

## NORMATIVE ANALYSIS OF LAND CONTROL FOR THE DEVELOPMENT OF THE ARCHIPELAGO'S CAPITAL

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### Abstract

Transfer The National Capital (IKN) from Jakarta to East Kalimantan is milestone big one that carries implications wide to order space, politics agrarian, as well as mastery land in scale massive. Study This analyze in a way normative policy IKN land based on Constitution Number 3 of 2022 in conjunction with Law No. 21 of 2023, Regulation President, and regulation implementer other. Focus study directed on authority IKN Authority (OIKN) in management land, scheme giving right term long (HGU 190 years, HGB up to 160 years), and problem normative consequences related certainty, justice, and protection right public local. Findings study show that even though regime law IKN land is designed as lex specialist for support acceleration development, practice procurement land Still leaving overlapping problems overlap claim between country, society customs (ulayat), and used ownership kingdom (sultan grond), accompanied limited protection law to public affected. With use Theory Rawls's justice, function social land, and draft right customary law, research This emphasize that policy IKN land must ensure distribution benefit Andjustice substantive, in particular for group prone to. Recommendation main covering acceleration harmonization regulations national-regional-customary, review repeat scheme right land term length, reinforcement protection right customary law, as well as implementation mechanism participatory and transparent in every Stages mastery land. With However, IKN development is not only oriented on investment and infrastructure, however Also in harmony with Principle justice agrarian and mandate constitution.

**Keywords:** Capital City of the Archipelago, Land Ownership, Indigenous Communities

## INTRODUCTION

The relocation of the nation's capital from Jakarta to the Nusantara region of East Kalimantan represents a monumental shift in Indonesia's governance, spatial planning, and agrarian politics. This development process not only manifests the government's vision of building a modern and sustainable center of government, but also marks a new critical point regarding land governance and control on a vast scale, with strategic implications for social, economic, legal, and environmental aspects.

In its implementation, land ownership for the development of the National Capital City (IKN Law) is based on the primary legal framework, namely Law Number 3 of 2022 concerning the National Capital City (IKN Law), which affirms the capital's status and grants the IKN Authority (OIKN) special authority in land management. This IKN Law was subsequently revised by Law Number 21 of 2023, which further clarifies the OIKN's authority in land governance, including the long-term land acquisition, utilization, and granting of land rights schemes (Arba'Satryadin, 2025).

The granting of land rights, particularly Right to Cultivate (HGU) and Right to Build (HGB), in the New Capital City area has reached an extraordinary duration of up to 190 years (a 95-year reset cycle for HGU and an 80-year, two-cycle reset for HGB). This policy is intended to provide legal certainty and encourage development investment in the new capital. However, the granting of these rights over such a long period raises various normative questions regarding certainty, fairness, and the protection of local community rights (Hukumonline.com, 2023).

Empirically, the development of the National Capital Region (IKN) cannot be separated from land composition. The IKN stretches across two large regencies, North Penajam Paser and Kutai Kartanegara, with a total area of over 256,000 hectares. This area consists of the Core Government Center Area (KIPP), buffer zones, development areas, and conservation zones. Based on research data, land ownership in this region has since its inception shown overlapping rights between the state, indigenous communities, and residual royal rights (sultan grond). The government's interpretation of unregistered land as state land, even though it has long been controlled by communities (ulayat or customary), has become a source of disputes and overlapping claims (Simarmata, 2023).

Regional Regulation and Governor Regulation of East Kalimantan Number 6 of 2020 concerning the control of land transfer and use in the proposed National Capital City area and its buffer zone, as well as the 2022 Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/BPN concerning restrictions on the issuance and transfer of land rights in the IKN area. Each of these instruments is intended to ensure efficient, controlled, and aligned with the government's strategic needs for land status transitions. However, in their implementation, challenges such as awkward harmonization, imbalanced rights protection, and the potential for marginalization of local communities are very real. Research by Simarmata (2023) revealed that overlapping land claims between the state, the sultanate, and customary law communities are very high, especially due to the formalist interpretation of the state bureaucracy, which considers unregistered land as state land, even though the land has been controlled and utilized by local or customary communities for decades.

One of the most important issues in the normative aspect of land ownership in the new capital city (IKN) is the issue of customary land rights or customary land. Article 3 of the Basic Agrarian Law explicitly states that customary land rights are legally recognized as long as they exist and are accepted by the indigenous communities concerned. However, land acquisition practices for the new capital city often disregard recognition of land already controlled by indigenous communities, as state interpretation tends to be one-way, distinguishing between certified land and unregistered customary land. Environmental law journals highlight that the relocation of the capital city has very complex ecological impacts, as large-scale land acquisition has the potential to disrupt the sustainability of Kalimantan's tropical forests. Existing regulations, such as Law No. 32/2009 concerning Environmental Protection and Management, have not always been optimally harmonized with strategic policies related to land governance in the new capital city.

## RESEARCH METHOD

Study law normative (normative legal research) is research that focuses on analysis regulation legislation (law in books), principles law, doctrine, and decision court related issues studied. Study type This aim for find clarity formulation, harmonization, potential overlapping overlap, and effectiveness implementation norm law in system land, as regulated in the IKN Law, Presidential Decree, UUPA, and regulation implementer others." (Nasution, 2008)

## RESULTS AND DISCUSSION

John Rawls' Theory of Justice and Its Correlation with Land Ownership in IKN, The Essence of John Rawls' Theory of Justice. John Rawls, a prominent American philosopher, introduced the Theory of Justice as Fairness in his legendary work "A Theory of Justice". This theory assumes that society is formed by rational individuals in the original position, who determine the principles of justice without knowing their social, economic, or personal attributes. Rawls put forward two main principles: first, every individual has the right to the same basic liberties; second, socio-economic inequality is only acceptable if it benefits the least fortunate, and there is an equal opportunity for everyone to achieve that position.

These principles are highly relevant in assessing the land tenure policy for the new capital city. The development of the new capital city involves massive land acquisition, which conflicts with the interests of local communities, indigenous peoples, and national investors. In Rawls's view, land acquisition mechanisms must ensure maximum protection and benefits for those most vulnerable. Economic benefits and land access resulting from development should not be enjoyed solely by elite groups or investors, but rather prioritized for the well-being of local communities whose land is sacrificed for development purposes.

### Application of Rawls' Principles of Justice in Control of IKN Land

Rawls's view requires formal and substantive justice in land acquisition. Formal justice, such as providing compensation to communities whose land is acquired, is insufficient to realize the substance of justice Rawls envisions. Substantive justice demands special treatment for groups initially in a vulnerable position, namely indigenous communities, local farmers, and hereditary landowners who often lack formal documentation. In the acquisition of land for the National Capital Region (IKN), government policy must first guarantee the rights of these groups, ensuring fair opportunities for compensation, participation in the process, and opportunities to benefit from development outcomes.

Rawls also emphasized the need for a fair distribution mechanism. The substantial profits from investment and infrastructure development in the new capital city (IKN) must not be obtained at the expense of the rights and welfare of a select few. In the context of the new capital city, control of state land through the IKN Authority must be distributed equitably for the prosperity of the people, as mandated by Article 33 of the 1945 Constitution. Land availability for investment and economic growth must also be balanced with redistribution schemes, job training, and empowerment of affected communities, to ensure Rawlsian justice is truly implemented.

Rawls's principle of procedural justice requires that every land acquisition and control process be conducted transparently, accountably, and involve affected communities. These three elements prevent inequality and prolonged agrarian conflict. In the IKN (National Capital City) affairs, the compensation process, public consultation, and dispute resolution must be fair so that the community's social rights are protected and their position is not marginalized by strategic state projects. In the Theory of Distributive Justice, Rawls emphasized that inequality is only acceptable if it brings the greatest benefits to those most oppressed. The implications for land control in the IKN are the need for affirmative action, such as special compensation packages for indigenous communities, prioritizing jobs and businesses for local communities, and recognizing and protecting customary rights under the law. Inequality in land control, such as monopolies and speculation by large investors, must be controlled through regulations and monitoring systems that favor the weak.

The theory of the social function of land is the main foundation of the Indonesian land system, as stipulated in the Basic Agrarian Law (UUPA) Number 5 of 1960. This provision is clearly stated in Article 6 of the UUPA, which states: "All rights to land have a social function." This means that every type of land right ownership rights, land use rights, building use rights, and other rights may not be used solely for the benefit of individuals or organizations, but must consider the benefits to society and the state. Philosophically, the social function of land emphasizes that land is both a social asset and a capital asset. As a social asset, land binds together community life and reflects social relations within it. As a capital asset, land is a crucial factor in national economic development and an object of investment growth. The official explanation of the UUPA emphasizes that land rights held by an individual cannot be used solely for personal gain, especially if the use or neglect of the land causes harm to the community. Land use must always consider the benefits to the welfare of the owner as well as to the common good and the state. However, this element of social function does not mean eliminating the protection of individual rights, because the law also protects the interests of owners/individuals as long as they do not conflict with the public interest (STPN Repository, 2017).

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### Principles and Applications

The social function of land requires the owner/rights holder to:

1. Maintain and utilize the land as best as possible, so that it remains fertile and useful.
2. Do not neglect land or use it arbitrarily in a way that could harm the surrounding community.
3. Willing to relinquish land rights if needed for broader interests or development for the general welfare.

This principle is also reflected in derivative regulations such as the Law on Land Acquisition for Public Interest, which allows the state to acquire/acquire land owned by individuals, provided that the development objective is for the welfare of the community and fair compensation is provided. The public interest here encompasses not only government development but also all efforts to improve the welfare of the people, such as infrastructure, education, health, and other public facilities.

Large-scale land acquisition by the state to build government centers must continue to base every policy on the following principles:

1. Prioritize the welfare of the community whose land is taken or converted.
2. Provide fair and adequate compensation and empowerment for affected communities.
3. Avoid monopolies, speculation, and land abandonment in investment schemes that only benefit a few parties.

Several scientific studies and legal practitioners have emphasized that if land acquisition for the IKN ignores the social functions as stipulated in the UUPA, then this policy is prone to giving rise to injustice, horizontal conflict, and is contrary to the constitutional goal, namely the prosperity of the people.

### Theory of Customary Rights.

Customary land rights are a set of authorities and obligations held by indigenous communities regarding the land within their customary territories. The concept of customary land rights emphasizes the historical, spiritual, and social connections between communities and their territories, which are passed down through generations. According to Boedi Harsono, customary land rights are the collective authority to regulate, manage, utilize, and maintain the land and natural resources within a given area for the sustainability of the community and its environment.

Important principles of customary rights include:

1. Land management and regulation is carried out by traditional leaders (nirik mamak, tribal chief).
2. Customary land is not individual property, but rather the shared ownership of all members of the customary law community.
3. The authority of customary rights includes: regulating use, regulating legal relations with other subjects, and resolving disputes over land within the customary community.
4. Customary rights are only recognized as long as they are still alive and implemented in reality, as stated in Article 3 of the UUPA.

In the context of national law, recognition of customary land requires administrative validation or regional regulations to ensure legal binding. Without formal recognition, many cases have seen customary land claimed as state land, making it vulnerable to development, as in the case of the new capital city in Kalimantan.

### Research result

Recent legal research indicates that the land regulation system in the Indonesian Capital City (IKN) refers to *lex specialis*, namely Law No. 3 of 2022 (and its amendments), Presidential Regulation No. 65 of 2022, and related implementing regulations. The IKN Authority is given very broad authority, including determining land status, rights management, and land release mechanisms for development and investment. Arba'Satryadin's (2025) study highlighted a paradigm shift, where state land can be owned by the IKN and granted Management Rights (HPL) to establish Cultivation Rights (HGU), Building Rights (HGB), or Use Rights, with a duration of up to 190 years for HGU and up to 160 years for HGB far exceeding traditional schemes.

Empirical research also found a dramatic increase in land ownership in the central government area of the new capital from 437 plots in 2019 to 903 plots in 2022, most of which are not yet officially registered (only around 8% are registered at the Land Office). Furthermore, the practice of "underhand" land transactions, without state registration or oversight, remains widespread and has the potential to hamper the development of the new capital and give rise to conflicting claims. Juridical-empirical research also identified overlapping land ownership claims between the state, indigenous communities (ulayat rights), and former local royal ownership (sultan grond).

Normatively, the IKN land regulations do expedite the process of land acquisition, registration, and utilization by granting "special rights" to the OIKN even allowing for deviations from the UUPA provisions for strategic purposes. However, recent evaluations have shown overlapping norms and weak harmonization between national, regional, and customary regulations, leading to land conflicts. For example, land deemed by the state as "state land" is often customary land that has not been formally documented. APRIL 2024 research (Veritas UNPAR) even highlighted regulatory inconsistencies regarding permits and the duration of land rights, which creates uncertainty for communities and investors. Another crucial issue is the limited legal protection of local community rights and weak mechanisms for participation, oversight, and the provision of fair compensation. Several cases have demonstrated delays in compensation, social resistance, and limited public access to information on land management in the IKN. In practice, efforts to accelerate land registration (P4T and PTPR Programs) have been carried out, but systemic problems such as land speculators, land mafia, and weak price controls have not been optimally addressed this creates the risk of disparity and injustice, contrary to the mission of social principles and agrarian justice.

From the results of the research and discussion above, the author provides recommendations in the form of, Harmonization of national, regional and customary law regulations needs to be accelerated to prevent long-term conflicts of norms and land disputes, Strengthening the protection of the rights and participation of local communities and indigenous peoples in every stage of land acquisition and development of the IKN, Need transparent disclosure and strict supervision of informal transactions and underhand buying and selling so that the development of the IKN is based on legal certainty and justice and Review of the very long land rights granting scheme (160-190 years) to ensure that it does not marginalize the rights of local and indigenous generations, and remains in line with the UUPA and the constitution.

## CONCLUSION

This study confirms that the absence of term limits for members of the Indonesian House of Representatives (DPR RI) poses a systemic risk to the quality of representation, deliberative legitimacy, and the effectiveness of checks and balances mechanisms; this condition is rooted in a normative vacuum in the state architecture that is counterproductive to the principles of democratic law. Normative and theoretical analysis shows that term limits are not merely restrictions on political rights, but rather rational institutional instruments to prevent power entrenchment, accelerate leadership regeneration, and strengthen legislative oversight capacity. Empirical findings combined with the Habermasian and Madisonian frameworks indicate that term limits can increase deliberative plurality, reduce incumbency advantage, and reduce opportunities for abuse of authority. However, restrictions designed without accommodating the learning curve, transition mechanisms, and strengthening the capabilities of the secretariat/party risk creating expertise gaps and disrupting policy continuity. Therefore, the most proportional policy recommendations are: (1) including period limitation rules within the framework of the law (Election Law/MD3 Law) with a hybrid model (limited period + re-entry gap), (2) synergizing this reform with strengthening party cadre development and the administrative capacity of the DPR, and (3) implementing a pilot policy and empirical evaluation before full national adoption to ensure a balance between democratic regeneration and institutional continuity.

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