

Granting Of Civil Use Rights In the IKN In Presidential Regulation Number 75 Of 2024 Is Reviewed Through the Dusturiyah Siyasah

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ABSTRACT

The Capital City of the Archipelago is a major project of the government to move the capital city of Indonesia with the aim of making it a sustainable city in the world, as a driver of the Indonesian economy and a symbol of national identity and a form of Indonesian diversity, many new regulations have been formed by the government to accommodate the implementation of IKN development, one of which is Presidential Regulation Number 75 of 2024 concerning the Acceleration of the Development of the Capital City of the Archipelago which in one of its material contents there is a regulation on the period of control of Cultivation Rights (HGU) which is relatively very long compared to the arrangements in other laws and regulations. This research was conducted to determine the validity of the HGU period in Presidential Regulation Number 75 of 2024 based on Indonesian regulatory law and the perspective of siyasah dusturiyah. The research method is qualitative with analysis of problems by literature study from primary and secondary data sources in the form of reading materials. The results of the research obtained state that based on the relationship of super and sub-ordination and special law (specialis), the HGU time in IKN contained in Presidential Decree No. 75 of 2024 does not conflict with the HGU contained in other laws and regulations. siyasah dusturiyah review in the context of legislation provides flexibility for the state in shaping the law provided that it aims to benefit and is in line with sharia.

Keywords: Legislation, Presidential Regulation, Administrative Law.

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INTRODUCTION

The existence of a state of law (rechstaat) is that all state powers are based on applicable laws and are able to eliminate the ambition of a person or group that is in government power that can impact the rights of citizens. The principles of legality, democracy, equality before the law are the first reference in running the government. The government in producing policies must pay attention to superior legal sources, in accordance with basic laws and maintain humanitarian values.(Qomar et al., 2018). The form of a legal state according to Julius Stafhl's view has the main characteristics, namely protection of human rights, division of power, government based on law and freedom over state administrative courts.(Ahmad Redi, 2021). In one of the training meetings held by the Legal Aid Institute (Lembakum) Anak Negeri, Deputy Chairman of the Constitutional Court (MA) Aswanto explained that the 1945 Constitution has emphasized that Indonesia is a form of rechstaat as stated in Article 1 Paragraph (3) of the 1945 Constitution which states "The State of Indonesia is a state of law". However, in its development it shifted to the rule of law which fundamentally has philosophical differences, then Aswanto said that Indonesia is a state of law because of the affirmation contained in the highest hierarchy of laws and regulations and he emphasized "So this is a series of things that are a unity that we are a Republic, a

Republic is a unitary state and a unitary state is based on law, so that we become a state based on the principle of law". *Rechtsstaat* is better known in continental European countries by adopting the form of Civil law.(Sujono, 2022). Indonesia as one of the former Dutch colonies certainly has many aspects that influence the development of the country, one of which is the absorption of the country's legal system, namely adopting a civil law legal system, the characteristics of this law are that it is codified or stated in the form of a document.(Dewi, nd).

Codified laws and regulations are a very important legal benchmark to prevent government arbitrariness. Maria Farida Idrati mentions 2 meanings of the term laws and regulations, namely laws and regulations as a process of formation at both the central and regional levels and laws and regulations as a collection of legal forms resulting from the formation of laws and regulations.(Retnowati et al., 2022). Bagir Manan stated that the function of statutory regulations is very urgent for the running of the state, namely: (1) statutory regulations as codified legal rules make them easy to identify and trace, (2) statutory regulations as a form of legal certainty that is more real, (3) there are mechanisms and procedures that must be fulfilled in the formation of statutory regulations to achieve validity, and can be re-tested from a formal and material perspective, (4) the formation of statutory regulations can be planned.(Lubis, 2019). Article 1 Paragraph (2) of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation has stated the definition of legislation, namely "Legislation is a written regulation containing generally binding legal norms and is formed or stipulated by a state institution or authorized official through procedures stipulated in legislation." Legislation in Indonesia has many types and each type has its own legal force and scale of regulation, in Law Number 12 of 2011 concerning the formation, the hierarchy or order of legislation has been stated which consists of: (a) The 1945 Constitution of the Republic of Indonesia, (b) Decrees of the People's Consultative Assembly, (c) Laws/Government Regulations in Lieu of Laws, (d) Government Regulations, (e) Presidential Regulations, (f) Provincial Regulations, and (g) Regency/City Regulations(Ministry of State Secretariat of the Republic of Indonesia, 2011). The functional order of the legal regulations makes the regulations contained in higher legal norms more prioritized than legal norms of lower standing, if the regulations contained in lower legal norms conflict with higher legal norms, then the regulations in the lower legal norms can be tested for their material and their application can be revoked.

Presidential Regulation is one type of legislation mentioned in the hierarchy, although the President according to the *Trias Politica* concept is in executive power or the power to run the government according to the Constitution, the President also has legislative power in forming laws through the approval of the DPR. The main power of the President is as Head of State who holds the highest power over the TNI, gives a firm statement on war and a statement of peace and conducts international relations.(Djohari, 2019). Law No. 11 of 2012 states that there are other legal products that can be formed by the President, namely the Presidential Regulation (*Perpres*). The *Perpres* is formed with the aim of further regulating the regulations regulated in the Law to implement Government Regulations and to

implement in general a regulation so that the government's power is realized.(ROY MARTHEN MOONTI., 2020). The purpose of the Presidential Decree has also been stated in Article 1 Number 6 of Law No. 15 of 2019 which states "Presidential Regulation is a statutory regulation stipulated by the President to carry out the orders of higher statutory regulations or in carrying out governmental powers."

To prevent the President from having too much power, in the formation of Presidential Regulations there need to be conditions as limitations.(Gelora Mahardika, 2020). Jimly Asshiddiqie mentioned the forms of these limitations, namely: can only be formed if there is an order from higher statutory regulations, the order is sufficiently understood to exist without having to directly mention the legal norms to be regulated, if there is no order from higher regulations, then the presidential decree may only regulate the technical administration of government and only for the internal needs of implementing laws and government regulations.(Princess, 2021).

The Capital City of Indonesia, which is located in the DKI Jakarta Province, has a role in the aspects of the center of government and economy which causes a surge in population, the impact of flooding, declining water quality, and land subsidence due to development that is not in accordance with environmental needs and city spatial planning. From considerations of environmental conditions, the Indonesian government proposed the relocation of the Capital City on August 26, 2019. President of the Republic of Indonesia, Ir. Joko Widodo, in a press conference officially stated the relocation of the new Capital City with the name of the Indonesian Archipelago Capital (IKN) which is located in East Kalimantan Province.(Kodir et al., 2021). To accommodate the relocation of the capital city, the government requires special regulations that regulate various aspects so that the relocation and development of the IKN can be achieved.

July 2024 was enacted and enforced one of the laws and regulations, namely Presidential Regulation Number 75 of 2024 concerning the Acceleration of the Development of the IKN, the regulations in the Presidential Regulation are Special (Lex specialis) because the object of regulation and enforcement only applies within the legal jurisdiction of the IKN. The content of the material also contains regulations on land rights including Cultivation Rights (HGU), Building Rights (HGB), and Usage Rights.

The focus of this study examines one of the contents of Presidential Regulation No. 75 of 2024 concerning the granting of Land Use Rights (HGU) which has a very long period compared to the regulation of HGU in other laws and regulations. As in Article 9 letter (a) of Presidential Regulation No. 75 of 2024 states:

"the right to cultivate for a maximum period of 95 (ninety five) years through 1 (one) first cycle and can be granted again for 1 (one) second cycle with a maximum period of 95 (ninety five) years based on evaluation criteria and stages."

The granting of the HGU Control period in the Presidential Decree has a very long time comparison for control of one cycle with several regulations contained in other laws and regulations. The granting of HGU in Law Number 5 of 1960 regulates control of the HGU period for 25 years, for HGU holders running a business that requires a longer time, a control period of 35 years can be given for the

cycle and can be extended for the second cycle for 25 years. Then the regulation on HGU is also contained in Government Regulation Number 18 of 2021 with the regulation of control of HGU which has 3 cycles compared to the regulations in other regulations, a maximum of 35 years for the first cycle can be extended for a maximum of 25 years and renewed for a maximum of 35 years. The many regulations on HGU and those contained in various types of laws and regulations and the granting of different time periods can create legal inconsistencies, resulting in a conflict of norms (the conflict norm) which has an impact on the uncertainty of legal rules that are more entitled to be enforced. Very long-term control carried out by companies can also have an impact on the environment and the lives of the surrounding community, so that management becomes a very urgent matter for government authorities to pay attention to in order to reduce negative impacts originating from the business carried out.(Nurwahid, 2025).

Article 5 of Law No. 12 of 2011 mentions several principles for the formation of good legislation including: clarity of purpose, accuracy of authority of the institution and official forming it, suitability of type, hierarchy and content, can be implemented, usefulness, clarity of formulation and openness. In one of the principles for the formation of good legislation, the principle of hierarchy suitability is mentioned therefore a legal norm will regulate other norms or give strength to other norms in a subordination relationship. Norms that are in a superior position will influence and give birth to other norm actions, namely inferior norms. The unity of legal norms is composed of the fact of the creation of low norms born because of higher norms, superior norms will provide validity and strength to the legal norms below them in accordance with the legal hierarchy. In the formation of legislation, this theory was first put forward by(Asshiddiqie & Safa'at, 2019)called the hierarchy of norms (stufentheorie), this theory states that a legal norm originates from a higher legal norm, likewise a high legal norm originates from the norm above it, up to a norm that cannot be traced (grundnorm).(Martyrs, 2020).

The position of the Presidential Decree in the hierarchy of laws and regulations is below the Law and Government Regulations as per the order of precedence contained in Article 7 Paragraph (1) of Law No. 12 of 2011. As the function of the hierarchy, legal norms that are below must not conflict with legal norms that are higher in the hierarchy because the legal force of laws and PP is greater than that of the Presidential Decree. The conflict of norms regarding the regulation of HGU here can eliminate the legal force of the regulation of HGU in the Presidential Decree if viewed from the Principle of conformity of hierarchy and Stufentheorie according to Hans Kelsen. With the aim of creating legal norms that are in the same direction in the theory of the formation of legislation, it is also better known as *lex superior derogat legi inferior* which states that higher legal norms eliminate the application of lower legal norms.(Nurfaqih Irfani, 2020). As a country based on law, the hierarchy of legal regulations is a function in resolving normative conflicts in a regulation to prevent threats to the principles of justice and legal certainty.(Aditya & Winata, 2018). If a regulation has been formed and enforced, then the mechanism that must be carried out to resolve the resolution of norm conflicts is with the presence of negative

legislative power. The presence of a constitutional court has a role in canceling laws or eliminating legal norms, the role of the court is asked to analyze its conformity with the constitution.(Farinacci-Fernós, 2020). The term of action from negative legislators is better known as judicial review, Indonesia has 2 judicial review paths covering different objects and subjects. Testing of the material of the Law against the UUD is under the authority of the Constitutional Court, testing of regulations under the Law against regulations above the Law is under the authority of the Supreme Court (MA)(Octavia, 2022).

The focus of the research problem is to find answers to the status of the validity of the HGU regulation in the material content of Presidential Regulation No. 75 of 2024 which provides a very long HGU control with a total of 190 years for 2 cycles because it is contrary to the HGU control regulation contained in Law No. 5 of 1960 and PP No. 18 of 2021 according to the principles of the formation of laws and regulations. The theory of *lex superior derogate legi inferior* and *lex specialis derogat legi generalis* and the concept of legislation in *siyasah dusturiyah* will be used as a scalpel to find answers to research problems. From the description above, the formulation of research problems that will be answered in the research are: first, whether the HGU period regulated in Presidential Regulation No. 75 of 2024 does not conflict with the principles of the formation of laws and regulations. Second, what is the perspective of *siyasah dusturiyah* regarding the differences in regulations in the concept of regulation according to *siyasah dusturiyah*.

It is hoped that this research will provide knowledge regarding the urgency of the procedures for forming and following the principles of forming legal regulations so that the legal products produced are not flawed and could harm the rights of citizens.

MATERIALS AND METHODS

The type of research used in this research is normative legal research or legal research in the study of legal science on a broad scale or not only bound to the study of laws and regulations but also other aspects that have an impact on solving legal problems. The focus of normative legal research includes principles, systematics, level of synchronization, history, comparison, inventory, discovery of principles and the latest discoveries in legal aspects.(Qomar et al., 2018). Therefore, the researcher uses a normative research type because the object of the problem is Presidential Regulation Number 75 of 2024 concerning the Acceleration of Development of the Indonesian Capital City, as one of the legal products or regulations whose validity will be examined, one of the contents of the material is based on the procedure for forming regulations and also the principles of regulation in industrial policy. The data collection method used is library research with analysis of the findings.(Yaniawati, 2020). According to Soerjono Soekanto and Sri Mamudji, initial data sourced from library materials becomes secondary data in research science.(Soerjono Soekanto, 2018). The forms of data are in the form of laws and regulations, books,

articles, and official government websites. The collected data is then analyzed and interpreted to answer the research problems

RESULTS AND DISCUSSION

Regulation of Land Use Rights in Indonesia

Indonesia as a country that geographically has superior capabilities in the agrarian sector, many Indonesian regulations are formed with a focus on regulating land management and empowerment. The first legislation containing regulations on land use rights is Law Number 5 of 1960 concerning the Regulation of the Basic Principles of Agrarian (UUPA), the legal basis for the formation of UUPA is the 1945 Constitution of the Republic of Indonesia and makes UUPA a regulation that contains specific regulations on the management of national wealth in a geographical sense as stated in Article 1 number 2, which reads "all the earth, water and space, including the natural resources contained therein in the territory of the Republic of Indonesia, as a gift from God Almighty are the earth, water and space of the Indonesian nation and are national wealth." UUPA was born as a form of agrarian law reform based on national values, customary law on land and in line with the constitution and adaptation of religious elements. Because agrarian law before UUPA, the nature of its regulations was still influenced by the objectives of the Dutch government for the needs of the colonial sovereignty which could make it inconsistent with the interests of the state (Fauzi Janu Amarrohman, 2021). one type of regulation on land rights contained in various types of Indonesian laws and regulations is the Right to Cultivate (HGU). The definition of the right to cultivate is the right to cultivate or manage land directly controlled by the state, within a period of time determined by laws and regulations for agricultural, fishery and livestock companies.

There are several components of HGU regulation in UUPA in the form of the term of the area, time of control, subjects who can obtain HGU, the abolition of HGU and several other regulations regarding the right to cultivate. The land that is the object to be managed for HGU must be state land designated for business in the fields of agriculture, animal husbandry and fisheries with a minimum of 5 hectares of land if the land exceeds 25 hectares then it must use good capital and management techniques to prevent adverse impacts on the environment. (Government of the Republic of Indonesia, 2018).

The regulation on the term of control of HGU contained in Article 29 reads, "(1) The right to cultivate is granted for a maximum period of 25 years. (2) Companies that require a longer period may be granted a right to cultivate for a maximum period of 35 years. (3) At the request of the rights holder and considering the circumstances of the company, the term referred to in paragraphs (1) and (2) of this article may be extended for a maximum period of 25 years." A person or legal entity holding HGU may be granted an additional term for the second cycle by the holder submitting a renewal within a minimum period of 2 years before the end of the first cycle period, by fulfilling several requirements. First, the land

with HGU status is still being cultivated and the condition of the land is in accordance with the nature and purpose. Second, the requirements for granting a right to cultivate are still completely fulfilled. Third, the rights holder still meets the requirements as a holder (Sirait, 2018) (Yazid, 2020).

After the UUPA was born, there were also other laws and regulations that in their material content regulated the time period for HGU, namely Government Regulation Number 24 of 1997 concerning Land Registration amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration. The granting of a time period in the PP is stated in Article 22 Paragraph (1) which reads "The right to cultivate is granted for a maximum period of 35 (thirty five) years, extended for a maximum period of 25 (twenty five) years and can be renewed for a maximum period of 35 (thirty five) years"

The granting of a period of control over HGU in PP No. 18 of 2021 is different from the number of periods and cycles obtained by HGU holders in the UUPA, total control over HGU for 50 years, for certain companies that receive an additional period in the first cycle, they can control HGU for a total of 65 years, both total periods in the UUPA are obtained through 2 cycles. The provision of an extension to the period of control of HGU in PP No. 18 of 2021 makes the total period of control of HGU for 95 years through 3 cycles/periods, namely the first period then the extension period and finally with the renewal period, while the UUPA does not contain a renewal of the period (Camalia & Taupiqqurrahman, 2021).

The relocation of the Indonesian Capital City to East Kalimantan with a new name, namely the Indonesian Capital City (IKN) with the aim of economic equality. The proposal for this relocation can be seen in the formation of Law Number 3 of 2022 concerning the Indonesian Capital City amended by Law Number 21 of 2023. Some of the objectives of the formation of the IKN are to create a sustainable city, as a city that drives the country's economy through aspects of technology, potential, and innovation, and as a city that reflects the symbols of the country and the values of diversity. (Salsabilah, 2025). the laws and regulations governing HGU control in the IKN area in Padang have a very long time period compared to other laws and regulations containing general HGU regulations. As stated in Law. No. 21 of 2023 which contains regulations regarding HGU in the IKN area, the granting of a period of HGU control is stated in Article 16A Paragraph (1), which reads:

"In the case of the HAT agreed upon as referred to in Article 16 paragraph (7) in the form of a right to cultivate, it is granted for a maximum period of 95 (ninety five) years through 1 (one) first cycle and can be granted again for 1 (one) second cycle with a maximum period of 95 (ninety five) years based on the evaluation criteria and stages."

The granting of the HGU control period in Law Number 21 of 2023 is similar to the UUPA in terms of the number of cycles or periods, however, the period for control of one cycle in the IKN is equivalent to 2 cycles of the total period in the UUPA and 3 cycles of the total period in PP No. 18 of

2021, namely with a total period of 190 years. There has been a lot of rejection of the implementation of the IKN Law, especially regarding the granting of the Control Period for land rights, one of which is HGU to investors, which can have an impact on the goal of economic equality for local communities due to the benefits for HGU holders, especially investors in the very long term (Wibowo, 2025). On March 6, 2023, Government Regulation Number 12 of 2023 concerning Granting of Business Licensing, Ease of Doing Business, and Investment for Business Actors in the Capital City of the Archipelago was also enacted. The contents of the material also contain regulations regarding HGU with a more complete explanation compared to other laws and regulations governing HGU in the IKN. Article 18 states that HGU above the HPL of the Capital City Authority of the Archipelago is given a period of 95 years for one cycle which is divided into several stages including the stage of granting rights for 35 years, the stage of extending rights for 25 years and the stage of renewing rights for 35 years. The extension and renewal stages in the first cycle are given to HGU holders after 5 years of management with the consideration that the HGU is still being utilized effectively and in accordance with its objectives. Within 10 years before the first cycle of HGU expires (Government of the Republic of Indonesia, 2023).

During the period when the first phase of IKN development was almost completed, the government formed a special regulation in order to encourage the acceleration of IKN development which was implemented in July 2024, namely Presidential Regulation Number 75 of 2024 concerning the Acceleration of IKN Development, in its material content it also contains regulations regarding the granting of a period of control over land rights. The granting of land rights is given to business actors as investors who make investments and also as a form of guarantee from the Indonesian government to business actors who participate in building IKN (Benny K. Heriawanto, 2025). As the function of the formation of the Presidential Decree as a legal norm that is born based on the existence of orders from higher laws and regulations and also as material for implementing government power. (Amancik, 2023). Therefore, the HGU regulations contained in Presidential Regulation No. 75 of 2024 are the same as those regulated in the laws and regulations governing HGU in the IKN area as stated in Article 9 Paragraph 2 with a total control period of 190 years through two cycles.

Regulation of Land Use Rights in Presidential Decree Number 75 of 2024

Presidential Decree No. 75 of 2024 aims to accelerate the development of the IKN, therefore in Presidential Decree No. 75 of 2024 there are several articles contained in it that have advantages for business actors who are interested in doing business in the IKN area. This can be seen in Article 3 Paragraph (1) in the form of providing incentives to business actors in the field of development, provision and management of basic and social services and commercial facilities based on permits from the Indonesian Capital City Authority, Ministries and Regional Governments.

Presidential Decree No. 75 of 2024 also contains regulations regarding HGU granted to individuals and legal entities domiciled in Indonesia, with a period of control as stated in Article 9 Paragraph (2), which reads:

"the right to cultivate for a maximum period of 95 (ninety five) years through 1 (one) first cycle and can be granted again for 1 (one) second cycle with a maximum period of 95 (ninety five) years based on evaluation criteria and stages."

The total control granted in Presidential Decree No. 75 of 2024 is for a period of 190 years obtained through 2 cycle calculations with a period of 95 years for each cycle. The granting of HGU in the IKN area has a very long period of time compared to the control of HGU regulated in other laws and regulations. Law No. 5 of 1960 only regulates the control of HGU with a total period of 50 years and 65 years for companies that require a longer time in the business process, then the granting of HGU is also included in PP No. 18 of 2021 with the granting of HGU control in a total period of 95 years obtained through 3 cycles, namely the first cycle, extension and renewal. As a result of the difference in the period of control of HGU in Presidential Decree No. 75 of 2024, there is a conflict or conflict of norms in terms of the length of the period given.

The authority to grant HGU for the first cycle is carried out by the Ministry of Agrarian Affairs with a request from the Head of the Indonesian Capital Authority. Control of HGU in the first cycle will be evaluated after 5 years of HGU management carried out by the holder. by looking at several requirements met by the HGU holder including: (a) the land is still being cultivated and managed well in accordance with its nature, condition and purpose (b) the holder's status is still met (c) the requirements for granting rights are still met (d) land use does not conflict with the spatial plan (e) the land is not abandoned.

It should be noted that the object of the implementation of Presidential Decree No. 75 of 2024 is only specifically for the KIPP area with the aim of developing a livable city ecosystem. (Hairunnisa & Syaka, 2022). The first regulation governing the granting of HGU in the IKN area is Law No. 21 of 2023, therefore the regulation of HGU in the IKN area contained in the laws and regulations below it such as in PP No. 12 of 2023 and Presidential Regulation No. 75 of 2024 is a form of granting regulatory power that originates from the laws and regulations above it. The first comparison studied is the highest law that contains regulations regarding the period of control of HGU, namely the IKN Law and the UUPA which are hierarchically at the same or equal level but differ in their application. Bagir Manan stated the parameters for the application of the principle of *lex specialis derogat legi generali*, namely: (1) the provisions in general legal rules (*generalis*) remain valid, except those specifically regulated in special law (2) the position of *lex specialis* must be equal to *Lex generalis* (3) the provisions of *lex specialis* and *lex specialis* are in the same legal environment. (Suparyanto and Rosad (2015, 2022). then the use of the principle of *lex specialis derogat legi generali* can certainly be used for the UUPA and the IKN Law,

the position of the IKN Law is a special legal form from the review of its implementation and HGU is in the same legal environment concerning the regulation of the term and land rights. The difference in regulation regarding the term of the HGU is not a legal conflict and the validity for its implementation is clear (Wibowo, 2025).

The regulation of HGU in Presidential Decree No. 75 of 2024 for 190 years specifically for the IKN area is in accordance with PP No. 12 of 2023 and the IKN Law so that with a super or subordination relationship that is in line, it states that the status of the regulation of the amount of the HGU control period in Presidential Decree No. 75 of 2024 concerning the Acceleration of IKN Development does not conflict with other laws and regulations.

Granting Use Rights in IKN According to Siyasah Dusturiyah's Perspective

Siyasah dusturiyah or in modern state administration is known as constitutional politics in an Islamic perspective by giving birth to a combination of new laws, namely government based on law and a codified form of constitution. Siyasah dusturiyah is a form of combination of Islamic law with the modern legal system in the field of studying state power to realize al-maslahah al-ammah (Nasruddin, 2018). Siyasah Dusturiyah is a branch of fiqh siyasah with the object of discussion on state legislation, the main focus of the discussion includes the concepts of the constitution (UUD and the history of the formation of legislation in a country), legislation (mechanisms or procedures in creating a law), the concept of shura and democratic institutions, from the discussion it is only natural that siyasah dusturiyah discusses the existence of a state of law, the reciprocal relationship between the people and the government and the government's responsibility in protecting the rights of citizens.

In language, the word Dustur in the Indonesian state administration is known as the Constitution or state constitution, in the word Dustur it contains the principles regulation of state power, and the dustur should have a role as a law that has great power to become a source for the rules under it. The sources of law in the dusturiyah system are: (1) The Qur'an, contains the principles of community life, good evidence, and the truth of a teaching (2) Hadith, contains the principles of state power based on the history of the Prophet in building the country (3) the policies of the Khulafaur Rasyidin in realizing the welfare of society (4) The results of the ijtihad of scholars, in taking action and parameters to produce a law (5) Customs, values that have become part of society by going through a long process of time and in line with the Qur'an and hadith (Begouvic, 2022).

Therefore, in Islamic law sources it is also known that there is a principle of hierarchy and the Qur'an makes the highest position in Islamic law a legal product from Allah SWT whose universal nature is born based on human events in the course of the prophetic life. The nature of the Qur'an is qath'iyy al-wurud which makes it have to be prioritized over the hadith which is dzaniyy al-wurud and the Sunnah also plays a role in the interpretation of the Qur'an, therefore the Sunnah must go hand in hand with the

Qur'an. Then, to resolve new problems that arise which require a law that regulates them, *ijtihad* will be carried out based on the understanding of a *faqih* in reconstructing the law which is strengthened by proof of evidence in the Al-Qur'an and Sunnah, so that the legal product that is produced is not always correct and can also be erroneous. (Didi Kusnadi, 2019). Different from the hierarchy adopted by modern countries today which in various forms of legal products or with the term legislation, all come from the ruler who must go through a legislative process in the form of procedures or mechanisms that have been set. The first constitution implemented in an Islamic state in the form of a caliphate was the Medina charter which was enforced during the leadership of the Prophet Muhammad by implementing a government based on Islamic values and local wisdom. (Rahman et al., 2023).

In countries with an Islamic majority, specifically Muslim countries, it is better known by the term *qanun* as legislation, the formation of which is under the authority of the government leader or caliph and is related to institutions. The Most High (Ananda, 2024). There are several urgencies of the *qanun*, namely: (1) regulating matters relating to human relations (2) Islamic law which originates from texts which are expressed in the form of public policy to realize *maslahah* (3) as a limited *ijmak* which is enforced in one country (4) with the aim of public welfare, there needs to be evidence of *syar'iyah siyasa* (legal politics) even though sometimes it has passed the provisions of Islamic law (5) the form of legislative or executive power which has legislative power in producing legal products, although in its development it can also be in the form of a decree from a king or ruler. With the support of the ruler who goes through a legitimate legislative process, the *qanun* has binding power and can be enforced. (Busman Edyar, 2021). In the context of Indonesian constitutional law, one of the executive institutions that also has legislative power is the President, with one of the legal products that he can form, namely the Presidential Decree.

Although the absolute power in formulating laws and the formation of laws in the *dusturiyah* system is in the hands of the *ahlul halli wal aqdi* with the aim of maintaining the welfare of the Islamic state based on the provisions of *sharia*. members of the *ahlul halli wal aqdi* are filled with people who have good competence and are honest such as *mujtahids*, *muftis* and experts in one field. Muhammad Abdul classifies the *Ahlul Halli Wal aqdi* as *ulil amri* and states that as a group of people who are in society with various professions and expertise, legal products and agreements that come from them must be obeyed on the condition that they are Muslims and in line with *sharia* values. Evidence for obedience to *Ahlul Halli Wal Aqdi* as mentioned in Surah An-Nisa Verse 59:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا الرَّسُولَ وَأُولَى الْأَمْرِ مِنْكُمْ وَالرَّسُولَ إِنَّ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ

O you who believe, obey Allah and obey (His) Messenger, and the ulil amri among you. Then, if you have different opinions about something, then return it to Allah (the Koran) and the Messenger (sunnah), if you truly believe in Allah and the Last Day. That is more important (for you) and the consequences are better.

Based on the theory of social contract put forward by Al-Mawardi, the relationship between *Ahlul halli wal aqdi* and Imam is in the position of a party to a social agreement on a voluntary basis, therefore they have a two-way contract with society, namely as a ruler who is responsible for protecting citizens and society must obey the decisions of the ruler. Legislation in Islamic government according to Iqbal is based on the view of the state, a theocratic Islamic state will give birth to a government based on monotheism in the form of implementing the principles of equality, solidarity and freedom which are understood by the concept of monotheism.

From the development of the era and the government system in Islamic countries, there have been changes that have aspects of adaptation and combination in the modern state legislation system. Therefore, legislation in an Islamic state has its own characteristics in accordance with the adopted government system and there is no explicit procedure that regulates the formation of laws and regulations in the industrial sector. However, in Islamic legislation or giving birth to laws, it only mentions the authorized institutions that have the right to formulate laws and absolute values that are considered and benchmarks in formulating laws in the form of laws that are in line with the *Shari'a*, because the purpose of the *Shari'a* itself has maintained important elements of human life called *maqasyid sharia*. Asy Syatibi said that the purpose of *maqasyid sharia* is to achieve the welfare of the world and the hereafter with the protection of 5 important points in the form of protection of religion (*hifzh ad-din*), soul (*hifzh an-nafs*), reason (*hifzh al-aql*), descendants (*hifzh al-'aql*) and property (*hifzh al-mal*). Likewise, in the context of the formation of legislation in Indonesia, which also contains separate formation procedures as contained in Law No. 12 of 2011, which states the principles for the formation of good legislation.

CONCLUSIONS

Based on the considerations of the discussion outlined, the conclusions that can be put forward regarding the answers to the research problems are: first, the content of the regulatory material regarding the period of HGU control contained in Presidential Regulation Number 75 of 2024 concerning the Acceleration of IKN Development is stated not to conflict with other regulations that also contain HGU Regulations in their material content, this is based on the super and sub-ordination ties of higher laws and regulations that contain the period of HGU in a special area, namely the Capital City of the Archipelago and in line with the principle of *lex specialis derogat legi generalis*. Second, Legislation in Islamic statehood is not explicitly contained concerning the procedures and theories of the formation of laws and regulations, the form of bench-marks that form the basis for containing absolute values with the aim of the welfare of the people in line with *sharia*. This study only focuses on the context of legislation, therefore the author provides suggestions for the continuation of the HGU problem for further researchers to study from other scientific fields, theories, and methods. Based on the implementation of HGU in the IKN area with a very long period of time, the author provides a special

scope for further researchers to study whether the very long HGU can provide benefits for the state, especially for accelerating the development of the IKN or whether it actually creates new problems that have aspects for indigenous communities.

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