



New Enclosure of the Commons: A Human Rights Critique of Rights to Cultivate in the Capital City of Nusantara

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Abstract: *Rights to Cultivate in the Capital City of Nusantara (IKN), which allows control for up to 190 years, reflects a shift in resource governance in Indonesia from a social paradigm toward an economic orientation centered on capital accumulation. This shift reveals that agrarian law is no longer an instrument of social justice, but rather a means of legitimizing long-term control by capital. This research aims to interpret Rights to Cultivate in the IKN Law as a form of new enclosure of the commons, by tracing the changes in resource governance patterns that are institutionalized through state policy. Using a descriptive qualitative method based on regulatory studies and academic literature, the analysis finds that the Rights to Cultivate effects practices of accumulation by Dispossession, double movement, and territorialisation by regulation, while at the same time contradicting the spirit of human rights in land management through the 1960 Basic Agrarian Law (UUPA), Article 33 of the 1945 Constitution, and commitments to economic, social, and cultural rights. This policy demonstrates a shift in resource governance toward a system that prioritizes capital and investment, yet overlooks the dimension of social justice. The Rights to Cultivate in the IKN Law can be interpreted as a new enclosure of the commons. This concept represents a new legal boundary that restricts people's access to their living space in the name of an institutionalized logic of capital.*

Keywords: *Rights to Cultivate; Nusantara Capital City; Enclosure of the Commons; Human Rights.*

Abstrak: Kebijakan Hak Guna Usaha dalam Undang-Undang Ibu Kota Nusantara (IKN) yang memungkinkan penguasaan hingga 190 tahun mencerminkan pergeseran tata kelola sumber daya di Indonesia dari paradigma sosial menuju orientasi ekonomi yang berpusat pada akumulasi kapital. Pergeseran ini menunjukkan bagaimana hukum pertanahan tidak lagi menjadi instrumen keadilan sosial, tetapi sarana legalisasi penguasaan jangka panjang oleh modal. Penelitian ini bertujuan untuk memaknai HGU IKN sebagai bentuk new enclosure of the commons, dengan menelusuri perubahan pola tata kelola sumber daya yang dilembagakan melalui kebijakan negara. Menggunakan metode kualitatif deskriptif berbasis studi peraturan dan literatur akademik, analisis menemukan bahwa HGU IKN mencerminkan

praktik accumulation by dispossession, double movement, dan territorialisation by regulation, sekaligus bertentangan dengan semangat hak asasi manusia dalam pengelolaan lahan melalui UUPA 1960, Pasal 33 UUD 1945, serta komitmen terhadap hak ekonomi, sosial, dan budaya. Kebijakan ini memperlihatkan transformasi tata kelola sumber daya menjadi sistem yang mengutamakan modal dan investasi, namun mengabaikan dimensi keadilan sosial. HGU IKN dapat dimaknai sebagai new enclosure of the commons. Konsep ini merupakan suatu pagar hukum baru yang menutup akses rakyat atas ruang hidupnya demi logika kapital yang dilembagakan.

Kata kunci: *Hak Guna Usaha; Ibu Kota Nusantara; Enclosure of the Commons; Hak Asasi Manusia.*

Introduction

The governance of natural resources in Indonesia is undergoing significant changes in line with the state's efforts to realize equitable development. One concrete manifestation of this change is the development of the Nusantara Capital City (IKN), which is designed as a new administrative and economic center of Indonesia. IKN is expected to become a symbol of progress and the equal distribution of national welfare. However, behind this grand idea lies a fundamental issue regarding how the state manages and distributes resources, especially land, so that it continues to side with social justice, ecological sustainability, and the respect for human rights.

Within the framework of political economy, the development of IKN represents an effort to modernize natural resource governance, with a focus on long-term investment and sustainability. This pattern of management raises concerns because it has the potential to create a new form of enclosure of the commons, namely a situation in which public resources are legally transferred into the exclusive rights of certain parties. This phenomenon reveals a shift in the state's role from managing resources for the common good to facilitating long-term control by corporate groups through lawful regulatory mechanisms.

One of the policies that has attracted the most attention in the development of IKN is the granting of the Right to Cultivate to investors with a very long duration, namely up to 190 years. This policy is regulated in Article 16A paragraph (1) of Law Number 21 of 2023

concerning the Capital City (which replaces Law Number 3 of 2022). The article grants entrepreneurs the right to manage land for two cycles, each lasting 95 years. This policy aims to attract long-term investment, but on the other hand, raises several fundamental issues from the perspective of agrarian law and human rights.

The prolonged duration of the Right to Cultivate creates tension with the fundamental principles of national agrarian law and humanistic values. Access to land is closely linked to the rights to life, housing, and dignity, as stipulated in the Universal Declaration of Human Rights and various international human rights instruments. The right to land is regarded as a fundamental human right, directly connected to other human rights.¹ Land, as a fundamental resource, has a philosophical dimension that encompasses legal, economic, and spiritual aspects. From a philosophical standpoint, land is understood as a space in which the spiritual relationship between human beings and the divine is formed, as well as an integral part of human existence.²

Several critiques note that the very long duration of the Right to Cultivate is not in line with the principle of public welfare and has the potential to create disharmony with other regulations. For example, there is an inconsistency with other agrarian regulations that govern the duration of the Right to Cultivate.³ The validity period of the Right to Cultivate, which can extend up to two cycles (a maximum of 190 years), raises ethical and philosophical questions regarding the distribution of resources and the concept of justice. This policy is also considered contrary to the spirit of shared prosperity as mandated by Article 33, paragraph (3) of the 1945 Constitution. The long duration of this Right to Cultivate creates a conflict between the regulatory norms of the

¹ Corina Heri, "The Human Right to Land, for Peasants and for All: Tracing the Social Function of Property to 1948," *Human Rights Law Review* 20, no. 3 (October 13, 2020): 433–52, <https://doi.org/10.1093/hrlr/ngaa026>.

² Fokky Fuad et al., "Ownership of Land: Legal Philosophy and Culture Analysis of Land Property Rights," *Jurnal Media Hukum* 30, no. 2 (December 26, 2023): 98–116, <https://doi.org/10.18196/jmh.v30i2.18264>.

³ M MAULANA, "Konstitusionalitas Masa Konsesi Hak Guna Usaha Di Ibu Kota Nusantara Dalam Perspektif Reforma Agraria" (Fakultas Hukum, 2023), <https://repository.unej.ac.id/handle/123456789/123862>.

Right to Cultivate in IKN and the provisions in the Basic Agrarian Law (UUPA).⁴

The granting of the Right to Cultivate for an excessively long duration not only violates the principle of social justice in the Basic Agrarian Law (UUPA) but also contradicts the fundamental values of Pancasila, which emphasize civilized humanity and human dignity.⁵ From a social perspective, this policy has the potential to disadvantage local communities and worsen social inequality.⁶ From an Islamic perspective, the long duration of the Right to Cultivate is also not in line with the principle of fair resource distribution, because extending the period of land control by a small group often creates legal uncertainty and injustice.⁷

The policy of Rights to Cultivate in IKN raises multidimensional issues involving legal, social, economic, and human rights aspects. This normative conflict highlights a fundamental difference between the objectives of the Basic Agrarian Law, which emphasizes equitable access to land, and the IKN policy, which is oriented toward attracting investment. Several previous studies have highlighted similar issues, although with varying approaches. The study by Mukmin Zakie (2017) shows that agrarian conflicts resulting from the granting of Rights to

⁴ Aditya Khrisna Murti, Nawang Wulan, and Andre Bagus Saputra, "Problematika Konflik Norma Penerapan Jangka Waktu Hak Atas Tanah Berdasarkan Peraturan Pemerintah Nomor 12 Tahun 2023 Tentang Pemberian Perizinan Berusaha, Kemudahan Berusaha, Dan Fasilitas Penanaman Modal Bagi Pelaku Usaha Di Ibu Kota Nusantara," in *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia*, vol. 1, 2023, 33–46, <https://journal.uii.ac.id/psha/article/view/30955>.

⁵ Stefano Moroni, "Property as a Human Right and Property as a Special Title. Rediscussing Private Ownership of Land," *Land Use Policy* 70 (January 2018): 273–80, <https://doi.org/10.1016/j.landusepol.2017.10.037>.

⁶ Chika Fatika Sari and Fadillah Zulfa Naftali, "Implications for the Development of the National Capital of the Archipelago and Protection of Customary Law Communities: A Review of Law Number 3 of 2022," *Arkus* 10, no. 3 (March 20, 2024): 566–72, <https://doi.org/10.37275/arkus.v10i3.546>.

⁷ Isnaini Isnaini, Rizkan Zulyadi, and Abdul Kadir, "The Models of North Sumatra Provincial Government Policy in Resolving the Ex-Hgu Land Conflicts of PTPN II Plantations in Deli Serdang Regency," *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 3, no. 2 (May 8, 2020): 1206–15, <https://doi.org/10.33258/birci.v3i2.962>.

Cultivate often occur because the positive legal approach does not take into account social dynamics and local wisdom.⁸ Research by the National Human Rights Commission and Sawit Watch (2022) affirms that granting of Rights to Cultivate without protection of the rights of indigenous peoples can trigger agrarian conflicts and human rights violations.⁹ The study by Syafitri et al. (2024) adds that long-term Rights to Cultivate policies have negative environmental impacts, including potential deforestation, water pollution, and ecosystem damage that threatens the sustainability of indigenous communities' livelihoods.¹⁰

Another study by Murti et al. (2023) examines the conflict between Law No. 5 of 1960 and Government Regulation No. 12 of 2023 regarding the duration of land rights in IKN, which has sparked debate over the legality of extending HGU to 190 years.¹¹ Safik & Ewinda (2023) emphasize the importance of asset appraisal based on the interests of local communities, ensuring that violations of the right to social and economic justice are avoided.¹² From the perspective of Islamic law, Khoiri et al. (2024) argue that extending the HGU period to 190 years contradicts the principle of *maslahah mursalah*, as it benefits only certain groups while neglecting social justice.¹³

⁸ Mukmin Zakie, "KONFLIK AGRARIA YANG TAK PERNAH REDA," *Jurnal Ilmiah Hukum LEGALITY* 24, no. 1 (March 31, 2017): 40, <https://doi.org/10.22219/jihl.v24i1.4256>.

⁹ Komisi Nasional Hak Asasi Manusia dan Sawit Watch, *Hak Guna Usaha Dan Hak Asasi Manusia* (Jakarta: KOMNAS HAM dan Sawit Watch, 2022).

¹⁰ Cut Zulfahnur Syafitri et al., "Land Rights and Their Environmental Implications for Indigenous Communities in Nusantara Capital City," *Jurnal Hukum Magnum Opus* 7, no. 2 (August 11, 2024): 198–209, <https://doi.org/10.30996/jhmo.v7i2.11569>.

¹¹ Murti, Wulan, and Saputra, "Problematika Konflik Norma Penerapan Jangka Waktu Hak Atas Tanah Berdasarkan Peraturan Pemerintah Nomor 12 Tahun 2023 Tentang Pemberian Perizinan Berusaha, Kemudahan Berusaha, Dan Fasilitas Penanaman Modal Bagi Pelaku Usaha Di Ibu Kota Nusantara."

¹² Akhmad Safik and Mira Ewinda, "Pengelolaan Tanah Di Ibu Kota Negara IKN," *Jurnal Magister Ilmu Hukum* 8, no. 2 (August 31, 2023): 50, <https://doi.org/10.36722/jmih.v8i2.2307>.

¹³ Ahmad Hasbullah Al Khoiri, Musleh Harry, and Yayuk Whindari, "PENAMBAHAN JANGKA WAKTU HAK GUNA USAHA PADA UNDANG UNDANG NOMOR 21 TAHUN 2023 TENTANG IBU KOTA NUSANTARA

Although these various studies have provided important contributions, most still stop at the stage of mapping normative conflicts and the social impacts of the policy of rights to cultivate. There has not been much research that attempts to integrate agrarian legal analysis with a human rights perspective and read it within the framework of political economy theories of natural resources. This study aims to examine two things. First, to analyze how the state restructures its role in natural resource governance through the policy of Rights to Cultivate in the Nusantara Capital City. This analysis examines how the policy of Rights to Cultivate, with a duration of up to 190 years, reflects shifts in the orientation of agrarian policy and the relationships between the state, society, and investors. Second, to examine the policy of Rights to Cultivate in the Nusantara Capital City as a modern form of enclosure of the commons. This inquiry seeks to understand how the policy can be interpreted as a practice of resource control that ultimately transforms public land into one dominated by specific economic interests in the long term.

This research employs a qualitative method, combining a juridical-normative approach with critical analysis. This approach focuses on examining the norms of positive law that regulate the Right to Cultivate in the context of the development of the Capital City of Nusantara (IKN), as well as analyzing the ideologies and interests underlying the construction of such laws. The type of research is descriptive-analytical, aiming to delineate and critique how modern land law regulations can create a new form of "enclosure of the commons" or the fencing off of public space in the name of development. The primary data sources of the study consist of legislation such as Law Number 21 of 2023 concerning the Capital City and its derivative regulations.

To enrich the analysis, this research uses secondary data in the form of scientific articles, legal journals, policy reports, and academic publications that discuss theories of property rights, the capitalization of space, and critiques of the modernization of land law. The data collection technique involves a literature study and analysis of legal

PERSPEKTIF MASLAHAH MURSALAH," *Al-Balad: Journal of Constitutional Law* 6, no. 1 (2024): 17–31, <https://urj.uin-malang.ac.id/index.php/albalad/article/view/9504>.

documents, while the data analysis is conducted using content analysis and critical discourse analysis. Through this combination, the research aims to expose power relations, development ideology, and the legal mechanisms at play in transforming public land into private commodities through the Right to Cultivate regime in IKN.

Result and Discussion

The Transformation of the State's Role in Natural Resource Governance: from Public Regulator to Facilitator of Capital

Law Number 21 of 2023 concerning the Capital City generates controversy because it contains a provision in Article 16A that allows the granting of the Right to Cultivate to investors for up to 190 years. This provision is considered excessively long and is viewed as deviating from the basic principles of national agrarian law, which limit land control to prevent monopoly. In addition to raising questions about its conformity with the Basic Agrarian Law, this policy also generates concerns regarding the diminishing state sovereignty over land, the potential for social inequality, and threats to the rights of local communities to access and utilize agrarian resources.

The provision in Article 16A of Law Number 21 of 2023 concerning the Capital City, which grants the Right to Cultivate to investors for a maximum duration of 190 years, marks a fundamental shift in the orientation of the state's agrarian policy. In the national agrarian legal system, regulated by the Basic Agrarian Law Number 5 of 1960, the Right to Cultivate is granted for a maximum period of 35 years. It may be extended for an additional 25 years, resulting in a total duration of 60 years.¹⁴ Such an extension is granted on the condition that a comprehensive evaluation of the social function of the land, as well as the rights holder's compliance with statutory regulations, is conducted. This is in accordance with the provisions contained in the Basic Agrarian Law Number 5 of 1960, which regulates land control

¹⁴ H Adjie, "Indonesian Land Rights for Individual Limited Companies," *International Journal of Cyber Criminology* 17, no. 2 (2023): 20–32, <https://doi.org/10.5281/zenodo.4766702>.

and land use rights in Indonesia.¹⁵ In contrast, the granting of Rights to Cultivate for up to 190 years in the Nusantara Capital City exceeds the rational limits of national agrarian law, which was designed to maintain a balance between economic, social, and environmental interests.

Such a long duration indicates a shift in the state's orientation in interpreting the function of land. Whereas the state previously acted as a regulator and guardian to ensure that land was used for the greatest prosperity of the people, this policy indicates a shift in orientation toward providing long-term legal guarantees for investment interests. The state no longer functions solely to regulate the distribution and use of land for social justice, but also to create comprehensive legal certainty for investors. This pattern marks a shift in the paradigm of natural resource control from a state-centered welfare orientation to a market-centered governance model, in which public policy is designed to provide a sense of security and long-term investment stability for key economic actors.

A state-centered welfare orientation refers to a model in which the state plays an important role in providing and managing welfare services. This involves substantial government responsibility for social security, healthcare services, education, housing, social services, unemployment insurance, family allowances, and pensions.¹⁶ Meanwhile, market-centered governance in natural resource management involves utilizing market mechanisms and economic incentives to regulate and manage land and resources. This approach differs from traditional hierarchical governance, aiming to improve efficiency and sustainability through market-based instruments and other economic tools. This form of governance involves the commercialization, privatization, and utilization of market mechanisms in resource governance, replacing traditional public policy. This

¹⁵ Amad Sudiro, "Measuring the Openness of Land Investment Policy Related to Housing or Residential Ownership by Foreigners in Indonesia," *EUROPEAN RESEARCH STUDIES JOURNAL XXI*, no. Issue 2 (November 1, 2018): 165–77, <https://doi.org/10.35808/ersj/992>.

¹⁶ B. Vivekanandan and Nimmi Kurian, "Introduction: Welfare States and the Future," in *Welfare States and the Future* (London: Palgrave Macmillan UK, 2005), 1–13, https://doi.org/10.1057/9780230554917_1.

approach is often criticized for its potential to reduce the role of the state and public participation in environmental governance.¹⁷

In the context of agrarian law, this shift raises fundamental questions about the consistency between the special policies of the Nusantara Capital City and the basic principles of the Basic Agrarian Law, which affirms that all rights over land inherently have a social function. This means that the control rights of individuals or legal entities over land may not override the interests of the wider society. This principle places the state as a regulator whose task is to ensure that the use of land aligns with social justice and shared prosperity. The granting of the Right to cultivate for up to 190 years effectively reduces the state's control function because, within such an extensive timeframe, mechanisms of oversight and evaluation become highly limited. The state loses part of its capacity to assess whether the management of the land remains consistent with the people's interests as mandated in Article 33, paragraph (3) of the 1945 Constitution.

The 190-year duration of the Right to Cultivate is not merely an administrative instrument but a reflection of a shift in the state's perspective on land as an economic resource. The state is seeking investment by offering an extraordinarily long period of legal stability, yet on the other hand, sacrificing agrarian policy flexibility and the potential for future land redistribution. This policy has the potential to create tension between investment certainty and the principles of agrarian justice that underpin Indonesia's land law system. The Right to Cultivate policy in the Nusantara Capital City not only raises technical legal issues but also marks a paradigmatic shift in natural resource governance, with far-reaching implications for social justice and the state's sovereignty over land.

The concept of Accumulation by Dispossession, introduced by David Harvey, can be used to interpret the Right to Cultivate policy in the Nusantara Capital City as a form of capital accumulation facilitated through state legal mechanisms. Harvey explains that in the stage of advanced capitalism, accumulation no longer occurs solely through

¹⁷ B J Deka, "Revisiting the Concept of Market Environmentalism and Human Right to Water," *International Journal of Scientific and Technology Research* 9, no. 2 (2020): 295–300, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85079688272&partnerID=40&md5=524e37ab0024584353c9e278c4e7a69a>.

production and exchange, but also through processes of Dispossession or the takeover of public resources into private ownership. Harvey developed this concept to describe the ongoing primitive accumulation in mature capitalism, emphasizing the role of state power and neoliberal policies in facilitating these processes.¹⁸ Accumulation by Dispossession involves the privatization of public assets and the commodification of resources, transforming them into marketable goods.¹⁹

The state plays a central role in this process by creating a legal framework that enables long-term control by private capital over resources that were previously communal or controlled by the state for the public interest. An example of this is the privatization of land and water resource commodities.²⁰ Land that once functioned as a socio-ecological space for local communities is transformed into a long-term commodity controlled by corporations through legal instruments that appear legitimate. This process often leads to the manipulation of crises and state redistribution to benefit capital accumulation.²¹ The state plays a central role in Accumulation by Dispossession by enforcing policies that facilitate Dispossession.²² This phenomenon has structural

¹⁸ Jean Batou, "Accumulation by Dispossession and Anti-Capitalist Struggles: A Long Historical Perspective," *Science & Society: A Journal of Marxist Thought and Analysis* 79, no. 1 (January 2015): 11–37, <https://doi.org/10.1521/siso.2015.79.1.11>.

¹⁹ Alejandro Sánchez Berrocal, "Acumulación Por Desposesión," *EUNOMÍA. Revista En Cultura de La Legalidad*, October 1, 2020, 258–74, <https://doi.org/10.20318/eunomia.2020.5711>.

²⁰ Sebastián Gómez Lende, "ORDEN GLOBAL Y ACUMULACIÓN POR DESPOSESIÓN EN ARGENTINA (1990-2012): CINCO ESTUDIOS DE CASO," *Finisterra* 50, no. 99 (July 14, 2015), <https://doi.org/10.18055/Finis3144>.

²¹ S G Lende, "Neoliberalismo y Acumulación Por Desposesión En Argentina (Períodos 1976-1983, 1989-2002 y 2016-2019)," *Cuadernos Del Cendes* 37, no. 103 (2020): 91–126, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85097592543&partnerID=40&md5=f03fbb90f03a3fd43060c779e0b7249b>.

²² Bongman Seo, "Towards Multiscalar Spaces of the Territorial Logic of Power: A Critical Reflection on Harvey's 'Accumulation by Dispossession,'" *Japanese Journal of Human Geography* 61, no. 1 (2009): 23–38, https://doi.org/10.4200/jjhg.61.1_23.

similarities to cases in Special Economic Zones.²³ Policies on Special Economic Zones result in large-scale land dispossession that marginalizes farmers and indigenous peoples in the name of economic efficiency and foreign investment.²⁴

The same pattern is evident in the Right to Cultivate policy in IKN. In the name of sustainable development, the state transforms land into a financial asset that investors can capitalize on for up to two centuries. This mechanism represents a duration that symbolically reflects intergenerational Dispossession. Here, law is no longer an instrument of distributive justice, but a mechanism for the legalization of Dispossession, in which the state becomes a mediator between global capital and national space. This long-term Right to Cultivate project can be viewed as a local manifestation of global neoliberalism, in which economic development not only creates new spaces for accumulation but also erases the historical rights of communities over land, perpetuating patterns of inequality that have long existed in other parts of the world.

Karl Polanyi's (1944) idea of the Double Movement can help us understand the contradictions in the Right to Cultivate policy in the Nusantara Capital City. Polanyi describes how the modern state is often situated within two opposing movements. On the one hand, the state seeks to protect society through various social and economic regulations. However, on the other hand, the state also opens up space for the market by liberalizing public assets, allowing them to be managed by investors. Several scholars argue that this double movement is an inherent and ongoing feature of capitalism, representing an oscillating imbalance between market liberalization and social protection.²⁵

²³ MICHAEL LEVIEN, "Special Economic Zones and Accumulation by Dispossession in India," *Journal of Agrarian Change* 11, no. 4 (October 2011): 454–83, <https://doi.org/10.1111/j.1471-0366.2011.00329.x>.

²⁴ Michael Levien, "The Land Question: Special Economic Zones and the Political Economy of Dispossession in India," *The Journal of Peasant Studies* 39, no. 3–4 (July 28, 2012): 933–69, <https://doi.org/10.1080/03066150.2012.656268>.

²⁵ Richard Sandbrook, "Polanyi's Double Movement and Capitalism Today," *Development and Change* 53, no. 3 (May 8, 2022): 647–75, <https://doi.org/10.1111/dech.12699>.

The concept of the Double Movement has been applied to analyze agrarian transformations and the pressures faced by producers, farm workers, and Indigenous communities.²⁶ Polanyi's Double Movement provides a valuable framework for understanding the dynamic interaction between market forces and social protection. This movement underscores the ongoing struggle to strike a balance between economic liberalization and the need to safeguard societal well-being.²⁷ In the case of the Right to Cultivate in IKN, this pattern is clearly visible. The government presents the long-term policy as a step to promote equitable development and attract investment. However, at the same time, the state also relinquishes part of its control over land that should belong collectively to the people. Land is then no longer viewed primarily as a source of livelihood for communities, but as an economic asset that capital holders can utilize for a very long period of time. This is the concrete face of the Double Movement. The state appears to protect the public interest, yet it also expands the market's role in the governance of natural resources.

When viewed through the lenses of David Harvey's (2003) *Accumulation by Dispossession* and Karl Polanyi's (1944) Double Movement, the Right to Cultivate policy in the Nusantara Capital City reveals a fundamental shift in the state's role. The state no longer functions as a manager of resources for the people's prosperity, but rather as a facilitator of capital through the granting of strong legal legitimacy to investors. This process illustrates how legal mechanisms are used to legitimize long-term control over public resources by private actors. On the one hand, the state still claims to protect the people's interests through the narrative of equitable development; yet on the other hand, it actively opens up space for the market to control strategic resources. Through this orientation, natural resource governance shifts from the logic of social welfare to the logic of capital accumulation, in which law and public policy serve as instruments of legitimacy for the expansion of long-term economic interests.

²⁶ Philip McMichael, "Updating Karl Polanyi's 'Double Movement' for Critical Agrarian Studies," *The Journal of Peasant Studies* 50, no. 6 (September 19, 2023): 2123–44, <https://doi.org/10.1080/03066150.2023.2219978>.

²⁷ John Vail, *Karl Polanyi and the Paradoxes of the Double Movement* (New York: Routledge, 2022), <https://doi.org/10.4324/9781003133186>.

Rights to Cultivate as a Form of New Enclosure of the Commons

The duration of Rights to Cultivate in the Capital City of Nusantara, which reaches up to 190 years, represents the occurrence of new enclosures of the commons as explained by Peluso and Lund. Through this policy, the state establishes new boundaries over public land through legitimate legal mechanisms, rather than through physical force. The regulation serves as a new means to restrict public access to resources that were previously held in common. The concept of enclosures of the commons, as discussed by Peluso and Lund, refers to the process of privatizing shared resources that were previously accessible to all members of society. The recent acceleration of land enclosure has been driven by economic globalization, which privatizes environmental assets that were previously available to all members of society.²⁸ This trend is clearly visible in the privatization of utilities and public services, as well as the takeover of both tangible and intangible resources.²⁹

The interpretation of Rights to Cultivate in the Nusantara Capital City as a form of new enclosure of the commons is based on a comprehensive analysis of the various theoretical and juridical dimensions that have been previously described. As has been explained, the granting of rights to cultivate for up to 190 years demonstrates the practice of accumulation by Dispossession in Harvey's sense, in which the state facilitates capital accumulation through mechanisms of dispossessing collective rights to land with legal legitimacy. This practice does not stand alone; instead, it operates within the dynamics of Polanyi's double movement, which shows the tension between the market logic that drives land liberalization and the social forces that seek to maintain the social function of land as mandated by the 1960 Basic Agrarian Law.

²⁸ C A Bowers, *Revitalizing the Commons: Cultural and Educational Sites of Resistance and Affirmation*, *Revitalizing the Commons: Cultural and Educational Sites of Resistance and Affirmation*, 2006, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-105014035309&partnerID=40&md5=e40325bf87e10c0057c05cd1c8c66cd4>.

²⁹ Carlo Inverardi-Ferri, "Field Systems and Enclosure," in *International Encyclopedia of Human Geography* (Elsevier, 2020), 91–96, <https://doi.org/10.1016/B978-0-08-102295-5.10463-9>.

In addition to being a new enclosure of the commons, Rights to Cultivate in the Capital City of Nusantara are also a manifestation of territorialisation by regulation, namely the control of space through legal instruments that subtly create a new spatial order for the interests of capital. The granting of a very long period for investors to utilize rights to cultivate creates a negative impression. The state effectively creates an exclusive space that is privately controlled, while also illustrating how the process of territorialization through regulation works. Public land is remapped and regulated to favor the interests of capital through legal instruments that appear administrative but are actually infused with the logic of new forms of control. Territorialisation through regulation refers to the process of using legal and administrative frameworks to define and control the use and management of land.³⁰

The state is currently facing the challenge of consistency with the mandate of the Constitution, particularly Article 33 of the 1945 Constitution, which concerns the state's obligation to manage natural resources for the benefit of its people. The article explicitly affirms that the earth, water, and natural resources contained within them are controlled by the state and used for the greatest prosperity of the people. However, the policy of granting Rights to Cultivate in the Capital City of Nusantara for up to 190 years shows a shift in meaning from "state control for the people" to "state control for capital." The state interprets the word "controlled" not as a mandate for management in the collective welfare, but as a legitimacy to hand over control to corporations in the name of efficiency and investment.

The policy is not fully aligned with the spirit of human rights in the 1945 Constitution, which places the people as the main subjects of development. The policy of Rights to Cultivate in the Capital City of Nusantara reveals a tendency for the state to act as an agent that legitimizes the privatization of public space, which has the potential to exacerbate social inequality. Article 33 of the 1945 Constitution, which should serve as the moral and political foundation for resource

³⁰ A.O. Tavares et al., "Land Use Change and Forest Routing in a Rural Context: The Relevance of the Community-Based Management and Planning Framework," *Applied Geography* 52 (August 2014): 153–71, <https://doi.org/10.1016/j.apgeog.2014.05.008>.

management, is reduced to merely an ideological ornament without corrective power over increasingly market-oriented economic policies.

Furthermore, the consistency of the state is also worthy of questioning in relation to the fulfillment of economic, social, and cultural rights that have been legally guaranteed, both in the Constitution and through international commitments. Indonesia does not merely express moral support for the principles of human rights, but has officially ratified the International Covenant on Economic, Social, and Cultural Rights through Law Number 11 of 2005. This ratification affirms that the state has active obligations (positive obligations) to respect, protect, and fulfill these rights, including the right to land, adequate housing, employment, and participation in development. The state no longer acts as a protector of its citizens' social rights, but has transformed into a mediator between the people and the interests of capital. The right to land, as one of the main dimensions of economic and social rights, is distorted into an instrument of long-term investment. Constitutional promises and international commitments regarding respect for human dignity often become mere legal rhetoric without genuine moral substance. The policy of Rights to Cultivate in the Capital City of Nusantara is not a matter of spatial planning or economics, but a reflection of the state's crisis in commitment to the fundamental rights of its own citizens.

Conclusion

The policy of Rights to Cultivate in the Capital City of Nusantara represents a paradigm shift in resource governance, one that is oriented toward capitalist logic rather than the social function mandated by the Constitution. Rights to Cultivate can be read as a concrete form of accumulation by Dispossession, in which the state actively facilitates capital accumulation through legal mechanisms that gradually displace the collective rights of the people over land. This phenomenon also exhibits symptoms of a double movement, characterized by a tug-of-war between the push for land liberalization and the resistance to the loss of people's living space. Furthermore, this policy exemplifies the practice of territorialization by regulation, in which regulation serves as a tool to reshape space within the framework of capital interests and long-term investment.

This governance highlights the decline of the state in fulfilling its responsibilities as the guarantor of human rights obligations. The choice of a new enclosure model for the commons causes the neglect of these responsibilities. The duration of Rights to Cultivate in the Capital City of Nusantara not only deviates from the 1960 Basic Agrarian Law, but also contradicts Article 33 of the 1945 Constitution, which affirms that state control over the earth and natural resources must be used for the greatest prosperity of the people. This policy disregards Indonesia's commitment to economic, social, and cultural rights, as guaranteed in the International Covenant, which has been ratified through Law No. 11 of 2005.

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