy with national land principles and the perspective of *siyasah dusturiyah*.

3. The National Capital City (IKN) of the archipelago is the new capital city of Indonesia which is designated as the center of government and national economic development. The development of the IKN aims to create a new center of economic growth based on investment and sustainability. In the context of this research, IKN is the main location for the implementation of the policy of providing investment facilities, especially related to land regulations for business actors. Therefore, this study will examine the extent to which land policies in the IKN can provide benefits for investors without ignoring the basic principles of land law that apply nationally.
4. A law is a law established by the House of Representatives together with the President and serves as a legal basis that contains norms, principles, and basic provisions that govern various aspects of state life. The law has an important position because it is the main guideline in the preparation of regulations under

it and becomes a reference in the administration of government. Conceptually, the law establishes rules that are general and binding, so that they can be operationalized through more technical regulations. In this study, the law is the main reference to assess the suitability and harmonization of policies related to land rights in the capital city of the archipelago.

5. *Siyasah Dusturiyah* is a concept in Islamic law that discusses the constitutional system and legislation in accordance with sharia principles. In this study, siyasah dusturiyah was used to analyze licensing policies regulated in Law No. 21 of 2023 by considering the principles of justice, benefits, and protection of community rights in land management. This approach aims to see the extent to which the policies implemented are in line with Islamic principles in governance and social justice, particularly in the context of natural resource management and land rights.

This operational definition serves as a guideline in understanding the main concepts in this study and ensuring that each aspect studied has a clear basis in the analysis and discussion carried out. With a systematic understanding of these terms, research can provide a more comprehensive picture of the impact of regulations on investment and land governance in IKN.

## **F. METHODS OF RESEARCH**

### **1. Types of research**

This research uses normative legal research methods, namely research that focuses on the study of laws and regulations, legal doctrines, legal principles, and principles that develop in legal science. This method is used to analyze norms related to Article 16A of the Nusantara Capital City Law Number 21 of 2023 in the context of the national land law system, especially its relation to the provisions of the Basic Agrarian Law (UUPA) No. 5 of 1960. This normative approach focuses on the analysis of harmonization of norms between laws to assess the harmony of the substance of the regulation regarding land rights and its implications for legal certainty and land management in the Capital City of the archipelago

### **2. Research Approach**

Research Approach In this study, two main approaches are used, namely

- a. The Statute Approach<sup>8</sup> is carried out by examining various relevant laws and regulations, such as the 1945 Constitution, the Basic Agrarian Law (UUPA) No. 5 of 1960, and the State Capital Law (IKN) No. 21 of 2023. This approach is used to understand the relationship and harmony of

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<sup>8</sup> Johny Ibrahim, *Theory and Methodology of Normative Law Research*. (Malang: Banyumedia Publishing, 2005), 306.

norms between the provisions of Article 16A of the IKN Law and the regulation of land rights in the UUPA.

- b. Conceptual Approach<sup>9</sup>. This approach is used when researchers examine legal concepts that have not been specifically regulated in laws and regulations. Through this approach, the research examines basic ideas such as the harmonization of norms, the principle of legality, and the regulation of land rights in the national legal system. This approach helps to understand how the provisions in the IKN Law and the UUPA should be harmonized so as not to cause conflicts of norms and legal uncertainty in the IKN.

### **3. Law Material**

In this study, legal materials are used, which consist of three types of legal materials:

- a. Primary Legal Materials, namely laws and regulations that are the basis of the analysis, such as:
  - 1) Constitution of the Republic of Indonesia in 1945
  - 2) Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, LN.2011/No. 82, TLN No. 5234, LL SETNEG: 51 PP.

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<sup>9</sup> Peter Mahmud Marzuki, Legal Research Revised Edition, (Jakarta: Kencana, 2005), 177.

- 3) Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, LN.2022/No.143, TLN No.6801 jdih.setneg.go.id: 13 pp.
- 4) Law (UU) Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, LN. 1960/No. 104, TLN No. 2043, LL SETNEG : 17 PAGE
- 5) Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital, LN 2023 (142), TLN (6898): 26 pp.; jdih.setneg.go.id
- 6) Government Regulation (PP) Number 29 of 2024 concerning Amendments to Government Regulation Number 12 of 2023 concerning the Granting of Business Licenses, Ease of Doing Business, and Investment Facilities for Business Actors in the Capital City of the Archipelago, LN 2024 (165), TLN (6980): 19 pp.; jdih.setneg.go.id
- 7) and other related regulations.

b. The secondary legal materials in this study include various sources that support the analysis of laws and regulations and land laws. This source includes legal literature that contains theories and concepts related to the hierarchy of laws and regulations, the principle of legality, and legal harmonization in the national agrarian system. The books used in this study consist of academic works that discuss land law, legal theory, and studies on investment regulations in Indonesia. In addition, scientific journals are

an important part of secondary legal materials because they provide the latest research that discusses legal issues related to land and investment policy. The results of previous research are also used as a comparison to see how other studies examine similar issues and the extent of differences or similarities with this study. Expert opinions in the form of articles, legal opinions, or interviews with academics and legal practitioners are also a reference in understanding various perspectives relevant to this research.<sup>10</sup>

- c. Tertiary legal materials in this study serve as additional sources that support the understanding of the legal concepts used. This resource includes a legal dictionary that provides definitions of terms that are often used in the study of laws and land laws. Legal encyclopedias are also used to obtain a broader explanation of legal doctrine and the principles that underlie policy analysis. In addition, other references such as research reports, government documents, and various official publications relevant to the regulations under review are also used as tertiary legal materials. These sources help provide a more comprehensive understanding of the legal context under study and enrich the analysis of Article 16 A of Law No. 21 of 2023 in the agrarian law system in Indonesia.

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<sup>10</sup> "Normative Law Research Theory & Methodology," accessed March 7, 2025, <https://bintangpusnas.perpusnas.go.id/konten/BK26135/teori-and-metodologi-penelitian-hukum-normatif>. accessed March 7, 2025, <https://bintangpusnas.perpusnas.go.id/konten/BK26135/teori-and-metodologi-penelitian-hukum-normatif>.

#### **4. Law Materials Collection**

In this normative legal research, the collection of legal materials is carried out by the library research method, which is to examine relevant legal materials to examine the legal problems being studied, including primary, secondary, and tertiary legal materials.<sup>11</sup> Document study is the process of collecting legal materials carried out through written legal materials related to business licenses in the capital city of the archipelago.

#### **5. Analysis of Law**

The following are the stages of data processing used in this study:

1. *Editing* . At this stage, the researcher analyzes all legal materials that have been collected, including laws and regulations, opinions of legal experts (doctrine), as well as articles in scientific journals, and other literature. This process aims to ensure that the data used is relevant to the research topic and does not contain errors or inaccurate information.

In this study, editing was carried out by:

- a. Checking the validity of the legal documents used, such as Law No. 21 of 2023, UUPA, and Law No. 12 of 2011.
- b. Eliminate data that is irrelevant or not directly related to the issues discussed in the research.

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<sup>11</sup> Johnny Ibrahim, Normative Legal Research Theory and Methodology, 392.

- c. Check if there is any information that needs to be updated or added to strengthen the analysis.
2. *Classifying* . After the data has been examined and selected, the next stage is to classify the data based on certain categories to make the analysis process easier. In this study, data classification was carried out based on the following aspects:
  - a. Laws and Regulations: Grouping regulations based on the hierarchy of legal norms, starting from the 1945 Constitution, UUPA, to Law No. 21 of 2023. This aims to see the relationship and potential conflicts between regulations.
  - b. Legal Concepts: Grouping literature and doctrines that discuss the theory of the hierarchy of legal norms and the principle of legality in land policy.
  - c. Legal analysis: Classifying materials related to the legal consequences of the enactment of Article 16 of Law No. 21 of 2023 on the national agrarian system.

With this classification, research can be more systematic in identifying problems related to the regulations being studied.

3. *Verify* . Once the data is classified, the next stage is verification to ensure the validity and accuracy of the information used. Verification is carried out by:

- a. Compare the content of Article 16 of Law No. 21 of 2023 with higher regulations, such as the UUPA, to see if there is a legal conflict.
  - b. Examine the validity of secondary sources, such as journals and books, to ensure that the analysis is supported by valid legal theories.
  - c. Using legal doctrine from credible experts to strengthen legal arguments in research.
  - d. This verification stage is essential to avoid misinterpretations of the law and ensure that the results of the research have a solid basis.
4. *Analyzing* (Data Analysis). At this stage, the data that has been classified and verified is analyzed using qualitative analysis methods. The analysis is carried out by:
  - a. Reviewing the Conformity of Regulations: Examining whether Article 16A of the IKN Law No. 21 of 2023 is in accordance with the principle of harmonization of legal norms and does not conflict with higher or equivalent provisions, especially with Articles 29-35 of UUPA No. 5 of 1960 as the basis of national land law.
  - b. Interpreting Legal Provisions: Analyzing the meaning of the norms contained in Article 16 A of Government Regulation No. 21 of 2023 using a conceptual and legislative approach.
  - c. Comparing with Existing Regulations: Comparing Law No. 21 of 2023 with similar regulations in the Indonesian legal system to see how this policy affects the national agrarian system.

The results of this analysis will be used to identify potential legal problems that arise and the implications of policies regulated in Article 16A of Law No. 21 of 2023.

5. *Concluding* . The final stage in data processing is the drawing of conclusions. In this study, conclusions are made based on the results of analysis of previously studied data. This conclusion will outline several things, including:
  - a. Is Article 16 A of the IKN Law No. 21 of 2023 in line with the provisions of UUPA No. 5 of 1960 or does it actually cause potential conflicts of norms in the regulation of land rights?
  - b. How does the provisions of Article 16 A of the IKN Law No. 21 of 2023 affect the national land system from the perspective of siyarah dusturiyah, especially related to justice, benefits, and the management of land rights in a proportionate manner.
  - c. Recommendations for improving regulations so that the rules made do not cause legal conflicts and can run in accordance with the principles of legality.

By going through this stage of data processing, the research can present a comprehensive legal analysis and contribute to understanding the legal problems that exist in land policy in the National Capital City (IKN) of the archipelago.

## G. PREVIOUS RESEARCH

Previous research is the result of research conducted by a researcher on certain themes and topics. Previous research was made in order to see the novelty aspect carried out by researchers by comparing it with the results of other research that had been conducted previously. The following is the previous research of this article.

1. Gunanegara (2022) with the title *State Policy on the Regulation of Land Rights after the Job Creation Law*.<sup>12</sup> highlighted changes in land policy after the enactment of the Job Creation Law which is considered to cause dualism with the UUPA, especially related to the expansion of land objects and changes in the term of land rights which have the potential to create legal uncertainty. Its relevance to this research lies in the same focus on the disharmonization of agrarian regulations. However, this study is different because it specifically analyzes the regulation of the term of land rights in the IKN based on the applicable IKN Law and its conformity with the principles of the UUPA in the perspective of siyasah dusturiyah. Thus, this study offers a more focused study on the harmonization of norms in the national land system, rather than on policy changes after the Job Creation Law in general.

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<sup>12</sup> Gunanegara, "State Policy on the Regulation of Land Rights after the Job Creation Law," *Legal Reflections: Journal of Law* 6, no. 2 (April 28, 2022): 161–84, <https://doi.org/10.24246/jrh.2022.v6.i2.p161-184>.

2. Muhammad Asrul Maulana et al. (2023) in their research entitled *Conflict of Norms in the Granting of Permits for the Period of Land Rights in the Capital Region of the Nusantara*<sup>13</sup> examines the disharmony between the regulation of the term of land rights in the IKN area with national agrarian provisions. This study found that the regulation of the term of land rights in the IKN regulation is not in line with the basic principles of the UUPA, so it has the potential to cause legal uncertainty and overlapping norms. Its relevance to this research lies in the same focus on the disharmony of land regulations. However, different from the study which discusses norm conflicts in general, this study specifically analyzes the suitability of the regulation of the term of land rights in the IKN with the UUPA through the perspective of siyasah dusturiyah, thus providing a more specific analysis space for the harmonization of norms in the national agrarian law system.

3. Iwn Erar Joesoef (2021) with the title *Concession Granting to Investors on Customary Land and the Existence of Customary Law*<sup>14</sup> focusing on land conflicts arising from the granting of concessions to investors on customary land and the weak state recognition of the existence of customary law communities. His findings show that land policies that are not aligned with

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<sup>13</sup> Muhammad Asrul Maulana et al., "Conflict of Norms in the Granting of Permits for the Period of Land Rights in the Capital City of the Archipelago," *Veritas and Justitia* 11, no. 1 (2025): 152–70, <https://doi.org/10.25123/g032eq74>.

<sup>14</sup> Iwan Erar Joesoef, "Concessions to Investors on Customary Land and the Existence of Customary Law.," *Journal of Law and Justice* 10, no. 3 (2021): 3, <https://doi.org/10.25216/jhp.10.3.2021.361-379>.

social values, customary structures, and the needs of local communities can trigger disputes and reduce the effectiveness of agrarian arrangements. The relevance of the research for this study lies in the same attention to the problem of disharmony of norms in land policy. However, unlike Joesoef's research which focuses on social conflicts and aspects of indigenous peoples' protection, this research focuses on the analysis of Article 16A of the IKN Law No. 21 of 2023 in relation to Articles 29–35 of UUPA No. 5 of 1960, especially from the perspective of harmonizing norms and their conformity with the principle of siyasah dusturiyah. Thus, this study expands the discussion from the issue of customary conflict to an analysis of the consistency and harmony of regulations in the national land law system.

4. Fahmi Kurniawan with the title "Agrarian Conflict in the Development of the National Capital: Analysis of Business Use Rights and Protection of Indigenous Peoples' Rights"<sup>15</sup> highlighted agrarian conflicts that arise in the development of the IKN, especially related to the provisions for granting and extending HGU to investors who have the potential to ignore the rights of indigenous peoples who do not have formal evidence of land ownership. Long-term land policies are considered to have the potential to contradict the principles of agrarian justice in the 1960 UUPA and weaken the protection of

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<sup>15</sup> Fahmi Kurniawan, "Agrarian Conflict in the Development of the National Capital: Analysis of the Rights to Use and Protection of the Rights of Indigenous Peoples," *Journal Of Science And Social Research* 8, no. 1 (2025): 1.

indigenous peoples. The relevance of the study to this research lies in the same attention to the potential disharmony between the IKN land policy and national agrarian regulations. However, Fahmi's research emphasizes more on social conflicts and the protection of indigenous peoples' rights, while this research focuses on the normative analysis of Article 16A of the IKN Law No. 21 of 2023 and its conformity with Articles 29–35 of the UUPA in the context of harmonization of laws and regulations. Thus, this research contributes to the aspect of harmonizing legal norms, not to the aspect of agrarian conflict.

5. Moh. Angga Dwi Fachrul Yahya (2024) *entitled Analysis of Fiqh Siyasah on the Mechanism of Land Acquisition and Management in the Capital City of the archipelago according to Presidential Decree 65 of 2022.*<sup>16</sup> This study examines the mechanism of land acquisition and management in IKN based on Presidential Decree 65 of 2022 through the perspective of fiqh siyasah. The results of his research show that government policies related to forest area release, land acquisition, control of land rights, and prevention of speculation have not fully reflected the principles of justice in fiqh siyasah, especially related to community participation and protection of property rights. Its relevance to this research lies in the use of the siyasah perspective to assess land policy in IKN. However, previous research focused more on the mechanism of land acquisition and management comprehensively, while this

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<sup>16</sup> Yahya, "Analysis of Fiqh Siyasah on the Mechanism of Land Acquisition and Management in the Capital City of the Archipelago according to Presidential Decree 65 of 2022."

study specifically analyzed Article 16 A of Law No. 21 of 2022 in the study of siyasah dusturiyah, especially regarding the period of land rights and their conformity with the principles of the 1960 Law. Thus, this research offers a narrower and normative focus, while contributing to the harmonization aspect of land regulations in the IKN area.

**Table 2**  
*Previous Research*

Yes	Name/Title/Year	Problem Statement	Research Results	Equation	Differences / elements of novelty
1	State Policy on the Regulation of Land Rights After the Job Creation Law (Gunanegara, 2022)	How will the law on land rights change after the Job Creation Law?	The Job Creation Law expands the regulation of land rights to upper and lower spaces, as well as extends the term of HGB and HGU, which creates regulatory dualism with the UUPA.	Both discussed land policy and potential conflicts with the UUPA.	This research focuses more on Law No. 21 of 2023, while previous research discussed the impact of the Job Creation Law. The research approach is more specific to the analysis on the latest regulations.
2	Conflict of Norms in the Granting of Permits for the Term of Land Rights in the Capital	How do norm conflicts occur in the granting of permits for the period of land	There is a conflict of norms related to the term of land rights in the IKN which causes legal	Both highlighted the conflict in the regulation of land rights in the IKN	This research focuses on the analysis of Article 16 A of the IKN Law and harmonization with the UUPA

	Region of the Archipelago (Muhammad Asrul Maulana et al., 2023)	rights in the IKN?	uncertainty and overlapping authority.	and the potential for legal uncertainty	based on siyasah dusturiyah, while Asrul's research emphasizes conflict of norms and overlapping authority in general.
3	Granting Concessions to Investors on Customary Land and the Existence of Customary Law (Iwn Erar Joesoef, 2021)	What is the impact of concessions to investors on the rights of indigenous peoples?	Many conflicts occur as a result of granting land concessions to investors, and customary law is often ignored in agricultural policy.	Both discussed the impact of land policy on indigenous peoples.	This research focuses more on the regulation of Law No. 21 of 2023, while the previous research discussed customary land conflicts due to concession policies.
4	Agrarian Conflict in IKN Development: An Analysis of the Rights of Business Use and Protection of the Rights of Indigenous Peoples (Fahmi Kurniawan)	Does the policy of extending HGU in the IKN protect the rights of indigenous peoples?	The extension of HGU in the IKN Law is more in favor of investors and has the potential to eliminate the rights of indigenous peoples.	Together they studied land problems in the IKN and their impact on indigenous peoples.	This research aligns it with the UUPA and the perspective of siyasah dusturiyah, while previous research has highlighted indigenous peoples' conflicts due to IKN policies.
5	Analysis of Fiqh Siyasah on the Mechanism of Land Acquisition	What is the mechanism of land acquisition and management	The government has the authority to regulate land for the public	Both use an Islamic perspective in analyzing	This research uses the siyasah dusturiyah approach to examine Law No. 21 of 2023,

	and Management in IKN According to Presidential Decree 65 of 2022 (Moh. Angga Dwi Fachrul Yahya, 2024)	in the IKN in the perspective of fiqh siyasah?	good, but its implementation is not in accordance with the principles of Islamic justice.	land policy in the IKN.	while previous research focused more on the mechanism of land acquisition in Presidential Regulation 65 of 2022.
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## H. STRUCTURE OF DISCUSSION

The systematics of writing this research consists of four main chapters that systematically explain various aspects of the research, ranging from the background to the conclusions and suggestions given based on the results of the analysis.

### CHAPTER I Introduction

This chapter contains an explanation of the basics of research which includes the background of the problem, problem formulation, research objectives, research benefits, and operational definition. The background of the problem outlines the urgency and significance of this research in the context of land law and policy in the National Capital City (IKN) of the archipelago. The formulation of the problem is focused on the legal issues that are the object of the study, while the purpose of the research is to formulate the results to be achieved. The benefits of research are described in two aspects, namely theoretical

benefits and practical benefits, which aim to contribute to the development of legal science and the improvement of land policy. The operational definition is used to avoid misunderstandings in understanding the concepts used in this study. This section also covers the research methods used, including the type of research conducted, the research approach applied, the legal materials used as the main data source, the techniques for collecting legal materials, and the methods of analyzing legal materials used to review the applicable regulations. In addition, in this chapter, previous research related to this topic is also presented as a reference in looking at the novelty aspect of research. The systematics of the discussion at the end of this chapter provides an overview of the flow of research and the division of chapters in this thesis.

## **CHAPTER II Literature Review**

This chapter discusses theories and concepts relevant to research. In this chapter, the theory of harmonization of laws and regulations according to Hans Kelsen is explained, which emphasizes the need for harmony of legal norms in the hierarchy so that there are no contradictions between regulations. This theory is the basis for analyzing the position of the National Capital Law (UU IKN) No. 21 of 2023 in the national legal system, especially in relation to the Basic Agrarian Law (UUPA) and other regulations. According to Kelsen, legal harmonization aims

to create legal certainty and optimize the effectiveness of regulatory implementation. In addition, the literature review also examines the concept of *siyasah dusturiyah*, which is the concept of Islamic constitutional law that emphasizes the relationship between the state and law in regulating society. *Siyasah dusturiyah* emphasized the importance of justice in policy formulation and regulatory orientation to the benefit of the people. In the context of this research, the *siyasah dusturiyah* approach is used to evaluate the extent to which land policies in IKN reflect the principles of justice and social welfare, as well as alignment with Islamic legal values.

### **CHAPTER III Research and Discussion Results**

This chapter presents an analysis of the problems that have been formulated in the research. The subchapters in this section are arranged according to the formulation of the problem that has been determined beforehand. The analysis is focused on the State Capital Law (UU IKN) No. 21 of 2023 using the theory of harmonization of laws and regulations and the concept of *siyasah dusturiyah*. The analysis emphasizes land policy in the IKN, especially related to the period of the Right to Use Business (HGU), the Right to Use (HGB), and the Right to Use, in the context of the Basic Agrarian Law (UUPA). This chapter also discusses the potential for regulatory inequality and legal dualism that arise due to differences in provisions between the IKN Law

and other national land regulations. With the siyasah dusturiyah approach, the study assesses the extent to which this land policy affects community welfare, the protection of indigenous peoples' rights, and the balance between investor interests and public interests. This analysis aims to identify emerging legal problems and offer recommendations for solutions for the government in adjusting regulations to be in line with the principles of national law and the principles of justice according to Islamic law.

#### **CHAPTER IV Conclusion**

This chapter contains conclusions and suggestions compiled based on the results of the research. The conclusions drawn in this study are the answer to the formulation of the problem that has been determined, which includes a legal analysis of the State Capital Law (UU IKN) No. 21 of 2023 in relation to the national legal system and the concept of siyasah dusturiyah. The suggestions given aim to provide recommendations to the government and policy makers regarding the evaluation and harmonization of land regulations in the IKN so that they are more in line with the principles of justice, legal certainty, and community benefits. This research is expected to make an academic contribution to the development of legal science and become a consideration for policymakers in managing laws and regulations in the land sector in a more fair, transparent, and sustainable manner.

## CHAPTER II

### LITERATURE REVIEW

#### A. Business Licensing in the National Capital City (IKN) of the archipelago

Licensing is a legal instrument used by the state to regulate, control, and provide certainty in the implementation of business activities. In the context of Indonesian administrative law, licensing is understood as a state administrative decision that functions to provide legality for individuals or legal entities to carry out certain activities that are limited by laws and regulations. Ateng Syafrudin explained that the permit is "the granting of legal dispensation from the state to citizens to carry out actions that were originally prohibited". Thus, licensing is not only an administrative mechanism, but also a *policy tool* to maintain public order, encourage investment, and regulate the use of agrarian space and resources.<sup>17</sup>

In the framework of the development of the National Capital City (IKN) of the archipelago, licensing of business actors is specifically regulated in the State Capital Law No. 21 of 2023 (IKN Law), which provides various forms of ease of licensing, especially related to the term and land rights as investment incentives. This regulation is the legal basis for the implementation of government policies in

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<sup>17</sup> Dear Shirley, *State Administration and Licensing Law*, Bandung: Alumni, 1994. "HGU in IKN for Almost 2 Centuries: The Interests of the People or Investors?", *LK2 FHUI*, n.d., accessed May 16, 2025, <https://lk2fhui.law.ui.ac.id/portfolio/hgu-di-ikn-hampir-2-abad-kepentingan-rakyat-atau-investor/>.

encouraging the acceleration of development through investment cooperation schemes, both domestic and foreign. The main focus of the IKN Law is to regulate the grant, extension, and renewal of business rights in the IKN area, including risk-based business licensing procedures and the authority of the IKN Authority as an institution with special authority body, while ensuring consistency with the principles of national law and the applicable land system.

On the other hand, regulations related to agrarian licensing in general have been previously regulated in the Basic Agrarian Law (UUPA) No. 5 of 1960, especially in Articles 29-35 which regulate the procedures for granting land rights such as the Right to Use (HGU), the Right to Use (HGB), and the Right to Use. The UUPA emphasizes that every grant of land rights must follow the principles of agrarian reform and state control over agrarian resources as stated in Article 2 of the UUPA. Thus, all forms of licensing related to land rights must basically be in line with the principles of social justice, utility, and legal certainty.<sup>18</sup>

The difference in orientation between the State Capital Law (UU IKN) which is more pro-investment and the Basic Agrarian Law (UUPA) which is oriented towards agrarian justice raises the potential for regulatory disharmony. The study of licensing is important, especially related to the period of land rights

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<sup>18</sup> s. H. Innayah Maghfirah Patola; Dr. Agus Sekarmadji, *Thesis (4864) - Granting the Period of Building Use Rights after the Enactment of Government Regulation Number 12 of 2023 concerning the Granting of Business Licenses, Business Facilities and Investment Facilities for Business Actors in the Capital City of the archipelago* (Faculty of Law, Unair), accessed May 16, 2025, [/all.fh.unair.ac.id%2Findex.php%3Fp%3Dshow\\_detail%26id%3D23948](http://all.fh.unair.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D23948).

and their conformity with national legal principles. This analysis uses a regulatory harmonization approach, taking into account the principles of *lex specialis derogat legi generali* (special law overriding general law) and *lex posterior derogat legi priori* (new law overriding old law), so that the regulation of business licensing in IKN can be understood within the framework of national law harmonization and in line with the principles of agrarian justice.

## **B. Land Rights**

Land rights are part of the national agrarian legal system which is comprehensively regulated in the Basic Agrarian Law (UUPA) No. 5 of 1960. UUPA emphasizes that all land in Indonesian territory is under the control of the state as an organization of power of all the people, which gives a mandate to the state to regulate the designation, use, availability, and maintenance of land for the greatest prosperity of the people. The State does not own land, but holds the Right to Control from the State (HMN) which is the basis for granting various types of land rights to individuals and legal entities.<sup>19</sup>

The UUPA regulates several types of land rights such as Property Rights, Business Use Rights (HGU), Building Rights (HGB), Use Rights, Lease Rights, and various other short-term rights. In the context of investment, the two most strategic rights are HGU and HGB because they provide convenience for business

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<sup>19</sup> Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. LN. 1960/No. 104, TLN No. 2043, LL SETNEG : 17 PAGE

actors to manage and utilize land within a certain period of time. Articles 29–35 of the UUPA emphasize that the term and extension of land rights must take into account the social function of land, the principle of justice, and the prohibition of monopolistic use of space. Thus, land rights should not be granted in a way that reduces state control or hinders public access to agrarian resources.

In the framework of the development of the National Capital City (IKN), the regulation of land rights has become a crucial issue due to the emergence of new policies that extend the period of certain rights for business actors. Policies such as Law No. 21 of 2023<sup>20</sup> can potentially cause disharmony if the period of time or the structure of the rights granted is not in line with the basic principles of the UUPA. Therefore, the analysis of land rights must assess the consistency of the new regulations with national agrarian principles, including the principles of justice, utility, and social function of land as stipulated by the UUPA.<sup>21</sup>

### ***C. Siyasah Dusturiyah***

Siyasah dusturiyah is a branch of fiqh siyasah that discusses the principles of statehood from an Islamic perspective, especially related to the relationship between rulers, people, and power structures in a country. The main focus of siyasah dusturiyah is how rules, policies, and legislation are carried out in

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<sup>20</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.; jdih.setneg.go.id

<sup>21</sup> Maria S. Sumardjono, *Land in the perspective of economic, social, and cultural rights* (Kompas Book Publisher, 2008), 45–62.

accordance with the values of justice, welfare, and protection of human rights. In the context of state administration, siyasah dusturiyah emphasizes that every government policy must rest on the principles of maslahah (*'public benefit'*), justice (*'al-'adl'*), and not cause injustice to the community, especially groups that are prone to be affected by state policies.<sup>22</sup>

From an Islamic perspective, the government has the authority to make regulations as part of the *wilayah as-siyâsah*, but this authority is limited by the purpose of the shari'a (*maqâshid as-syârî'ah*), which is to protect religion, soul, intellect, lineage, and property.<sup>23</sup> Therefore, every regulation in the modern legal system, including regulations related to land and licensing for business actors, must be able to ensure a balance between the interests of the state, investors, and society. Distributive justice and protection of property rights (*haqq al-milkiyyah*) are the main concerns in *siyasah dusturiyah*, so policies should not only benefit certain groups or create social disparities.<sup>24</sup>

The relevance of siyasah dusturiyah in this study lies in its use as a tool for analyzing the consistency and morality of state policies, especially Article 16 A of Law No. 21 of 2023<sup>25</sup> which regulates the term of land rights for business actors

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<sup>22</sup> To Djazuli, *Fiqh siyasah: the implementation of the benefits of the ummah in the signs of shari'ah* (Kencana, 2003), 45.

<sup>23</sup> Wahbah Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Juz 6 (Damascus: Dar al-Fikr, 1985), 421.

<sup>24</sup> Iqbal Muhammad, *Islamic political thought: from classical times to contemporary Indonesia* Cet. 1. (Kencana, 2010).

<sup>25</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.: jdih.setneg.go.id

in IKN. This approach allows for a normative assessment of whether the policy is in line with the principles of justice, benefit, and protection of people's rights as taught in Islamic law. Thus, siyasah dusturiyah becomes a theoretical basis to evaluate the suitability of land policy with sharia values and ensure that regulations do not cause structural injustice in land management in IKN.

## **D. Theoretical Framework**

### **1. Harmonization of Laws and Regulations**

The harmonization of laws and regulations is used in this study as a basis for analyzing the harmony of a regulation in the Indonesian legal system. This theory emphasizes the importance of drafting and adjusting legal norms so that there are no conflicts between regulations, so that each regulation is in harmony with higher regulations and basic principles of national law. By understanding the concept of harmonization, this study assesses whether the licensing provisions for business actors in Law No. 21 of 2023 concerning the State Capital City (UU IKN)

<sup>26</sup> are in line with the principles of agrarian law regulated in Articles 29–35 of the UUPA. The relevance of this theory is directly related to the formulation of the first problem, which is to test whether the IKN Law is normatively consistent and

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<sup>26</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.; jdih.setneg.go.id

harmonious with the UUPA as a regulation that is the basis for regulating land rights in Indonesia.<sup>27</sup>

The term "harmonization" comes from the Greek *harmonia*, which means something that is harmoniously and harmoniously intertwined. Philosophically, harmonization is interpreted as the cooperation of various factors so that a noble unity is created. The etymology shows that harmonization is a process that begins with an effort to create or realize a harmonious system.<sup>28</sup>

From a psychological perspective, harmonization refers to a balance between a person's thoughts, feelings, and behavior, thus creating an alignment that can prevent unnecessary stress.<sup>29</sup> According to the Great Dictionary of the Indonesian Language (KBBI), harmonization is an effort to find harmony.<sup>30</sup> In the social context, it emphasizes the importance of peaceful coexistence, minimizing conflict, and building smooth social relationships to achieve the common goals of society. In other words, harmonization is rooted in the concept of harmony, which is an effort to realize order and harmony. In philosophy, harmony is described as a

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<sup>27</sup> Rangga Trianggara Paonganen et al., "Analysis of Harmonization of Laws and Regulations in Overcoming Regulatory Conflicts in Indonesia," *Innovative: Journal Of Social Science Research* 5, no. 4 (2025): 4796–812, <https://doi.org/10.31004/innovative.v5i4.20799>.

<sup>28</sup> Liba Taub, "Reflection I: The Soul of the World and Harmony," in *World Soul: A History*, ed. James Wilberding (Oxford University Press, 2021), <https://doi.org/10.1093/oso/9780190913441.003.0004>.

<sup>29</sup> Sutopo, *Harmonization and Harmony in Social Life*, Yogyakarta: Pustaka Siswa, 2015, pp. 32–34.

<sup>30</sup> The Great Dictionary of Indonesian, online edition, "Harmonization," accessed November 28, 2025, <https://kbbi.co.id/arti-kata/harmonisasi>

combination of various components so as to produce a beautiful and meaningful unity.

In comparing the Western and Eastern mentalist approaches, Soetoprawiro emphasized that harmony is the most important element in the life of the Indonesian people. Everything that is considered good should be realized in the form of harmony, harmony, and balance. Justice and prosperity are achieved through harmony, and every behavior and action must begin in a harmonious state and then develop into a new state of harmony.

Based on various definitions, harmony can be understood as harmony, conformity, compatibility, and balance. Some of the important elements contained in the concept of harmonization include:

- a. There is excessive tension or differences.
- b. Adjustment of different plans by utilizing each part to form a complete system.
- c. A process or effort to realize harmony, conformity, compatibility, and balance.
- d. Cooperation between various factors so as to create a meaningful and noble unity.

Legal harmonization was developed in law to show that in legal practice, government policy, and the relationship between the two there are various differences that have the potential to cause disharmony. *Rudolf Stammler* stated that the main function of law is to harmonize various aims, objectives, and interests,

both between individuals and between individuals and society. According to *Stammler*, fair law aims to harmonize the goals of the individual with the interests of society.<sup>31</sup> Principles of fair law include the alignment between individual intentions, goals, and interests with public goals, goals, and interests. The main elements of this purpose, purpose, and interest are mutual respect and participation.<sup>32</sup>

The concept of legal harmonization in the legal literature in the Netherlands is explained by Jan Micheil Otto in his book *Implementation of Environmental Law: Harmonization, Environmental Management and Enforcement by The Courts, With References to Indonesia and The Netherland*. Otto stated that when there is unnecessary incompatibility between various elements in the legal system that discuss the same thing, harmonization can be done by adjusting the elements so that the incompatibility is eliminated, better results are obtained, and the identity of each element is maintained.<sup>33</sup>

Efforts to harmonize the legal system are carried out to overcome the imbalance between different legal elements, by adjusting and harmonizing these elements. Conceptually, harmonization can be applied to the entire legal system,

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<sup>31</sup> "Moral Perspective of Good Law Enforcement | Legal Journal IUS QUA IUSTUM," accessed November 28, 2025, <https://journal.uui.ac.id/IUSTUM/article/view/3902>.

<sup>32</sup> Dwi Seno Wijanarko et al., *Legal Issues in the Procurement of Goods and Services*, n.d.

<sup>33</sup> Munsharif Chalim, "Harmonization Between the National and International Law on the Usage Settings of Natural Resources in the Territory of the Republic of Indonesia," *Journal of Legal Reform* 4 (August 2017): 191, <https://doi.org/10.26532/jph.v4i2.1669>.

which involves three main components: the substance of the law, its legal structure and its institutions, and the legal culture, or to any part of the relationship between these three components.<sup>34</sup> In Indonesia, the principle of legal harmonization is reflected in Presidential Decree Number 188 of 1998,<sup>35</sup> Article 2, which states that in order to harmonize, round, and consolidate the conception of the Bill, each minister or head of the drafting institution must first consult with the Minister of Justice and the minister or head of other related institutions.

Harmonization of the national legal system is needed to integrate various legal systems so that an harmonious order is formed within the national legal framework. In the framework of legal politics that emphasizes the unity of the national legal system, the national legal system is interpreted as a law built based on Pancasila and the 1945 Constitution, with the aim of realizing a state of law, constitutional principles, and welfare or social justice for all people. Ideally, legal harmonization is carried out from the legal planning stage and the process of forming laws and regulations. This process aims to ensure the formation of good regulations, containing moral values, harmonious, non-contradictory, integrated, visionary, and durable. Legal harmonization also serves to overcome differences, conflicts, or irregularities between legal norms in regulations as part of the national

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<sup>34</sup> Soerjono Sockanto, *Principles of Legal Sociology* (Jakarta: RajaGrafindo, 2010), pp. 65–67

<sup>35</sup> Presidential Regulation (Perpres) Number 76 of 2021 concerning Amendments to Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. LN.2021/No.186, jdih.setneg.go.id : 4 p.

legal subsystem. Thus, the resulting laws and regulations are harmonious, harmonious, balanced, integrated, consistent, and in accordance with legal principles.

## **2. Legal Certainty Theory.**

The use of legal certainty theory is relevant in this study because this theory emphasizes the importance of clarity, regularity, and consistency of norms in a legal system in order to provide protection and predictability for society. According to Hans Kelsen, legal certainty is achieved if legal norms are arranged in a rational, hierarchical manner, and can be applied without causing ambiguity. In the perspective of legal positivism, pioneered by John Austin, law is seen as an order of a ruler that must be obeyed as long as it is established through formal procedures, so that its enactment does not depend on morality, but on legality.<sup>36</sup>

Positivist thinking emphasizes that every regulation, including the IKN Law, must have a clear legal basis and be in harmony with relevant norms, such as UUPA No. 5 of 1960. In this context, the concept of legal harmonization is used to assess whether the licensing provisions in the IKN Law are aligned and consistent with Articles 29–35 of the UUPA, as well as whether the regulation guarantees legal protection and order for business actors and the community. The relevance of this approach is directly related to the formulation of the research problem, namely

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<sup>36</sup> Hans Kelsen, *Pure Theory of Law*, explained that legal certainty is achieved through the application of positive legal norms that are hierarchical and free from moral or political interference.

examining whether the licensing policy in the IKN Law is in accordance with the principle of legal harmonization in the national agrarian system.

The theory of legal certainty is one of the main goals of law and can be considered an integral part of realizing justice. Legal certainty is reflected concretely through the application and enforcement of laws that apply fairly regardless of who is the perpetrator of an act. With legal certainty, every individual can predict the legal consequences of their actions, so as to create a sense of security and order in social life.

Legal certainty is also an important element in realizing the principle of equality before the law without discrimination. The term "certainty" is closely related to the principle of truth, where legal certainty means that a rule can be applied consistently through a logical and systematic formal legal approach. With legal certainty, individuals have a guarantee to act in accordance with the applicable legal provisions, and know the limits and consequences of their actions. On the other hand, without legal certainty, a person does not have clear guidelines in behaving in accordance with the law.<sup>37</sup>

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<sup>37</sup> Hans Kelsen, *Pure Theory of Law*, explains that legal certainty is achieved through the application of positive legal norms that are hierarchical and free from moral or political interference. Aprilia Silvi Suciana, "Juridical Analysis of Release Decisions by Judges in the Crime of Money Laundering (Case Study: Court Decision Number 555/Pid.Sus/2021/Pn.Sby)" (diploma, National University, 2023), <http://repository.unas.ac.id/6990/>.

In line with this goal, Gustav Radbruch stated that legal certainty is one of the main goals of the law itself.<sup>38</sup>

In his theory, he put forward four main elements that are closely related to the meaning of legal certainty, namely:

- a. Law is positive, which means that positive law refers to laws and regulations;
- b. Law is prepared based on facts, namely laws born from the reality that exists in society;
- c. The facts contained in the law must be formulated clearly and firmly, so as not to cause misunderstandings in interpretation and can be easily applied;
- d. Positive laws should not be changed easily or arbitrarily.

Gustav Radbruch's view emphasizes that legal certainty is the essence of law itself, which is manifested through the existence and application of laws and regulations as a concrete form of positive law. According to him, the law is something positive that functions to regulate the interests of each individual in society and must be respected and obeyed, even though the positive law is considered unfair. In addition, legal certainty refers to clear and firm conditions, in the form of provisions or decisions that can be ensured to be enforced.

In essence, the law must have a definite and fair nature. A definite law serves as a guideline in action, while a just law is a guideline that ensures balance

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<sup>38</sup> Satjipto Rahardjo, 2012, Legal Science, Bandung, Citra Aditya Bakti, p. 19

and fairness in a social order. Only by fulfilling these two characteristics can the law be properly implemented according to its function.

In his book entitled *The Morality of Law*, Lon Fuller explains that there are eight principles that must be fulfilled by a law.<sup>39</sup> If one or more of these principles are not met, then the law is considered to have failed and is not worthy of being called law. This emphasizes the importance of legal certainty in the legal system. From Lon Fuller's explanation, it can be concluded that the concept of legal certainty that he conveyed is in line with Sudikno Mertokusumo's view, namely that legal certainty is a guarantee that the law can function and run as it should.

*Lon Fuller* explained that there are eight principles that must be fulfilled by the law, namely:

1. The legal system created by a legitimate authority should consist of rules that are not made arbitrarily or based on a momentary decision for a particular case.
2. The rules set must be publicly announced to the public.
3. Rules should not be retroactive because this can undermine the integrity of the legal system.
4. The rules must be formulated clearly so that they are easy to understand by the general public.
5. One rule should not conflict with another.

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<sup>39</sup> Lon L. Fuller, *The Morality of Law* (McGraw-Hill: Yale University Press, 1964), hlm. 54-58

6. The rules made must not demand actions that exceed the capabilities of the person they regulate.
7. Rules should not be changed frequently so that legal stability is maintained.
8. There must be harmony between the rules made and their implementation in daily life.

From these eight principles, it can be concluded that certainty must be created both in regulations and in the implementation of the law. Thus, positive law can run effectively when it has touched on aspects of behavior, actions, and factors that affect the implementation of the law itself.

According to Apeldoorn, legal certainty has two important aspects that need to be understood. The first aspect is that the law can be formed concretely, so that the party seeking justice can clearly know the applicable legal rules before starting a case. The second aspect is legal certainty as a form of legal protection that provides security for the parties concerned, especially to protect them from arbitrary actions by judges or authorities.

Through the paradigm of positivism, Apeldoorn defines law as prohibiting all existing rules that resemble laws, but do not have the nature to rule or orders that come from sovereign authorities. According to Apeldoorn, legal certainty must be upheld highly, whatever the consequences and there is no reason not to uphold legal

certainty because according to its paradigm, positive law in legal certainty is the only law.<sup>40</sup>

In the paradigm of positivism, Apeldoorn explains that law should prohibit all rules that are similar to the law but have no governing nature or orders from sovereign authorities. According to him, legal certainty must be respected absolutely without exception, because in his view, only positive law is the only source of law in the context of legal certainty.

Based on experts' explanations of the theory of legal certainty, it can be concluded that legal certainty includes several important meanings, namely the clarity of rules without causing double interpretation, the prohibition of contradictions between regulations, and the ability of these regulations to be implemented effectively. Laws that apply and are set by official authorities, such as the government, must be firm and transparent so that the public can understand their content and meaning clearly.<sup>41</sup>

According to the theory of legal certainty from experts, the law should not contain contradictions because doing so will create uncertainty and doubt. Legal certainty is an important instrument for the state to create clear rules, while

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<sup>40</sup> Guide *Definition of Legal Certainty in General and Opinions of Experts*, n.d., accessed June 2, 2025, <https://www.gramedia.com/literasi/pengertian-kepastian-hukum/>.

<sup>41</sup> Guide *Definition of Legal Certainty in General and Opinions of Experts*.

guaranteeing the rights and obligations of every citizen in accordance with the cultural values that apply in the society.<sup>42</sup>

### **3. *Siyasah Dusturiyah***

#### **1. Definition of *Siyasah Dusturiyah***

*Siyasah Dusturiyah* comes from the word "*dusturi*" in Persian is the source of the *Dusturiyah language*. The word "*dusturiyah*" refers to a grouping of guidelines that govern cooperative interaction between the government and its citizens, both implicitly (convention) and written (Constitution). Therefore, it can be concluded that the term "*dusturiyah*" refers to the standard of basic regulations. *Siyasah Dusturiyah* is a branch of *siyasah syar'iyyah* that focuses on aspects of constitutional law and constitutional law from an Islamic perspective. This concept includes the basic principles that govern the relationship between leaders (*ulil amri*), the people, as well as the mechanism for the fair and responsible administration of power.

#### **2. The Purpose of *Siyasah Dusturiyah***

According to Muhammad Iqbal, quoting the opinion of Abdul Wahhab Khallaf in the book *Al-Siyasah Al-Syar'iyyah*, the purpose of *Siyasah Dusturiyah* is:

- a) Realizing human benefits and meeting their needs.

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<sup>42</sup> Guide *Definition of Legal Certainty in General and Opinions of Experts*.

- b) Regulating the relationship between leaders and the people as well as their respective rights and obligations.
- c) To maintain religion and realize its goals in life

State.

The functions of *Siyasah Dusturiyah* According to Imam Al-Mawardi in his book *Al-Ahkam Al-Sulthaniyah*, some of the functions of *Siyasah Dusturiyah* are:

- a) Maintain religion and regulate the affairs of the world.
- b) Regulating the government and the people.
- c) Uphold law and justice.
- d) Regulating the public and individual interests

### 3. The Principles of *Siyasah Dusturiyah*

In the framework of *siyasah dusturiyah*, power is not merely a tool of domination, but a mandate that must be carried out to uphold justice (*al'adl*), safeguard the public interest (*mashlahah 'ammah*), and preserve the rights of the community. The principles of deliberation, justice, and the protection of people's property rights are important foundations in this theory.<sup>43</sup> Therefore, the ideal state governance according to siyasah dusturiyah is one that is able to balance the authority of the state and the aspirations of the people within the framework of Islamic law.

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<sup>43</sup> Muhammad Iqbal, *Fiqh Siyasah: Contextualization of Islamic Political Doctrine* (Jakarta: Kencana, 2014)

These principles are also relevant in analyzing contemporary public policies, including in terms of land management and regulation in the Nusantara Capital City (IKN), which requires an ethical, fair, and beneficial approach for all parties involved. From an Islamic perspective, land ownership is a recognized and guaranteed right, both in the form of individual, state, and collective ownership of society.

The principle of justice ('adl) is the main foundation in this arrangement of ownership, where any policy relating to land must ensure the absence of injustice, coercion, or taking of rights without a legitimate basis. Justice in Islam includes the concepts of balance, proportionality, and impartiality. Islam emphasizes the importance of justice in all aspects of life, including the protection of individual rights. Justice means that every individual should be treated fairly and non-discriminatory. The Basis of the Qur'an Surah *An-Nisa* verse 58

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤْمِنُوا مُؤْمِنَاتٍ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعُدْلِ إِنَّ

الَّهُ نِعِمًا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَيِّئًا بَصِيرًا

"Indeed, Allah has commanded you to convey the message to those who are entitled to receive it, and (commands you) when you establish the law among men, that you should judge justly. Indeed, Allah has

given you the best instruction. Indeed, Allah is All-Hearing and All-Seeing".<sup>44</sup>

Islamic sharia stipulates that land can be owned through legitimate efforts such as land clearing (*ihya' al-mawat*), inheritance, grants, and fair buying and selling. The state is also given the authority to regulate and manage land in the public interest, but must still pay attention to individual rights and ensure that there is no unilateral deprivation of ownership<sup>45</sup>. In the context of the development of the archipelago's capital city, these principles are very important to assess whether the land policy implemented is in line with Islamic justice values or actually creates potential inequality and neglect of the rights of local communities, especially indigenous communities and farmers. Therefore, a *review of the siyasah dusturiyah* of this policy can provide an ethical and normative framework to assess whether the state has acted fairly as a manager of people's land.

From the point of view *of siyasah dusturiyah*, namely the politics of state administration in Islam, land policy in the Capital City of the Archipelago (IKN) needs to be analyzed in depth to assess its conformity with the principles of justice, benefit, and protection of people's rights. Islam teaches that the state

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<sup>44</sup> "Surah An-Nisa Verse 58 Arabic, Latin, Translation and Tafsir | Read on TafsirWeb," accessed May 20, 2025, <https://tafsirweb.com/1590-surat-an-nisa-ayat-58.html>.

<sup>45</sup> HA Djazuli, Fiqh Siyasah: *The Implementation of the Benefit of the Ummah in Sharia Signs* (Jakarta: Kencana, 2003)

has a responsibility as a manager of public trust, including in land and natural resource affairs. When the state establishes a policy of large-scale land tenure in the IKN area, including granting long-term land management rights to investors, this must be weighed based on the principle of *maslahah 'ammah* (public interest)

The principle of *maslahah 'ammah* in Islamic law is an important foundation that emphasizes that public policy should be directed to the public interest, not just to a specific group. In the context of land and investment policies in the Nusantara Capital City (IKN), this principle is relevant because it requires that all forms of regulations made by the government bring broad, sustainable benefits, and do not cause losses to the community, especially vulnerable groups and indigenous peoples.

This principle is rooted in *maqashid al-shari'ah* or the goals of Islamic sharia, which include the protection of religion, soul, intellect, descent, and property. Therefore, a good policy is a policy that preserves the environment, respects people's rights, and provides equitable welfare<sup>46</sup>. *Maslahah 'ammah* wants the public interest to be the axis in every decision-making, including in the process of land transfer, investment licensing, and infrastructure

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<sup>46</sup> Arif Chasanuddin and Zahrotun Nafisah, "The Concept of Mashlahah Al-Ammah in the Perspective of Social Fiqh Kh. Ma. "Mahmoud Ahmadinejad." *Islamic Review: A Journal of Islamic Research and Studies* 8, no. 2 (2019): 2, <https://doi.org/10.35878/islamicreview.v8i2.177>.

development in the IKN area. The evidence from the Qur'an that reflects the spirit of this principle is (QS. Al-A'raf: 56)

وَلَا تُعْسِدُوا فِي الْأَرْضِ بَعْدَ إِصْلَاحِهَا وَادْعُوهُ حَوْفًا وَطَمَعًا إِنَّ رَحْمَةَ اللَّهِ قَرِيبٌ مِّنَ الْمُحْسِنِينَ

"And do not make any damage on the earth after it has been repaired, and pray to Him with fear and hope. Indeed, Allah's mercy is very near to those who do good."<sup>47</sup>

Hadith Saheeh Al-Bukhari No. 2262

حَدَّثَنَا يَحْيَى بْنُ بُكَيْرٍ حَدَّثَنَا الْيَتْمَى عَنْ عَفَّيْلٍ عَنْ ابْنِ شَهَابٍ أَنَّ سَالِمًا أَخْبَرَهُ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ وَمَنْ كَانَ فِي حَاجَةٍ أَخِيهِ كَانَ اللَّهُ فِي حَاجَتِهِ وَمَنْ فَرَّجَ عَنْ مُسْلِمٍ كُرْبَيْةً فَرَّجَ اللَّهُ عَنْهُ كُرْبَيْةً مِّنْ كُرْبَيَاتِ يَوْمِ الْقِيَامَةِ وَمَنْ سَرَّ مُسْلِمًا سَرَّهُ اللَّهُ يَوْمَ الْقِيَامَةِ

"Narrated to us Yahya bin Buhari, he said: He narrated to us al-Laits from 'Uqail from Ibn Shihab, that Salim narrated to him that Abdullah bin 'Umar (may Allah be pleased with him) said that the Messenger of Allah (peace and blessings of Allaah be upon him) said: "A Muslim is a brother to another Muslim, he does not mistreat him and does not allow him to be hurt. Whoever helps his brother's needs, Allah will help his needs. Whoever

<sup>47</sup> "Surah Al-A'raf Verse 56 Arabic, Latin, Translation and Tafsir | Read on TafsirWeb," accessed May 21, 2025, <https://tafsirweb.com/2510-surat-al-araf-ayat-56.html>.

removes one hardship for a Muslim, then Allah removes one hardship for him from the hardships of the Day of Judgment. And whoever covers (disgrace) a Muslim, Allah will cover his disgrace on the Day of Judgment."<sup>48</sup>

These two sources emphasized that actions that provide broad benefits and prevent damage are part of Islamic teachings that must be held in formulating and implementing public policies, including in strategic issues such as land and investment in the IKN. If the policy tends to favor the interests of corporations or foreign investors and ignores the rights of indigenous peoples, local farmers, or previous landowners, then the policy is contrary to the principle of *siyasah syar'iyyah* which places the people as the main party that must be protected. Furthermore, the IKN land policy can be judged from the aspects of *ta'addudiyyah* (social plurality) and *hurriyyah* (freedom) in Islam, where people have the right to live on their land safely and free from the threat of eviction or marginalization.

Countries that apply the principle of *siyasah dusturiyah* should not only be oriented towards economic growth, but also pay attention to social balance and ecological justice<sup>49</sup>. Therefore, in its implementation, the state must ensure

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<sup>48</sup> "Hadith of Bukhari No. 2262 | A Muslim should not insult other Muslims, nor should he allow them...," Hadits.Id, accessed May 21, 2025, <http://www.hadits.id/hadits/bukhari/2262>.

<sup>49</sup> HA Djazuli, Fiqh Siyasah: *The Implementation of the Benefit of the Ummah in Sharia Signs* (Jakarta: Kencana, 2003)

public participation in the process of formulating and implementing land policies, as well as providing a fair legal mechanism for the affected communities. Thus, the assessment of land policy in the IKN through the lens of *siyasah dusturiyah* is important to ensure that the development of the IKN is not only legally and positive, but also fair in terms of *sharia*.

This chapter has outlined the various concepts and theories that are the basis of the thinking in this study. Starting from a discussion on land policy in the Capital City of the Archipelago (IKN), which shows the complexity between the interests of development, investment, and the protection of community rights. Furthermore, investment policies in the IKN were also discussed as part of the national strategy in attracting capital to support the development of the new capital city. In the last part, the review of land policy from the perspective of *siyasah dusturiyah* provides a critical perspective based on Islamic principles regarding justice, benefit, and protection of people's rights.

## CHAPTER III

### RESULTS AND DISCUSSION

#### **A. Harmonization of Land Rights Licensing in Article 16 A of Law No. 21 of 2023 with Articles 29-35 of the UUPA Based on the Theory of Harmonization of Laws and Regulations**

Legal harmonization in the context of licensing refers to efforts to harmonize various norms and regulations in order to create harmony, consistency, and integration in the legal system. The definition of harmonization of legislation emphasizes that every legal provision must be structured in such a way that there is no conflict between one norm and another, both in the national scope and in relation to its implementing regulations.<sup>50</sup> Thus, harmonization not only aims to address normative conflicts, but also ensures that the regulations made can be applied effectively and provide legal certainty for all parties.

In the context of the national agrarian legal system, harmonization is very relevant because the regulation of land rights involves various interests: indigenous peoples, landowners, business actors, and the government as a regulator. Disharmony between national rules and implementing regulations can cause agrarian conflicts, legal uncertainty, and losses for communities and

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<sup>50</sup> Kusnu Goesniadhie. *Harmonization in Legislative Perspectives* (lex Problem Specialist). (Surabaya: 2006) Page 59

investors.<sup>51</sup> Therefore, legal harmonization in land rights licensing plays a role in harmonizing the principles of agrarian law with regional development and management policies, so as to create legal certainty, justice, and integration of regulations that support national development goals.

Article 16A of Law No. 21 of 2023<sup>52</sup> regulates the licensing mechanism for land rights in the Nusantara Capital City (IKN) area. These provisions include the permitting procedure, the authority to issue the permit, and the types of land rights that can be granted. The purpose of this arrangement is to ensure order, certainty, and legal protection for all parties involved, including governments, investors, and local communities.

The scope of regulation in Article 16A includes the regulation of property rights, business use rights, use rights, and other rights recognized in the national agrarian legal system, with an emphasis on compliance with the principles of justice, transparency, and efficiency. In addition, Article 16A is also intended to support the development of the IKN in a planned manner, by minimizing potential conflicts over land ownership and use. Thus, Article 16A becomes a strategic legal instrument in managing land rights, as well as the basis for the harmonization process with the provisions stipulated in Articles 29–35 of the

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<sup>51</sup> Muh Afif Mahfud and Sia Chin Chin, “Incongruence in the Definition of Land Rights in National Agrarian Law: A Path to Legal Uncertainty,” *Law Reform* 20, no. 1 (2024): 22–33, <https://doi.org/10.14710/lr.v20i1.49047>.

<sup>52</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.: jdih.setneg.go.id

UUPA. Further analysis is needed to assess the suitability, consistency, and potential conflicts that may arise between the provisions in the IKN Law and the agrarian principles that apply nationally.

Articles 29–35 of the UUPA regulate various types of land rights, including customary rights, use rights, and property rights. Customary rights are recognized as the traditional rights of indigenous peoples to their customary lands, while property rights and use rights include the regulation of land ownership and use by individuals and legal entities. The basic principles of the UUPA emphasize social justice, legal certainty, and the sustainability of land use for the welfare of the community.

When compared to Article 16A of Law No. 21 of 2023<sup>53</sup>, there are similarities in terms of recognition of land rights and the need for official permits from the government as part of the legal mechanism. However, there are differences in several aspects, such as the duration of licensing, the authority to grant permits, and the procedures for regulating land rights in the IKN area, which can cause inconsistency with the principles of the UUPA. The UUPA emphasizes the protection of customary rights and the interests of local communities, while the IKN Law emphasizes smooth development and legal certainty for investment.

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<sup>53</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.; jdih.setneg.go.id

This comparison shows that harmonization between the IKN Law and the UUPA is needed to ensure that people's rights are protected, while development regulations can run smoothly. Harmonization is also important so that regulations do not contradict each other, provide legal certainty, and meet the goals of social justice as aspired to in the UUPA.

In the context of harmonization of laws and regulations, the preparation of provisions for land rights licensing must also pay attention to conformity with the national legal framework as a whole. This is in line with the provisions of Article 7 Paragraph 1 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, which explains the types and hierarchy of laws and regulations, ranging from the 1945 Constitution of the Republic of Indonesia to Regency/City Regional Regulations.<sup>54</sup> By understanding this hierarchy, any new regulations, including the licensing provisions in the IKN Law, can be drafted in harmony, consistently, and harmoniously with the national legal system.

Each norm derives its applicability, source, and foundation from norms that are at a higher level, and those higher norms also depend on the norms above them. This series of hierarchies culminates in the basic state norm (*Staatsfundamentalnorm*), namely Pancasila, as the highest source of the entire national legal order or as the basis of all regulations issued by the Government.

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<sup>54</sup> Law (UU) Number 12 of 2011 concerning the Establishment of Laws and Regulations. LN.2011/No. 82, TLN No. 5234, LL SETNEG: 51 PAGE

Under it, *the Staatsgrundgezets* in the Laws and Regulations are the same as the 1945 Constitution, which is the basis of the state that regulates the main policies of the state. *Formal Gezets* is positioned like a Government Law/Regulation in Lieu of Law that regulates formally and bindingly. Under it, *the verordnung and Autonome Satzung* (Implementation Regulations and Autonomous Regulations) are in the same position as Government Regulations, Presidential Regulations, and Regional Regulations.

Article 33 paragraph 3 of the 1945 Constitution (1945 Constitution) is an article that regulates the control and use of natural resources contained in the land of Indonesia. Article 33 paragraph 3 reads that "The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." According to the theory of the hierarchy of legal norms put forward by Hans Kelsen and Hans Nawiasky, it is included in the second part, namely the 1945 Constitution (*Staatsgrundgezets*).

Article 33 paragraph 3 of the 1945 Constitution (1945 Constitution) mandates by forming regulations under it, namely Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital and the Basic Agrarian Law articles 29-35 if according to the theory of the hierarchy of legal norms put forward by Hans Kelsen and Hans Nawiasky are included in the formal Law section (*Formell Gesetz*). Government Regulation (PP) Number 29 of 2024 concerning Amendments to Government Regulation Number 12 of 2023 concerning the Granting of Business Licenses,

Ease of Doing Business, and Investment Facilities for Business Actors in the Capital City of the archipelago is under it based on the hierarchy of Indonesian laws and regulations and according to this theory, implementation regulations and regulations (*verordnung en autonome satzung*).

The development of the Nusantara Capital City (IKN) is a national strategic project initiated by the Indonesian government with the main objective of encouraging equitable development and reducing the burden on Jakarta as the center of government while creating a modern, sustainable, and environmentally friendly future city. Located in East Kalimantan, this area was chosen because it has rich natural potential and a strategic geographical position, as well as carrying the concept *of smart city* and *green city* that integrate high technology while preserving the environment.<sup>55</sup>

Not only functioning as a government center, the IKN is also planned to become a new economic growth center that opens up more equal employment and investment opportunities throughout Indonesia, while reducing urbanization pressure in Jakarta which causes congestion, pollution, and land limitations. The city's infrastructure is designed with an efficient transportation system, complete facilities, and neat spatial planning, while still paying attention to the survival of indigenous peoples and local communities so that

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<sup>55</sup> Fikri Hadi and Rosa Ristawati, "The Movement of the Indonesian Capital and Presidential Power in the Perspective of the Constitution," *Constitution Journal* 17, no. 3 (2020): 3, <https://doi.org/10.31078/jk1734>.

this development is inclusive and does not cause social and land conflicts. Despite full of hope, the development of the IKN faces major challenges related to the management of natural resources and land, especially in order to maintain a balance between development and protection of indigenous peoples' rights and the principle of sustainability, so that the process requires careful planning and careful implementation so that the benefits can be felt to the maximum by all Indonesian people.<sup>56</sup>

The Government of Indonesia in this case has established various regulations as the legal basis for the development of the IKN, including Law No. 3 of 2022 concerning the National Capital City and its amendments through Law No. 21 of 2023, which regulates the period for granting business use rights (HGU), building use rights (HGB), and use rights up to a maximum of 190 years, with certain evaluations and criteria. This is contained in Article 16A which is as follows.<sup>57</sup>

(1) In the case of the agreed HAT as referred to in Article 16 paragraph (7) in the form of business use rights, it is granted for a maximum period of 95 (ninety-five) years through 1 (one) first cycle and can be re-granted for 1

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<sup>56</sup> "The Authority of the Nusantara Capital Authority as the Holder of the Management Rights of the Nusantara Capital City Area | Tunas Agraria," accessed May 22, 2025, <https://jurnaltunasagraria.stpn.ac.id/index.php/JTA/article/view/246>.

<sup>57</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.: jdih.setneg.go.id

(one) second cycle with a maximum period of 95 (ninety-five) years based on the criteria and evaluation stages.

(2) In the case of the agreed HAT as referred to in Article 16 paragraph (7) in the form of building use rights, it is granted for a maximum period of 80 (eighty) years through 1 (one) first cycle and can be re-granted through 1 (one) second cycle with a maximum period of 80 (eighty) years based on the criteria and evaluation stages.

(3) In the event that the HAT is agreed as referred to in Article 16 paragraph (7) in the form of right of use, it is given for a maximum period of 80 (eighty) years through 1 (one) first cycle and can be re-granted through 1 (one) second cycle with a maximum period of 80 (eighty) years based on the criteria and stages of evaluation.

(4) In the event that the Nusantara Capital Authority releases the management rights as intended in Article 15A paragraph (8), the HAT period as intended in paragraphs (1) to (3) remains valid in accordance with the provisions of this Law.

(5) The evaluation as intended in paragraph (1), paragraph 121, and paragraph (3) is carried out 2 (two) years before the end of each stage with the following criteria:

- e. Land is still cultivated and used properly in accordance with the circumstances, nature, and purpose of granting rights;
- f. the right holder is still qualified as a right holder;

- g. the conditions for granting rights are properly fulfilled by the rights holder;
- h. land use is still in accordance with the spatial plan; and
- i. The land is not indicated to be abandoned.

(6) Further provisions regarding the criteria and stages of evaluation, rights, obligations, prohibitions, and transfers of HAT in the Nusantara Capital City area are regulated in Government Regulations.

The implementing regulations are Government Regulation Number 29 of 2024 concerning the Granting of Business Licenses, Ease of Doing Business, and Investment Facilities for Business Actors in the Capital City of the archipelago. This regulation extends the validity period of land rights and business licenses, aiming to attract investment and accelerate infrastructure development. This is stated in article 18<sup>58</sup>

- (1) The Nusantara Capital City Authority provides a guarantee of the certainty of the HAT period through 1 (one) first cycle and can be given back 1 (one) second cycle to Business Actors, which is contained in the agreement.
- (2) The cycle as referred to in paragraph (1) is as follows:
  - a. HGU for a maximum period of 95 (ninety-five) years through 1 (one) first cycle and can be re-awarded for 1 (one) second cycle with a

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<sup>58</sup> Government Regulation (PP) Number 29 of 2024 concerning Amendments to Government Regulation Number 12 of 2023 concerning the Granting of Business Licenses, Business Facilities, and Investment Facilities for Business Actors in the Capital City of the Archipelago LN 2024 (165), TLN (6980): 19 pp.; jdih.setneg.go.id

maximum period of 95 (ninety-five) years based on the criteria and evaluation stages;

- b. HGB for a maximum period of 80 (eighty) years through 1 (one) first cycle and can be re-awarded through 1 (one) second cycle with a maximum period of 80 (eighty) years based on criteria and evaluation stages; and
- c. The right to use for a maximum period of 80 (eighty) years through 1 (one) first cycle and can be re-granted through 1 (one) second cycle with a maximum period of 80 (eighty) years based on the criteria and evaluation stages.

(3) The granting of HAT as referred to in paragraph (2) is carried out by the ministry that organizes government affairs in the field of agrarian land based on a request from the Nusantara Capital City Authority.

(4) The Nusantara Capital City Authority conducts an evaluation 5 (five) years after the granting of the first cycle of rights to the fulfillment of the following requirements:

- a. the land is still cultivated and used properly in accordance with the circumstances, nature, and purpose of granting rights;
- b. the right holder is still qualified as a right holder;
- c. the conditions for granting rights are fulfilled by the rights holder;
- d. the use of the land is still in accordance with the spatial plan; and
- e. The land is not indicated to be abandoned.

(5) Within a period of 10 (ten) years before the first cycle of HGU/HGB/right of use ends, Business Actors may apply for the re-granting of HGU/HGB/right of use for 1 (one) second cycle with the longest period as intended in paragraph (2) in accordance with the land use agreement as intended in Article 17 paragraph (2).

(6) The stages of implementing the extension and renewal of the HAT are determined by the Nusantara Capital City Authority.

The regulation concerns land issues so that it must synergize with the principles of the UUPA which emphasizes social justice and equal distribution of land rights, so that caution is needed so that the IKN development policy does not cause social conflicts and still upholds the protection of the rights of indigenous peoples and affected residents. The UUPA itself is an implementation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which has given the authority to the state to carry out legal acts against natural resources, namely earth, water, and natural resources.<sup>59</sup>

The UUPA lists the principles, namely<sup>60</sup>:

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<sup>59</sup> Cindy Monica Fatah, "Agrarian Reform Policy in Land Dispute Resolution in Waringin, Bumiarijo and Joyoboyo Surabaya City" (masters, Wijaya Kusuma Surabaya University, 2024), <https://uwks.ac.id>.

<sup>60</sup> Dwi Kusumo Wardhani, "Disharmony Between the Land Chapter Job Creation Bill and the Principles of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA)," *Journal of Legal Communication (JKH)* 6, no. 2 (2020): 2, <https://doi.org/10.23887/jkh.v6i2.28095>.

1. The principle of Nationality, God Almighty has endowed a very large territory of Indonesia to fight for together so that everyone has the same right to land and can enjoy the potential contained in it, In this concept, all citizens have the right to get fair access and opportunities to the land and natural resources that exist, So that everyone can enjoy the potential contained in it. This principle encourages social justice in land management, considering that national natural resources should be part of the heritage and shared responsibility of the entire nation. In the context of current development, this principle serves as the main reference so that the policies and regulations issued not only benefit a few parties, but are able to maintain a balance of rights and obligations of all citizens in a fair and sustainable manner.
2. The principle of the right to control the state over land, where the state is not the owner of the land, but has the authority to regulate the designation, use, and ownership of land and is responsible for the availability of land rights. In the context of IKN development, government authorities have an important role in managing land and resources in the area. However, the implementation of policies and regulations related to land rights in Law No. 21 of 2023 shows that there is a considerable tendency to give authority to certain parties under the authority of the IKN. This regulation is designed to facilitate the licensing and land management process, including the granting of business use rights, building use rights, and use rights with a

fairly long period of time. It can be said that the treatment of this authority seems to be broader than what is generally regulated, and can be interpreted as an effort to make the development process run quickly and efficiently. However, it should also be remembered that this policy must remain careful so as not to dominate the aspect of land management which should still maintain the principles of sustainability and social justice, and avoid the potential for excessive abuse of power. So, this policy shows a tendency to give great authority to the IKN development authority, and must be balanced with proper supervision and regulation so that irregularities do not occur.

3. The Land *Reform* Principle, which aims to implement a fair distribution of farmers' rights in particular. This regulation aims to ensure that their rights are not neglected and get a fair share, so that there is balance and social justice in the management of land resources. The application of this principle also seeks to reduce inequality in land tenure which has been able to cause conflict and injustice. In short, *land reform* is one of the important steps to realize equal distribution of land rights and improve people's welfare through a more humane land distribution policy that favors the small people. Article 16 of Law no. 21 of 2023 does not reflect the principle of *land reform*, but rather the regulation of land rights in the context of area management and investment.

4. The principle of juridical and factual recognition of customary law, explained in articles 3 and 5 of the UUPA, that the customary rights of indigenous peoples are still guaranteed and protected by the state. In Law No. 21 of 2023, Article 16 is more about the administrative mechanism and land licensing in certain areas, while the principle of recognition of customary rights requires the protection of indigenous peoples' rights, which must be respected and maintained. To be harmonious, there needs to be recognition that land development and management must not ignore customary rights, and that must be guaranteed in regulations. Article 16 also does not reflect the principle of recognition of customary rights because there is no affirmation that the customary rights of the community are still recognized or protected, and it may even be that the position of customary rights is somewhat open to be adjusted to the needs of regional development and management.
5. The principle of social function over land, in article 6 of the UUPA regulates the harmony and balance of land rights between private interests and public/social interests, because the right to land is not an absolute right. Article 16 A of Law No. 21 of 2023<sup>61</sup> can be said to be in line with the principle of social function over land, because it contains provisions that land rights must be used in accordance with their designation, as well as

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<sup>61</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.; jdih.setneg.go.id

through periodic evaluations to ensure that social benefits and public interests are maintained in accordance with paragraph 4, namely ensuring that land is optimally utilized, in accordance with the purpose of use and applicable regulations. This provision emphasizes that the right to land is not absolute, but must accommodate social interests and the cleaning of land use that is not in accordance with its social function.

The period of HGU and HGB specified in the UUPA is listed in articles 29-35.<sup>62</sup>

Article 29 reads

- (1) The right to use the business is granted for a maximum period of 25 years.
- (2) For companies that require a longer time, they can be granted business use rights for a maximum period of 35 years.
- (3) At the request of the rights holder and considering the state of the company, the period referred to in paragraphs (1) and (2) of this article can be extended for a maximum period of 25 years.

Meanwhile, the right to use the building is contained in Article 35 which reads:

- (1) A right-use building is the right to erect and own a building on land that does not belong to oneself, with a maximum period of 30 years.

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<sup>62</sup> Law (UU) Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, LN. 1960/No. 104, TLN No. 2043, LL SETNEG : 17 PAGE

(2) At the request of the rights holder and taking into account the needs and condition of the buildings, the period in paragraph (1) can be extended for a maximum period of 20 years.

(3) Use-building rights can be transferred and transferred to other parties.

The implementation of the UUPA in a period of approximately 60 (sixty years) did not always run smoothly. Land disputes and conflicts occur many and many of their settlements are delayed or at an impasse. Actually, the articles in the UUPA can accommodate all land problems, but as time goes by, many interests and problems require new, more modern rules. Because the UUPA itself is better known as the basic and principal regulation, so many new rules are born and shift and forget the joints of the UUPA.

In context, the regulation of business licensing that is directly related to the right to land and natural resources, the UUPA (Basic Agrarian Law) has the main position as the basic legal basis in the field of agrarian and land management in Indonesia. The UUPA comprehensively regulates land rights, land tenure, and licensing procedures directly related to these aspects.

In the harmonization analysis between Article 16A of Law No. 21 of 2023<sup>63</sup> and Articles 29–35 of the UUPA, there are several potential inconsistencies that need to be considered. First, the duration of land rights

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<sup>63</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.; jdih.setneg.go.id

licensing in the IKN Law can be different from the regulation of property rights or use rights according to the UUPA, thus causing inconsistency with the principle of agrarian law certainty. Second, the authority to grant permits in the IKN Law is concentrated in the central government, while the UUPA recognizes the role of indigenous peoples in the management of customary rights. Third, the procedures and licensing requirements in the IKN Law emphasize development efficiency, which can conflict with the protection of traditional rights and property rights regulated in the UUPA.

The consequences of this discrepancy are quite significant. Businesses may face ambiguities in licensing procedures, while indigenous peoples and local landowners have the potential to lose traditionally recognized rights. This conflict can also cause agrarian disputes and affect the smooth development of the IKN if it is not immediately harmonized. Therefore, identifying non-conformities is an important first step to formulate a regulatory harmonization strategy, so that people's rights are protected while national development runs effectively.

Based on the theory of legal certainty, the legal system must be able to provide clarity, firmness, and order in the application of rules. The law must be able to guide the community and business actors in behaving in accordance with applicable regulations, and be able to provide fair protection of rights and

obligations.<sup>64</sup> In the context of Law No. 21 of 2023, normative inconsistency that arises from the enactment of this regulation without paying attention to the position and enactment of the UUPA as the main basis for regulating land rights has the potential to cause confusion and ambiguity in the application of the law. This is contrary to the main value of the theory of legal certainty which requires the existence of legal norms that are clear, not contradictory to each other, and can be understood and implemented by society at large.

Gustav Radbruch emphasized that the law should consist of strict norms that are not easily changed in order to avoid confusion and uncertainty.<sup>65</sup> When Law No. 21 of 2023<sup>66</sup> is not in line with and contradicts the UUPA, the legal norms it produces become unpredictable and inaligned, thereby reducing the protection power of land rights. In addition, this uncertainty allows for the emergence of different interpretations, disputes, and injustices because the public and business actors do not get certainty about their rights and obligations with certainty. This is clearly contrary to the need for certainty in the implementation of the law which is at the core of the theory of legal certainty.

From a theoretical point of view, certainty and social justice are highly dependent on the existence of a firm and predictable legal system. The

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<sup>64</sup> Mario Julyano and Aditya Yuli Sulistyawan, "Understanding the Principle of Legal Certainty through the Construction of Legal Positivism Reasoning," *CREPIDO* 1, no. 1 (2019): 13–22, <https://doi.org/10.14710/crepido.1.1.13-22>.

<sup>65</sup> Hari Agus Santoso, "The Perspective of Legal Justice of Gustav Radbruch's Theory in the Decision of the PKPU 'PTB,'" *JATISWARA* 36, no. 3 (2021): 325–34, <https://doi.org/10.29303/jtsw.v36i3.341>.

<sup>66</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.; jdih.setneg.go.id

inconsistency of legal norms arising from the enactment of Law No. 21 of 2023<sup>67</sup> not only weakens the protection of rights, but can also cause injustice because the public does not know exactly what their rights are and what the prohibitions are. In addition, the implementation of economic activities and investment in the IKN area will be disrupted if legal certainty is not guaranteed. In fact, according to the Apeldoorn paradigm, legal certainty must provide protection against arbitrariness and create a sense of security for all parties, this will not be achieved if the legal norms are inconsistent and contradictory to each other.

Legal certainty must be firm, clear, and enforceable. The norms in Law No. 21 of 2023 do not meet this principle because they are not in line with the UUPA which fundamentally regulates land rights, so legal certainty in this context is not realized. Inconsistent and contradictory laws will be a source of doubt and uncertainty, rather than protection and usefulness as theoretically intended.

Efforts to harmonize between Article 16A of Law No. 21 of 2023 and Articles 29–35 of the UUPA aim to harmonize the licensing of land rights in accordance with the principles of national agrarian law. Harmonization is carried out by adjusting regulatory elements that are contrary or not aligned, both in terms of procedures, duration, and permitting authority. This approach

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<sup>67</sup> Law (UU) Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the State Capital LN 2023 (142), TLN (6898): 26 pp.; jdih.setneg.go.id

emphasizes the importance of maintaining legal consistency, so that the IKN Law does not override customary rights and property rights recognized in the UUPA.

The principles that must be fulfilled in harmonization include:

1. Alignment: new regulations must be in line with the higher norms and basic principles of the UUPA.
2. Consistency: the licensing provisions must not conflict with other regulations in the agrarian legal system.
3. Protection of people's rights: customary rights and traditional property rights must be respected.
4. Development effectiveness: licensing must support the smooth development of the IKN without sacrificing legal certainty.

With the application of these principles, the harmonization of licensing is expected to create a legal system that is consistent, fair, and able to accommodate the interests of the government, business actors, and the community. Harmonization is also a strategic instrument to prevent agrarian disputes and ensure that regulations function optimally in the context of national development.

Based on the description above, the provisions for land rights licensing in the IKN Law are not fully in line with the provisions in Articles 29-35 of the UUPA. This inconsistency raises potential conflicts related to the protection of customary rights, government authority, and legal certainty for the community

and business actors. In the perspective of the principle of legal harmonization, every regulation must be prepared in order to create harmony and consistency of norms. The principle of legal certainty requires clarity regarding rights, obligations, and procedures, so that all parties are aware of the applicable legal limitations and mechanisms.

The application of the principle of *lex specialis derogat legi generali* means that special provisions, such as the rules on land rights licensing in the IKN Law, can override general provisions in the UUPA in the event of a conflict. This means that the licensing mechanism in the IKN can run according to existing special rules, but it must still pay attention to the basic agrarian principles regulated in the UUPA, such as the protection of customary rights and property rights. Meanwhile, the principle of *lex posterior derogat legi priori* emphasizes that regulations made later, in this case the IKN Law, can override the old provisions in the UUPA that are contrary to the purpose of IKN development, as long as they do not violate the principles of justice and legal certainty. With the application of these two principles, licensing regulations can be implemented effectively, without negating rights that have been generally recognized, while maintaining the integration of the national legal system.

Thus, the current condition shows that the IKN Law is not fully aligned with the UUPA, so further harmonization efforts are needed so that licensing regulations can provide legal certainty, protect people's rights, and support the development of the Nusantara Capital City in a fair and orderly manner.

## **B. Harmonization of Land Rights Licensing in Article 16 A of Law No. 21 of 2023 and UUPA in the Perspective of Siyasah Dusturiyah**

There are two regulations that are currently experiencing conflict in the legal context in Indonesia, namely Article 16 A of Law No. 21 of 2023 and Articles 29 to 35 of the Basic Agrarian Law (UUPA) No. 5 of 1960. The main conflict that arises between these rules is caused because the provisions in the IKN Law are not fully aligned or in accordance with the regulations that have been regulated in the Basic Agrarian Law (UUPA) Number 5 of 1960. This inconsistency raises potential legal uncertainties, especially related to land rights licensing, protection of customary rights, and government authority in land management in the archipelago's Capital City area.

In the UUPA, regulations regarding the customary rights of indigenous peoples are usually regulated with a maximum duration of 60 years. This right is traditional and has the character of protecting the customary rights and cultural identity of indigenous peoples that have been going on for generations.<sup>68</sup> Meanwhile, in Law No. 21/2023, the right to use business (HGU) and the right to use buildings (HGB) are regulated with a much longer duration,

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<sup>68</sup> Arvita Hastarini and Gusti Fadhil Fithrian Luthfan, "The Legal Position of Indigenous Peoples in Obtaining Land Rights in Indonesia," Sasana Law Journal 8, no. 2 (2022): 243–264, <http://ejurnal.ubharajaya.ac.id/index.php/SASANA>

which is up to 190 years. This duration makes these rights very permanent, commercial, and more private than customary rights regulated in the UUPA.<sup>69</sup>

Because Law No. 21 of 2023 does not adjust the provisions regarding the duration and protection of customary rights in the UUPA, a considerable conflict has arisen. This difference in treatment creates legal uncertainty, especially on the ground, as indigenous peoples and others become confused about which rules they should follow and who is protected in priority.

When these two rules conflict, it creates legal uncertainty as to which rules should be applied in practice. These conflicts have the potential to cause legal uncertainty because norms that should complement each other are in conflict, thus causing ambiguity and uncertainty in law enforcement in the field. As a result, the public and law enforcement officials have difficulty determining the legal path that must be followed, which can cause legal problems in the future if not resolved immediately.

Based on siyasah dusturiyah, state power is obliged to carry out its mandate fairly and responsibly, including in the management of natural resources and land ownership.<sup>70</sup> The principles of justice ('adl) and the public interest (*maslahat 'ammah*) demand that every public policy must be able to guarantee the rights of the people in a fair and sustainable manner.

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<sup>69</sup>Jemmy Sondakh, *Land Tenure Rights*, Ambon: Faculty of Law, Pattimura University, 2020, p. 78.

<sup>70</sup> Savitri Nabila, "Analysis of Siyasah Dusturiyah on the Function and Authority of the State in Caring for the Poor (Study of Law Number 13 of 2011 concerning the Handling of the Poor)" (Undergraduate, Raden Intan State Islamic University Lampung, 2021), <https://repository.radenintan.ac.id/13336/>.

The conflict between Article 18 of Government Regulation No. 21/2023 and Articles 29–35 of the UUPA is contrary to the principle of justice (*al-'adl*) in *UU*. This principle emphasizes fair and equitable treatment of all communities, including customary rights and land rights. When norms (UU) provide long-term and commercial rights that have the potential to ignore the customary rights of indigenous peoples, inequality and injustice occur.

As a result, indigenous peoples who should have received protection and recognition of rights in a fair manner are disadvantaged. This creates social inequality and injustice, which is contrary to the main value of *siyarah* *dusturiyah*. The principle of justice in this context demands that the rights of indigenous peoples be respected and protected fairly, and not defeated by economic interests alone.

The principles of justice (*'adl*) and the public interest (*maslahat 'ammah*) not only demand that every public policy must be able to guarantee the rights of the people in a fair and sustainable manner but also not cause social conflicts.<sup>71</sup> The potential conflict between Article 16 A of Law No. 21 of 2023 and Articles 29–35 of the 1960 Law raises serious problems for legal certainty because it has the potential to create overlapping norms and ambiguity in the regulation of land rights.

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<sup>71</sup> H. B. Syafuri, *Fiqh siyarah in the era of globalization*, ed. M. Taufiq Rahman and Ucep Hermawan, with H. B. Syafuri et al. (Yayasan Al-Ma'aarij Darmaraja, 2025), <https://digilib.uinsgd.ac.id/106097/>.

From the perspective of siyasah dusturiyah, this is contrary to the principles of justice, the public interest (*maslahat 'ammah*) and *maqashid al-shari'ah* which emphasizes the protection of the rights of communities, especially indigenous groups and peasants who are often vulnerable to land takeover without fair procedures. This inconsistency risks causing legal uncertainty that hinders the implementation of social justice and has the potential to increase inequality and disrupt socio-economic stability. As a result, it can reduce public trust in the sustainability of the legal system, and indirectly violate the basic principles of *siyasah syar'iyyah* which requires courage to uphold justice and benefits.

From the perspective of siyasah dusturiyah, the policy of granting business licenses in the Capital City of the Archipelago (IKN) that does not pay attention to the balance between the interests of investors and the rights of the local community can be seen as contrary to the principle of justice (*al-'adl*). In Islam, justice is not only formal, but also substantial, namely putting things in their place, giving rights to those who are entitled, and avoiding all forms of tyranny in the exercise of power. The principle of justice is the main pillar in Islamic governance because it reflects the state's function as a protector and trustworthy regulator.

If the business licensing policy in the IKN is more in favor of the interests of large corporations, provides excessive convenience to foreign investors, or causes evictions and uncertainty for the surrounding community,

then it shows that there is an inequality in the distribution of development benefits. This inequality has the potential to violate people's social and economic rights, such as the right to decent work and livelihood, the right to the ownership and management of economic resources, the right to a clean environment and decent housing, the right to health, and the right to participate in public policy-making. All of these rights are part of efforts to maintain human welfare and dignity that must be protected by the state.<sup>72</sup>

In the context of siyasah dusturiyah, this condition can be categorized as a form of structural tyranny, in which state power is used without considering the balance of the social and economic rights of the people. The state should ideally be a referee who upholds social justice, not just a facilitator of capital interests. Therefore, *the principle of al-'adl* requires that every licensing policy be carried out in a transparent, participatory, and inclusive manner for the benefit of the community as a whole, not only for short-term economic growth, but also for the realization of justice and sustainable welfare for all levels of society.<sup>73</sup>

From the perspective of siyasah dusturiyah, the policy of granting business licenses in the Capital City of the Archipelago (IKN) must also be in line with the principle of public benefit (*al-maslahah al-'ammah*). This

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<sup>72</sup> Syamsul Anwar, Islamic Law Studies: Integration and Interconnection (Yogyakarta: UIN Sunan Kalijaga Press, 2007), 54.

<sup>73</sup> Harun Nasution, Islam Reviewed from Its Various Aspects (Jakarta: UI Press, 1986), 102.

principle emphasizes that any public policy, including in the field of investment and business licensing, must be oriented towards broad benefits for society, not just benefiting certain groups.<sup>74</sup> Thus, policies that grant business licenses or open investments in the IKN must not ignore the rights of the community, both in terms of social, economic, and environmental aspects, because it will actually cause harm that is contrary to the principle of benefit.

The public benefit also means that development in the IKN should not only be seen in terms of economic growth and increased investment, but also from the extent to which these policies are able to create common welfare, equitable distribution of benefits, and environmental sustainability. If the licensing policy actually results in eviction, marginalization of local communities, or the exploitation of resources without social balance, then the policy loses its beneficial value. In the context of siyasah dusturiyah, the government has a moral and political obligation to ensure that every strategic decision is in the interests of the people as a whole, not just the interests of investors or economic elites.

Therefore, the application of the principle of al-maslahah al-'ammah in business licensing policies in the IKN must be realized through a transparent, participatory, and fair process, where the local community is involved in the planning, implementation, and supervision of development projects. This

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<sup>74</sup> Al-Mawardi, Al-Ahkam al-Sultaniyyah (Beirut: Dar al-Kutub al-'Ilmiyyah, 1996), 39.

approach not only reflects the state's responsibility to its people, but also strengthens the moral and social legitimacy of the policy within the framework of siyasah dusturiyah. Thus, the development of the IKN based on the public benefit will produce a just, prosperous, and sustainable community order in accordance with Islamic values and the principles of social justice.

Furthermore, in the Islamic view, the common good includes the protection of the five main purposes of the shari'ah (maqashid al-shari'ah), namely the preservation of religion (hifz al-din), the soul (hifz al-nafs), reason (hifz al-'aql), posterity (hifz al-nasl), and property (hifz al-mal).<sup>75</sup> This conflicting policy also undermines *the Maqashid al-Shari'ah* principle of the protection of property (*hifz mal*) and individual property rights, which must be protected from unilateral and arbitrary seizure.<sup>76</sup> In Islam, property rights are part of the human rights guaranteed by the Shari'a, and their taking should not be done unilaterally, arbitrarily, or without a fair and transparent basis. The state as a trustee must be able to ensure that every policy does not cause injustice and is within the framework of justice and public benefits.<sup>77</sup> Legal uncertainty due to this conflict of norms has the potential to erode the legitimacy of state power and disrupt the principle of deliberation (*shura*) and

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<sup>75</sup> Al-Ghazali, Al-Mustashfa min 'Ilm al-Usul (Beirut: Dar al-Kutub al-'Ilmiyyah, 1993), 286.

<sup>76</sup> Paryadi Paryadi, "Maqashid Shariah: Definitions and Opinions of Scholars," *Cross-Border* 4, no. 2 (2021): 2.

<sup>77</sup> Septalizen Farhan, "A Review of Fiqh Siyasah on the Implementation of Good Governance in Public Services in the Covid-19 Era (Study at the Population and Civil Registration Office of East Oku Regency)" (diploma, UIN RADEN INTAN LAMPUNG, 2022), <https://repository.radenintan.ac.id/21908/>.

community participation in the formulation of policies that are fair and based on sharia to avoid all forms of tyranny (*al-Zulm*).

In practice, the state needs to prioritize the principle of adaptation of applicable law and affirm the principle of Lex Superior Derogat Legi Inferiori, namely that higher norms must take precedence. If the licensing provisions in the IKN Law are not in line with Articles 29-35 of the UUPA, then the higher norms, namely the UUPA and the constitution, must be prioritized, and conflicting provisions need to be adjusted in order to maintain justice and legal certainty. This approach is in line with the principle of *siyasah dusturiyah*, which places justice, benefits, and the protection of people's rights as the top priorities in the formulation and implementation of public policies.

In general, this normative conflict results in reduced legal certainty, creates confusion in the enforcement of land rights, and threatens the entire principle of justice and benefits in the Islamic constitutional system. Therefore, it is important for the state to develop policies that are harmonious and in accordance with the principle *of siyasah dusturiyah* so that development in the IKN is not only legally and positive, but also fair according to sharia and ensures the sustainability of people's lives in a fair and civilized manner.

## CHAPTER IV

### CLOSING

#### A. Conclusion

Based on the analysis with the approach of harmonization of laws and regulations, it can be concluded that the licensing arrangements for business actors in the Nusantara Capital City Law (UU IKN) are not fully in line with the principles of national agrarian law as stipulated in the Basic Agrarian Law (UUPA) No. 5 of 1960. Provisions related to the term of land rights granted to business actors have the potential to cause regulatory disharmony and legal uncertainty if they are not aligned with broader legal norms, as well as the principles of land management for the benefit of the community.

From the perspective *of siyasah dusturiyah*, the policies contained in the IKN Law also do not fully reflect the principles of justice (*'adl*), the public interest (*maslahah 'ammah*), and the protection of people's rights. The granting of land tenure rights in the long term without paying attention to the balance of the interests of the state, society, and investors risks causing inequality and reducing the role of the state in managing agrarian resources as a people's mandate. This shows the need for a more harmonious drafting of regulations, which not only accommodate the acceleration of development and investment, but also ensure social justice, legal certainty, and the sustainability of land management in the IKN.

Therefore, the regulation of business licensing in the IKN must be directed to create a balance between development interests, the protection of community rights, and the principle of agrarian justice, so that the policies implemented are not only pro-investment but also in line with the values of national law and the goals of Islamic law, which are to uphold justice and bring benefits to all people.

## **B. Suggestion**

Accordingly, the Government needs to harmonize and adjust regulations so that legal norms related to land rights in the Nusantara Capital City (IKN) are in line with the Basic Agrarian Law (UUPA) and the principles of social justice and sharia maqashid. These adjustments must be made carefully and comprehensively to prevent normative conflicts, ensure legal certainty, and avoid injustice in land management. With proper harmonization, the legal system can run consistently and ensure people's rights in a fair and sustainable manner.

In addition, community participation, especially indigenous peoples and vulnerable groups, should be strengthened in the formulation, implementation, and supervision of land policies in IKN. Their involvement will ensure that their rights are protected in real terms, as well as minimize the potential for social conflicts and economic inequality due to the development of the IKN area. By prioritizing the principles of justice and benefit (*maslahah*), the development

of the IKN can take place in a fair, sustainable manner, and in line with the values of maqashid sharia, so that the benefits are felt equally and with dignity by all Indonesian people.

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