

Reaffirmation of State Control Over Land: Analysis of Legal Certainty After Constitutional Court Decision No. 185/PUU-XXII/2024

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Abstract

This study examines the constitutional reaffirmation of state control over land following Constitutional Court Decision No. 185/PUU-XXII/2024. It analyzes legal certainty, agrarian governance, and the balance between state authority and private land rights in Indonesia. This study presents a new perspective on the IKN policy and Constitutional Court jurisprudence by examining how Constitutional Court Decision No. 185/PUU-XXII/2024 reaffirms state control over land, enhances legal certainty, and highlights the social function of land rights, in the framework that follows the decision. This study employed a normative juridical approach, incorporating statutory, case, conceptual, and historical perspectives. The Constitutional Court Decision No. 185/PUU-XXII/2024 reinforces state control over land, emphasizing the *staatbeheerrecht* principle in alignment with Article 33 of the 1945 Constitution while limiting excessive liberalization of land rights. The absence of implementing regulations post-decision raises concerns over legal certainty, highlighting the need for coherent regulations to reconcile constitutional demands with investment governance and land administration. Future regulations must establish timelines and evaluation mechanisms for HGBs to prevent legal gaps and ensure a balance between investment certainty and agrarian justice. This decision reverses the trend of liberalizing land rights in the IKN area, which could disregard the principle of social justice.

Keywords

Agrarian Law; Building Use Rights (HGB); Nusantara Capital City; Constitutional Court; Legal Certainty; Social Function Land Rights

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1. INTRODUCTION

The development of the National Capital City (IKN) Nusantara in East Kalimantan is a significant project requiring extensive land provision, which has led to the formulation of specific legal regulations (Ariawan et al., 2025), particularly regarding land rights. The IKN Law (Law Number 21 of 2023) allows for long-duration Land Rights (HAT), such as Building Use Rights (HGB), which can span up to 190 years through a two-cycle grant system (al Arif & Indra, 2024; Al'anama & Prabowo, 2025). This initiative aims to enhance investment attractiveness and ensure stable land use for developers (Cahyaningrum et al., 2023). However, it faces criticism for potentially violating the 1945 Constitution's principle of state control over land, water, and natural resources.



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The Constitutional Court's Decision Number 185/PUU-XXII/2024 found this long-duration land rights provision unconstitutional, with significant implications for national agrarian law, underscoring the need for legal certainty in the IKN context. Concerns arise that such extended land rights could lead to quasi-ownership, undermining the state's control as designated by the Basic Agrarian Law and the Constitution (Suyanto, 2024). This situation is not in line with the principle of state control as mandated by Article 33, paragraph (3) of the 1945 Constitution and Article 2 of the Basic Agrarian Law, because the state loses its effective control to regulate, manage, and supervise land use for the greatest prosperity of the people. (Suparto, 2020)

Existing studies on the legal framework of the National Capital City (IKN) and Constitutional Court jurisprudence predominantly focus on constitutional review outcomes, institutional authority, or policy feasibility in isolation (Angela, 2024; Wanda Putri Dzakiah et al., 2025). While several analyses discuss the principle of state control over land under Article 33 of the 1945 Constitution, they generally treat *staatbeheerrecht* as a settled doctrine without examining its recalibration following recent constitutional adjudication (Kurniati & Surya, 2023; Peturun, 2023). Moreover, prior scholarship has not systematically addressed the post-decision legal consequences of Constitutional Court Decision No. 185/PUU-XXII/2024, particularly the tension between the Court's normative reaffirmation of state control and the absence of implementing regulations that shape legal certainty for land governance and investment.

As a result, a critical gap remains in understanding how constitutional doctrine is operationalized or left indeterminate after the decision. Departing from prior studies that predominantly assess the IKN policy or Constitutional Court decisions in isolation, this research introduces a novel perspective by analyzing the reconfiguration of state control over land and its implications for legal certainty following Constitutional Court Decision No. 185/PUU-XXII/2024.

This study builds directly upon previous analysis of land governance and state control, which developed the conceptual framework used to examine the doctrine of *staatbeheerrecht* in investment-oriented land policies (R. A. Wibowo et al., 2025). The present research extends this framework by applying it to the post-post-constitutional Court Decision No. 185/PUU-XXII/2024 context, particularly regarding legal certainty and transitional risks in the IKN area.

This change in legal interpretation has created new dynamics in the structuring of land law in the IKN, which has an impact on legal certainty for investors and, at the same time, reaffirms the state's position in controlling and regulating land for the greatest prosperity of the people as mandated in the constitution and the objectives of the Basic Agrarian Law (Lontoh et al., 2021). The Constitutional Court's decision also creates new uncertainties if it is not followed up by updates to derivative regulations or even revisions to land policies in the IKN area. Furthermore, it explores the legal effects

of the decision on the investment climate and land contracts, highlighting potential conflicts between investment requirements and the constitutional mandate of state control. (Kurnia, 2024)

This study contributes to constitutional and land law scholarship by providing a focused doctrinal and normative analysis of Constitutional Court Decision No. 185/PUU-XXII/2024 as a pivotal moment in reaffirming state control over land (*staatbeheerrecht*) under Article 33 of the 1945 Constitution. Unlike prior IKN-centered or jurisprudential studies, this research advances the literature by linking constitutional interpretation to post-decision legal certainty, revealing the emergence of a regulatory vacuum in the absence of implementing instruments. By bridging constitutional doctrine with practical governance implications, the study offers a refined analytical framework for assessing the effectiveness of judicial review in land regulation. It provides normative guidance for aligning constitutional mandates with coherent regulatory reform.

This phenomenon raises several important legal questions, including: How does the Constitutional Court's decision limit HGB's term in IKN? Is the decision consistent with the principle of state control in accordance with the 1945 Constitution and the principle of legal certainty? What are the implications for investors and national land policy? These questions underscore the importance of comprehensive, systematic legal research into the Constitutional Court's decision. This study examines the constitutional reaffirmation of state control over land following Constitutional Court Decision No. 185/PUU-XXII/2024. It analyzes legal certainty, agrarian governance, and the balance between state authority and private land rights in Indonesia.

2. METHOD

This study used normative legal research with a normative juridical approach. Normative legal analysis for this study because the research focuses on constitutional interpretation, doctrinal reaffirmation of state control over land, and the assessment of legal certainty as a normative principle following Constitutional Court Decision No. 185/PUU-XXII/2024. The study does not seek to evaluate empirical outcomes but to examine the coherence and adequacy of legal norms within the constitutional framework, making normative analysis both appropriate and methodologically sound. (Suyanto, 2022, 2023)

In this normative legal research, several approaches are used, as follows:

- a. Statute Approach. This approach is used to analyze: The 1945 Constitution of the Republic of Indonesia, specifically Article 33 paragraph (3); Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) (Ramadhani, 2021); Law Number 3 of 2022 in conjunction with Law Number 21 of 2023 concerning the National Capital; Regulations related to land rights (HGB, HGU, and Right of Use) (Pradana et al., 2023; Sari & Fadillah Zulfa Naftali, 2024). The analysis examined the

- synchronization and disharmony of norms, particularly those governing HGB duration in the IKN area.
- b. Case Approach. The case approach focused on Constitutional Court Decision Number 185/PUU-XXII/2024 as the main object of research. Analysis of the Court's legal arguments, including constitutional considerations regarding the duration of land rights. Identification of the ratio decidendi and the legal implications of the decision on the national land law system.
 - c. Conceptual Approach. The conceptual approach is used to examine and interpret legal concepts, including: the principle of State Control Rights; the concept of legal certainty; the doctrine of the social function of land rights; the concept of quasi ownership or concealed ownership rights.
 - d. Historical Approach. The historical approach is used in a limited manner to trace the development of HGB term regulations in Indonesian agrarian law; compare HGB term regulations before and after the existence of the special IKN policy; and understand the background of the legislator's policy in extending the duration of land rights.

The research materials consist of primary legal materials, including: Constitutional Court Decision Number 185/PUU-XXII/2024; the 1945 Constitution of the Republic of Indonesia; the Basic Agrarian Law (UUPA); the Capital City Law and its amendments; and implementing regulations related to land rights. Secondary legal materials include textbooks on agrarian law and constitutional law; scientific journals discussing land rights, state control, and legal certainty; academic articles, research results, and opinions of legal experts; and legal commentary and analysis of Constitutional Court decisions. Tertiary legal materials include legal dictionaries, legal encyclopedias, and indexes of legislation and court decisions.

The research analysis was conducted by analyzing legal materials in a qualitative-normative manner (Dwi Indriati et al., 2022; Hamzani et al., 2023), with the following steps: 1) inventory of legal norms governing the HGB period; 2) interpreting the law on the Constitutional Court's decision using systematic and teleological interpretation; 3) analyzing the consistency of norms between the IKN Law and the UUPA; 4) assessing the implications of the Constitutional Court's decision on legal certainty and the principle of state control.

3. FINDINGS AND DISCUSSION

3.1 Constitutionality of State Control over Land

The Constitutional Court ruled that granting land rights for two cycles (190 years) was contrary to the principle of state control because it eliminated the social function of land. Land rights are temporary and must always be controlled by the state to ensure social equality and justice (Harsono, 2018). At the global level, emphasize that the state has a primary role in ensuring fair access to land. The state should not merely function as a grantor of rights, but also as a regulator of the distribution and use of land for

the public interest. (Borras, 2023; Cotula, 2020)

In the Indonesian agrarian legal system, land rights other than Freehold Rights (HM)—such as Building Use Rights (HGB), Cultivation Rights (HGU), and Use Rights—are essentially derivative rights of State Control Rights (HMN) as stipulated in Article 2 of the Basic Agrarian Law (UUPA) (Efrianto, 2023). The main characteristic of these rights is that they are temporary, granted under certain conditions and subject to evaluation, and can be revoked, extended, or not renewed based on public interest. Thus, time limitations are an essential element that distinguishes these rights from Freehold Rights, which are the strongest and most complete. (Christie et al., 2023)

When the term of HGB or HGU is extended for a very long time and across multiple cycles, for example, reaching tens to hundreds of years, there is a substantive shift, like the right, from a temporary right of use to a control that resembles ownership rights (Laksono et al., 2023). In this condition, the rights holder enjoys very long factual control over the land, the state loses effective regulatory intervention space, and periodic evaluations become administrative formalities rather than substantive controls.

This is what is referred to in legal doctrine as quasi-ownership or covert ownership (Suyanto, 2024), a situation in which a right is not formally a Property Right but is treated as one in fact and in law. The principle of state control over land (Article 33 paragraph (3) of the 1945 Constitution in conjunction with Article 2 of the Basic Agrarian Law) places the state as a regulator (*regelendaad*), manager (*bestuursdaad*), and supervisor (*toezichthoudendaad*). (Harsono, 2018; Tuharea et al., 2024)

However, when land rights are granted for too long a period, the state loses its real control, its supervisory function weakens, and it acts only as an initial legitimizer, not an active ruler. This contradicts the constitutional meaning of HMN, which requires active and continuous control, not just legal formalities. In the UUPA, every land right has a social function. Rights should not lock land control for an extended period, preventing future land redistribution and closing off the state's access to agrarian policy adjustments. Extremely long-term rights will freeze the structure of land control across generations, turning land into a speculative asset and shifting the orientation from public welfare to private accumulation (Suyanto & Khulsum, 2022). This situation reinforces the quasi-ownership character that is contrary to the goal of agrarian justice.

To reinforce the constitutional consistency of the analysis, this study situates Constitutional Court Decision No. 185/PUU-XXII/2024 within a comparative reading of the Indonesian Constitutional Court's jurisprudence on state control over land and natural resources. By examining a line of landmark decisions, such as Decision No. 001-021-022/PUU-I/2003 on natural resource control, Decision No. 36/PUU-X/2012 on oil and gas governance, and subsequent rulings interpreting Article 33 of the 1945 Constitution.

This research demonstrates a coherent and enduring doctrinal pattern in the Court's constitutional reasoning. Across these decisions, the doctrine of *staatbeheerrecht* has been consistently construed as a public-law mandate that empowers the state to regulate, supervise, and direct land and resource governance in pursuit of public welfare, rather than as a form of ownership analogous to private property rights. Through a systematic comparison of the legal tests, proportionality standards, and constitutional objectives articulated in these earlier rulings with those reaffirmed in Decision No. 185/PUU-XXII/2024, the study shows that the Court's reaffirmation of state control reflects jurisprudential continuity rather than doctrinal innovation, thereby strengthening the predictability and internal coherence of Indonesia's constitutional land law framework.

This jurisprudential continuity has direct implications for the constitutional assessment of contemporary land governance policies, particularly those associated with large-scale development and investment initiatives such as the establishment of the new national capital (IKN) and the extension of long-term HGB rights. While extended HGB regimes are often justified as instruments to enhance legal certainty and attract long-term investment, comparative MK jurisprudence makes clear that such arrangements remain constitutionally subordinate to the public-law framework of state control.

Drawing on the Court's consistent emphasis on regulatory oversight, social function, and proportionality, this study argues that land-use rights in strategic development zones cannot be treated as quasi-ownership detached from state supervision. Instead, Decision No. 185/PUU-XXII/2024 reaffirms that investment-oriented land policies must operate within clearly defined constitutional limits, ensuring that economic objectives do not displace public accountability, social justice, and equitable access to land. In this sense, the Court's comparative jurisprudence functions as a constitutional benchmark for evaluating whether long-term HGB arrangements and land allocation practices in projects such as IKN remain aligned with the normative commitments of Article 33 of the Constitution.

3.2 Implications of the Decision on Legal Certainty

The Constitutional Court's decision has a direct impact on legal certainty in the IKN land sector. The Constitutional Court, in various decisions (including Constitutional Court Decision No. 185/PUU-XXII/2024), emphasizes that the granting of land rights must be limited rationally and proportionally, that the extension of rights cannot be automatic, and that the state must have a substantive evaluation mechanism. The Constitutional Court considers that excessively long rights durations blur the line between use rights and ownership rights, thereby potentially eroding the principle of state control. (Hermanto, 2023; Ofak, 2021)

The Constitutional Court's ruling creates normative legal certainty by affirming the constitutional limits on the duration of land rights, preventing elastic interpretations that could lead to quasi-permanent land control, and serving as a guideline for legislators and land regulators. From this perspective, the Constitutional Court's decision actually strengthens long-term legal certainty, because legal certainty does not only mean certainty for investors, but also certainty that the law is being implemented in accordance with the constitution.

However, in the short term, this ruling also creates uncertainty for business actors and investors who have planned for long-term land ownership, a vacuum or ambiguity in the norms. At the same time, the derivative regulations have not yet been adjusted, and there is potential disharmony between the IKN Law, the implementing regulations, and the Constitutional Court ruling (Al Arif & Indra, 2024). This uncertainty is not solely the result of the Constitutional Court's decision, but also of suboptimal responses from legislation and executive policy, and of IKN policy's dependence on the long-term land rights regime. (Busari et al., 2025; Kamal, 2022)

In the context of the IKN, legal certainty is not only defined as certainty regarding the duration of rights, but also as certainty that land is used in accordance with national development objectives, certainty that the state retains control to protect the public interest, and certainty that land rights do not become covert property rights. Thus, the social function of land rights serves as an instrument of substantive legal certainty rather than merely a formal restriction. Legal certainty of land depends on the clarity of the rights extension procedure and the transparency of the evaluation mechanism (Deininger & Feeder, 2022). Without technical regulations, investors face uncertainty about the duration of land-use rights. After the Constitutional Court's decision, the government needs to reorganize implementing regulations to ensure investment continuity without sacrificing the principle of state control. (Suyanto, 2024)

The reaffirmation of state control over land following Constitutional Court Decision No. 185/PUU-XXII/2024 carries tangible implications for legal certainty, particularly for holders of Building Use Rights (HGB) within the IKN development area (S. A. Wibowo et al., 2025). While the decision normatively curbs excessive liberalization of land rights, the absence of detailed transitional provisions generates uncertainty at the operational level.

First, existing contractual arrangements involving HGB land, such as long-term commercial leases exceeding standard concession periods, build-operate-transfer (BOT) schemes for infrastructure and mixed-use developments, and public-private partnership (PPP) contracts executed on the assumption of extended or renewable HGB terms, may face renegotiation or rebalancing risks. Where such contracts were structured around expectations of prolonged tenure or near-automatic extensions, the reinforced doctrine of *staatbeheerrecht* underscores that these expectations remain subject to heightened state

discretion, potentially affecting contractual stability and risk allocation.

Second, administrative permits and approvals associated with HGB land, including location permits, environmental approvals, and building approvals (known as PBG), are exposed to transitional ambiguity. Although formally issued permits retain their legal validity, uncertainties arise regarding their renewal, modification, or harmonization with post-decision land governance policies, particularly in the absence of clear implementing regulations. This creates regulatory unpredictability for developers whose project timelines depend on synchronized land tenure and permitting frameworks.

Third, for existing HGB holders, the decision introduces transitional legal risks concerning the extension, renewal, or potential restructuring of land rights. In the absence of explicit post-decision regulatory guidance, unresolved questions persist as to whether HGBs in the IKN area will remain automatically extendable, become subject to more stringent public-interest assessments, or be recalibrated to reflect intensified forms of state supervision. (Abdul Zaini et al., 2023)

These uncertainties are especially consequential for capital-intensive, long-term developments whose financial viability depends on stable land tenure. Taken together, these concrete examples illustrate that, while the Constitutional Court's decision strengthens constitutional control over land at the normative level, legal certainty in the IKN context remains highly dependent on the timely adoption of coherent implementing and transitional regulations that reconcile constitutional mandates with existing contractual and administrative realities.

3.3 Analysis of the Social Function of Land Rights

The social function of land rights, as stipulated in Article 6 of the UUPA, limits individual land rights. The concept of the social function of land rights is a fundamental principle of Indonesian agrarian law, as emphasized in Article 6 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). This principle emphasizes that every right to land cannot be used solely for the benefit of individuals or legal entities, but must take into account the interests of the community, nation, and state.

Theoretically, social function means that land rights are not absolute, that land use must be productive, equitable, and sustainable, and that the state has the authority to restrict, supervise, and evaluate land use (Agustina, 2018; Ondetti, 2016). Within this framework, Building Use Rights (HGB) are temporary and functional rights granted to support development activities that provide social and economic benefits, rather than to create long-term land control akin to ownership rights.

3.3.1 Normative Meaning

HGBs are granted for a limited period and can be extended based on a land-use evaluation. This time limitation is a legal instrument to ensure that land is used for its intended purpose, is not neglected, and is not subject to speculation. However, in the context of the IKN, the regulation of the HGB period,

which allows for a very long duration through a layered extension scheme, raises theoretical issues, as it has the potential to eliminate the temporary nature of HGB, reduce the effectiveness of state control, and deviate from the social function of land rights. In agrarian law theory, when land use rights are granted for an extremely long period, the social function risks being reduced to a purely economic function, while the social and agrarian justice dimensions are neglected.

3.3.2 Operational Implication

- a. The Constitutional Court, through Decision No. 185/PUU-XXII/2024, substantially reaffirmed the relevance of the social function of land rights. The Constitutional Court ruled that the regulation of land rights in the IKN should not eliminate the principle that the state controls land for the greatest prosperity of the people. Granting rights for a very long period can close the space for state correction of land use that is no longer in the public interest. The Constitutional Court's decision shows that the social function of land rights is not only declarative but must be operationalized through restrictions on the term of rights, periodic evaluation mechanisms, and the state's authority to refuse extensions if the social function is not fulfilled.
- b. In the practice of IKN development, the social function serves as a tool to prevent land speculation, land control without optimal utilization, and utilization contrary to spatial planning (Kalalinggi et al., 2023). The HGB period, which is evaluated periodically, allows the state to ensure that the land is actually used for development that supports the public interest, such as housing, public facilities, and social infrastructure. From a practical perspective, social functions require a balance between legal certainty for investors and the interests of the community and future generations. Reasonable and objectively evaluated HGB terms actually provide sustainable legal certainty, as investors know that the continuity of their rights depends on the fulfillment of social functions, not merely the contractual duration.

Land rights cannot be separated from social responsibility to support community welfare (Resosudarmo et al., 2019; Wang et al., 2024). In the context of the IKN, the granting of long-term rights must consider the socio-economic and ecological benefits for the surrounding community (Santoso, 2021). Legal pluralism in land governance requires national legal flexibility without neglecting the principle of social justice (Van der Haar, 2020). Thus, implementing the Constitutional Court's decision must strengthen the state's position as both a regulator and a protector of community rights.

4 CONCLUSION

From a normative legal perspective, Constitutional Court Decision Number 185/PUU-XXII/2024 reaffirms the principle of state control and the social function of land. This decision reverses the trend of liberalizing land rights in the IKN area, which could disregard the principle of social justice. However, from a legal certainty perspective, implementing regulations are needed to specify the time frame, periodic evaluation, and extension mechanism for HGBs to prevent a legal vacuum after the ruling. The balance between legal certainty for investment and agrarian justice is the government's main objective going forward.

Future research should empirically assess how Constitutional Court Decision No. 185/PUU-XXII/2024 is implemented within land governance practices in the IKN area. Such research may employ qualitative methods, including interviews with land administration officials, IKN Authority representatives, notaries, and HGB holders, to examine decision-making patterns in land allocation, permit issuance, and HGB extensions following the decision. In parallel, document-based empirical analysis of land contracts, licensing decisions, and administrative circulars issued after the ruling would provide insight into regulatory adaptation and institutional consistency. In addition, quantitative approaches could be used to analyze trends in HGB approvals, renewals, or conversions in the IKN area before and after the MK decision, thereby measuring the practical impact of strengthened state control on land tenure security and investment behavior.

Comparative empirical studies between the IKN and other strategic development zones may further illuminate whether post-decision governance reflects uniform constitutional compliance or localized regulatory divergence. Such empirical evidence would be crucial for assessing whether the Constitutional Court's normative reaffirmation of state control effectively translates into predictable, accountable, and socially responsive land governance in practice, or whether gaps persist between constitutional doctrine and administrative implementation. Moreover, longitudinal studies could evaluate the long-term effects of post-decision land governance on investment stability, spatial equity, and public trust in state-led land management.

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