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Paradigm Transformation in Land Area of Plantation Cultivation Right from Agrarian Basic Law to Job Creation Law

Setiawan Wicaksono[1], Imam Koeswahyono[1], Iwan Permadi[1], Hanif Nur Widhiyanti[1]

[1]Faculty of Law, Brawijaya University, Malang, Indonesia

*Corresponding Author E-mail : setiawanwicaksono@ub.ac.id

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ABSTRACT

The regulation of land area for plantation cultivation rights (Hak Guna Usaha/HGU) has changed from 1960 to 2023. Paradigm theory is one of the theories that examines why and what reasons lie behind written regulations. When legal changes occur, a paradigm shift also takes place. This article addresses the issue of what paradigm is used to determine the land area for plantation cultivation rights in several laws and whether a paradigm shift has occurred. A normative research method is chosen to examine the provisions regarding the land area of cultivation rights in four laws. The analysis uses a systematic, conceptual, and historical approach. This study shows a shift in paradigm in the granting of cultivation rights, particularly from 1960, which emphasized social justice, to 2023, which prioritizes economic interests.

Keywords: Cultivation Rights, Plantation, Land Area, Paradigm.

1. INTRODUCTION

Right of Cultivation (Hak Guna Usaha/HGU) as a land law instrument plays a vital and strategic role within the framework of Indonesia's legal development. The discourse on national legal development gained prominence during the New Order regime as a response to the inadequacies of the prevailing regulations at the time. National legal development on many occasions is associated with economic development, with law positioned as a source of norms and social order (Isdiyanto, 2018). In the past, when the New Order regime was in place, economic development was a major concern for Indonesia. The Indonesia government put in big efforts to restore the economic situation post-independence. Indonesia's independence declaration in 1945 did not automatically abolish policies and economic practices left by Japan and the Netherlands. The Netherlands' economic blockade, together with the circulation of Japanese, Indonesian, and Netherlands currencies, complicated the determination of exchange rates (Hayati et al., 2024). Against this background**,** law was perceived as an instrument capable of stabilizing political and economic conditions while advancing democratization (Rajab, 2004).

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The term "national legal development" is often equated with “national legal reform” in both academic discourse and practice, given the substantive overlap between the two. National legal reform, in the context of the legal system, encompasses law enforcement, legal norms, legal structures, legal behavior, and even legal culture. Although the notion of national legal development is often employed in academic inquiry (Mandala, 2024), the theoretical framework can also be applied to examine specific legal norms and the ways in which they have evolved.

One of the national legal developments that warrants closer examination is the regulation of cultivation rights, particularly with regard to land allocation for plantation purposes. Written regulations on land allocation and rights for plantations were administratively done by the colonial government, the Netherlands, when they invaded and occupied Indonesia. At that time, the Netherlands' legal development policy applied dan institutionalized Western law in Indonesia. Prior to colonial rule, customary law (*hukum adat*) governed agrarian relations. Customary law character is unwritten and often not codified in manuscripts, albeit in a less systematic form. For example, the Sultan Adam Statute illustrates the codification of customary provisions, including articles regulating tenancy arrangements and land ownership structures at individual, familial, and royal levels (Ahmadi Hasan & Ali Mu’ammar, 2024). Customary law's biggest contribution to Indonesian agrarian law is the concepts of tenancy, possession, and ownership, whether individual or communal, even by a monarchy (Utami et al., 2024).

The concept of land or agrarian rights in customary law, by the colonial government fundamentally seen different from the perspective of Western law. The most striking distinction lay in how the relationship between land, individuals, and the community was conceived. The communities governed land through a communal perspective that emphasized collective ownership, while still considering the economic utility of land. Western law, meanwhile, insisted on a sharp division between public and private domains, individuals, and the categories of movable and immovable property. Such distinctions, deeply rooted in individual rights, were considered incompatible with the communal orientation of customary law (Hiscock & Allan, 1982). Within this Western legal framework, the individualistic right most commonly granted for plantations was *erfpacht* (right of cultivation). Archival evidence shows that *erfpacht* functioned as a leasehold arrangement, granting rights to cultivate plantations (TERMORSHUIZEN-ARTS, 2000). Historical records from Suriname indicate that *erfpacht* did not operate as a lease or a tax arrangement; rather, it conveyed a form of quasi-ownership, though it still fell short of *eigendom*. *Erfpacht* itself entailed rights not only to farm and reside on the land but also to exercise certain public functions, including territorial authority and taxation. It also imposes

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restrictions on land transfer, requiring prior approval from the government (DE BL COURT, 1922).

Following Indonesia's independence, and driven by the aspiration to end the dualism of agrarian law, Law No. 5 of 1960 concerning the Basic Agrarian Principles (hereinafter referred to as the UUPA) was enacted. The UUPA abolished the validity of *erfpacht* rights and simultaneously brought an end to the coexistence of Western civil law and customary law in agrarian matters (Nurjannah, 2014). Under this framework, the right conferred upon plantations was the Right of Cultivation (*Hak Guna Usaha/HGU*), as regulated in Articles 28 and 29 of the UUPA. These provisions authorized holders to cultivate land that remained directly under state control (Febrianasari et al., 2021), including for plantation purposes.

A notable distinction between the Right of Cultivation and *erfpacht* lay in the more specific provisions regarding land area and the duration of tenure. The land area eligible for cultivation rights was set at a minimum of five hectares and a maximum of twenty-five hectares (Article 8(2) of Law No. 5 of 1960 on the Basic Agrarian Principles, 1960). The duration of cultivation rights was granted in stages. The initial grant could last up to twenty-five years or thirty-five years, depending on the needs of the enterprise. A subsequent grant or extension could be issued for a maximum of twenty-five years (Article 29 of Law No. 5 of 1960 on the Basic Agrarian Principles, 1960).

The regulation of land area eligible to be granted under the Right of Cultivation (*Hak Guna Usaha/HGU*) has undergone dynamic changes following the enactment of the UUPA. The table below shows these regulatory adjustments.

Table 1. Right of Cultivation Land Area Regulation After UUPA

No	Legislation	Article	Material
1.	Act Number 18 of 2004 on Plantation	Article 10 (1) and (2)	The Ministry of Agriculture determines the land area for the Right of Cultivation (Hak Guna Usaha/HGU) of plantations based on considerations of commodity, agroclimatic land availability, capital, processing capacity, population density, business development models, geographical conditions, and

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			technological advancements.
2.	Act Number 39 of 2014 on Plantation	Article 14 (1) and (2)	The Ministry of Agriculture determines the land area for the Right of Cultivation (Hak Guna Usaha/HGU) of plantations, guided by considerations of commodity, land availability in accordance with agroclimatic conditions, capital, processing capacity, population density, business development, geographical characteristics, technological progress, and the compatibility of land use with spatial functions.
3	Act Number 6 of 2023 on Enactment of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law	Part Four, Paragraph Three, Article 29, Section 1, Article 14 of Law No. 6 of 2023.	The Ministry of Agriculture determines the land area for the Right of Cultivation (Hak Guna Usaha/HGU) of plantations, based on commodity and agroclimatic land availability.
Sources: processed from Indonesia legislation			

The evolving regulation of land area limitation under the Right of Cultivation (*Hak Guna Usaha/HGU*) must be examined as part of the broader project of national legal development, in order to identify shifts in direction within agrarian and Plantation law. Such an inquiry can be pursued through the exploration of legal paradigms. In a previous article entitled *"Measuring the Gene of Indonesian Law as the Basis of National Legal Development,"* Isdiyanto emphasizes the necessity of incorporating customary law values, as articulated by Soerjono Soekanto, into the paradigm of national legal development to address its existing weaknesses (Isdiyanto, 2018). The other scholarly work, *"The Paradigm of Environmental Ethics Philosophy in Determining the Direction of Environmental Law Policy,"* by M. Yasir Said and Yati Nurhayati, reveals a paradigm shift in environmental regulation from anthropocentrism to ecocentrism. Such a shift is significant,

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as it aligns with the philosophical values of environmental ethics (Said & Nurhayati, 2020). Similarly, Al Munir's research, *"The Paradigm of Environmental Ethics: Anthropocentrism, Biocentrism, and Ecocentrism,"* analyzes how environmental ethics and environmental law can be influenced by these three paradigms (Al Munir, 2023).

No scholarly work has been identified recently that specifically addresses the legal paradigm governing the land area of cultivation rights for plantations. Accordingly, this research will be the first to seek and analyze the transformation of the legal paradigm regulating plantation cultivation rights from 1960 to 2023.

2. RESEARCH METHOD

The research method employed in this article is normative juridical. This method was chosen because the study focus on legal provisions and norms(Munir Fuady, 2018), specifically those articulated in Article 28 of the Basic Agrarian Law (UUPA), Article 10 of Law No. 18 of 2004 on Plantations, Article 14 of Law No. 39 of 2014 on Plantations, and Part Four, Paragraph Three, Article 29, Section 1, Article 14 of Law No. 6 of 2023 on Enactment of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. By applying this approach, the research seeks not only to interpret the formal content of the law but also to uncover the underlying values and directions embedded within these legal frameworks. In this way, the method allows for a deeper understanding of how shifts in legal regulation reflect broader paradigms in Indonesia's agrarian development.

This study employs systematic, conceptual, and historical approaches (Munir Fuady, 2018). It begins by tracing the regulatory changes concerning plantation cultivation rights from 1960 to 2023. Subsequently, the relevant statutory provisions are examined systematically, highlighting continuity and change over this period. A detailed textual and contextual analysis of these provisions is then undertaken to uncover the underlying concepts of regulation across different eras. Finally, the regulatory concepts identified are analyzed to reveal the values or philosophical foundations embedded in each legal framework. The values reflected in the regulation of cultivation rights from 1960 to 2023 are expected to demonstrate whether a paradigm shift in legal regulation has occurred.

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3. RESULTS AND DISCUSSION

The Paradigm of Cultivation Rights for Plantation Land Area under the Basic Agrarian Law (UUPA)

Basic Agrarian Law (Undang-Undang Pokok Agraria/UUPA) enactment on 24 September 1960 marked a significant turning point in the development of national land law. This statute provided the legal framework governing land ownership in Indonesia. Major shift introduced by the UUPA was the discontinuation of land rights previously governed by Western civil law, such as *eigendom*, *erfpacht*, and *opstal*, which were codified under Book II of the Indonesian Civil Code and reflected an individualistic and liberal orientation (Harahap et al., 2020). In contrast**,** the post-independence construction of national law was guided by *Pancasila* as both state ideology and legal philosophy, particularly in realizing social welfare and justice for the people (Supryadi et al., 2023). Customary law (*hukum adat*), as the living law in Indonesian society, was recognized as an important material source of agrarian law (Supryadi et al., 2023). Its incorporation into the UUPA was not wholesale; rather, it underwent a process of selection and adaptation to align with national interests and religious values, thereby emphasizing justice (Fathoni, 2021).

The replacement of Western civil law principles with the national agrarian system embodied in the UUPA introduced a paradigm shift in land rights for plantations. Specifically**,** the designation of land rights changed from *erfpacht* to the *Right of Cultivation* (*Hak Guna Usaha/HGU*). Existing plantation holdings, land right previously named as *erfpacht*, were converted into cultivation rights pursuant to the Regulation of the Minister of Agrarian Affairs No. 2 of 1960 concerning the Implementation of the UUPA and Government Regulation No. 10 of 1961. Thus, this regulatory change was more than administrative; it constituted a strategic reorganization of land tenure. For instance**,** small-scale plantations formerly held under *erfpacht* were converted into individual ownership rights. At the same time, larger estates were reclassified under cultivation rights, thereby ensuring a more systematic and state-controlled management regime.

Colonial land tenure practices had adversely affected the socio-economic position of farmers. In the case of Bali, for example, the arrival of Dutch colonial rule in the nineteenth century fundamentally altered the socio-economic structure of rural society. Before colonial intervention, land was controlled by local kingdoms and distributed to peasants under sharecropping systems, which placed peasants at the center of the social hierarchy. Colonial policy force land registration to facilitate taxation and gradually replaced local governance structures with

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a centralized colonial administration. Local peasant leaders were transformed into government officials tasked with maintaining land registries.

Furthermore, colonial authorities pursued export-oriented production, compelling peasants to divert much of their output for external markets, often at the expense of subsistence needs. As a result, peasant landholdings dwindled to an average of one hectare, giving rise to significant land inequality (Sumakto, 2015). This colonial model affects and changes traditional agrarian practices to capitalist production, reshaping peasants from key actors in rural hierarchies into mere instruments of production (Hoogervorst & Nordholt, 2017).

This inequitable colonial structure was replaced through the introduction of cultivation rights, which reflected a stronger orientation toward social justice and state control. Under Ministerial Regulation No. 2 of 1960, *erfpacht* lands were converted into cultivation rights (Articles 15 and 16). Then, the UUPA introduced specific provisions concerning the minimum and maximum size of cultivation rights. The "Yogyakarta Agrarian Committee" initially proposed conceptual guidelines for redistributing agricultural land, which included setting minimum and maximum thresholds. The Jakarta Agrarian Committee refined this proposal, suggesting a minimum of two hectares for farmers and a maximum of twenty-five hectares per family (Harsono, 2013). Eventually, these ideas were consolidated into the UUPA, which established a minimum of five hectares and a maximum of twenty-five hectares.

The minimum and maximum limits of land area for cultivation rights under the UUPA were based on both operational and social considerations. Operationally, agricultural production required minimum land sizes. For example, rice cultivation requires planting distances of approximately 27 by 27 cm (Department of Agriculture, n.d.). In comparison, maize requires spacing of around 100 by 40 cm (Food Security and Agriculture Office, n.d.), making maize more land-intensive than rice. Accordingly, the UUPA prohibited excessively fragmented holdings, recognizing that farming on very small plots was not viable, particularly given the labor and mechanization demands of modern agriculture (Parlindungan, 1992). Socially, the provisions sought to redress inequality perpetuated by feudal systems such as *apanage* and *bekel* in Surakarta and Yogyakarta, which had fostered exploitative relations between landlords and peasants. These systems enabled large agricultural enterprises to reap significant profits while leaving small farmers in poverty (Harsono, 2013). Therefore, the UUPA's land ceiling was designed to mitigate such inequities by limiting both ownership and exploitation.

More broadly, the UUPA and its implementing regulations reflected Indonesia's commitment to socialist principles, which conceptualized land as a collective resource that must

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serve the common good. The Indonesia government tries to encourage agricultural productivity while ensuring that large plantations do not marginalize smallholders. In this sense, the UUPA was not only about redistributing land but also about creating a more equitable agricultural economy. For instance, Government Regulation in Lieu of Law (Perpu) No. 38 of 1960 on the Use and Allocation of Land for Certain Crops authorized the Minister of Agrarian Affairs to determine minimum and maximum sizes for certain crop areas, taking into account geographic and operational considerations (Articles 1 and 2). Moreover, the Minister was also empowered to require large companies to contribute to the welfare of surrounding communities (Article 5).

The social and economic dimensions of land use have a tight relation to the UUPA's implementation. By preventing large plantations from monopolizing land, while prioritizing essential crops such as rice and sugar, the government aimed to safeguard both national food security and smallholder livelihoods. For example, the general explanatory in Government Regulation in Lieu of Law No. 38 of 1960 provides an illustrative case: tobacco production, due to its high profitability, displaced sugar plantations, forcing sugar mills to lease scattered and less fertile lands. This situation reduced sugar output, despite its importance to domestic consumption. The Minister of Agrarian Affairs, to solve this issue, was authorized to mandate minimum land allocations for critical crops like rice and sugar.

Ultimately, the UUPA sought to dismantle entrenched land monopolies by the elite and redistribute land to ordinary people in pursuit of social justice. Its vision was explicitly tied to the broader national agenda of promoting public welfare through equitable land distribution. Hence, by regulating cultivation rights, both for individuals and corporations, the UUPA laid the foundation for what has been described as "Indonesian socialism." According to Sutan Sjahrir, Indonesian socialism was a form of people's socialism (*sosialisme kerakyatan*), aimed at achieving social justice across all segments of society, not just for workers or the marginalized. This form of socialism was adopted in Indonesia between 1945 and 1960, a period when the nation had not yet entered an industrial stage. It emphasized democracy, peaceful processes, and the avoidance of fascism, while upholding humanitarian values and protecting individual rights. The ultimate goal was to establish a just and prosperous state (Miqdad & Munigar, 2024). While socialism globally was associated with collective ownership of the means of production to eradicate inequality—ideas most prominently advanced by Karl Marx (Wiratama et al., 2022)—Indonesia localized these principles under President Soekarno. Indeed, his doctrine of *Marhaenism* envisioned social justice and prosperity through collective solidarity (*gotong royong*) and kinship-based economic practices, values enshrined in *Pancasila* (Wiratama et al., 2022).

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The Paradigm of Cultivation Rights for Plantation Land Area under the Act Number 18 of 2004 on Plantation

In the academic manuscript of the 2004 Plantation Law, the House of Representatives (DPR) identified several prevailing conditions and challenges in plantation practices across Indonesia. These issues included: (i) the lack of integration between central and regional government regulations (Draft Plantation Law, 2003); (ii) persistent disputes and conflicts between smallholders, peasant farmers, and large-scale plantations, often arising from unfair profit-sharing schemes that fostered monopolistic or oligopolistic practices; and (iii) the absence of specific provisions in the UUPA regarding plantation land size, as the law applied the same rules to agriculture, livestock, and fisheries (Draft Plantation Law, 2003).

In legal scholarship, the concepts of *legal vacuum* and *normative incompleteness* are well known. A *legal vacuum* arises when there is no governing provision, while normative incompleteness occurs when existing rules fail to regulate comprehensively (Rifai, 2010). The plantation sector relied largely on the provisions of the UUPA and its implementing regulations. Consequently, while plantations were subject to regulation, the framework did not address all aspects comprehensively. Notably absent were rules concerning cultivation practices, business scale, marketing, land clearing, and other operational matters. Therefore, the proposed Plantation Law was designed to regulate these dimensions comprehensively.

The DPR's plantation proposal aims a clarity, coherence, and completeness (Ministry of Education and Culture of Indonesia, 2016), aimed at ensuring legal certainty for the plantation sector. Specifically, it sought to provide a regulatory foundation that would guide sustainable plantation development while ensuring legal protection for all stakeholders, including plantation enterprises, surrounding communities, and relevant government ministries (Draft Plantation Law, 2003). Importantly, the bill was envisioned as a *lex specialis* in relation to the UUPA. As a legal doctrine, *lex specialis* refers to a principle that allows specialized laws to take precedence over general laws (Gede Atmadja, 2018). Although this principle was not explicitly stated, it guided legislators in formulating plantation-specific provisions consistent with broader legal values and sectoral priorities (Gede Atmadja, 2018).

In line with Article 33 of the 1945 Constitution, which mandates that natural resources be managed for the greatest benefit of the people, the Plantation Law draft emphasized legal certainty in areas such as land tenure, business licensing, the protection of farmers' and workers' rights, and environmental conservation. At the same time, it underscored the central role of the state in supervising and fostering the plantation sector to enhance productivity and contribute to social

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welfare (Draft Plantation Law, 2003. The bill was further expected to address agrarian conflicts, unequal access to land, and investment uncertainty. With such a foundation, it was anticipated that harmonious collaboration between farmers, corporations, and the government could be achieved, thereby advancing strategic goals such as boosting exports, developing agricultural technology, and promoting sustainable practices (Draft Plantation Law, 2003).

The draft initially proposed a maximum cultivation right of 100,000 hectares, though it offered no clear justification for this figure. This idea sparked debate, particularly given that it overlooked the interests of smallholders and landless peasants. According to the Indonesian Dictionary (*Kamus Besar Bahasa Indonesia*), a farmer is defined as a person whose occupation is cultivating land(Ministry of Education and Culture of Indonesia, 2016) . Several subcategories of farmers exist, including *petani berdasi* (entrepreneurial farmers), *petani gurem* (smallholders with less than 0.25 hectares), and *petani tunakisma*(landless peasants) (Ministry of Education and Culture of Indonesia, 2016). However, the draft law largely neglected the latter two categories. Scholars such as Gunawan Wiradi and Dianto Bachriadi highlight two categories of peasants most affected by land inequality: landholder peasants, who cultivate small plots for subsistence, and landless peasants, who lack land entirely (Bachriadi & Wiradi, 2011). This distinction is critical, as inequality stemmed from the disproportionate landholdings of large plantations relative to the much smaller plots cultivated by millions of farmers.

Land control has long been contested, particularly in relation to agrarian reform and its economic-political implications. Indeed, in many countries, economic crises often foster the emergence of new conglomerates or cartels, which exacerbate land inequality. Moreover, neoliberal practices frequently convert smallholdings into corporate estates, deepening disparities in access to land (McSweeney & Coomes, 2020). In the Indonesian context, land and natural resources fall under state authority and must be managed to ensure public prosperity. Article 33(3) of the 1945 Constitution affirms that while the state serves as the administrator, ultimate ownership of natural resources resides with the people, with the state merely holding such resources in trust (Hayati, 2019). Thus, restrictions on plantation land size under the draft bill were intended to uphold this constitutional mandate by balancing the interests of corporations and smallholders.

The draft bill, at the same time, reflected a vision of plantations not only as generators of foreign exchange but also as providers of employment, income, and broader economic growth. During this period, commodities such as rubber, tea, and palm oil were key export earners (Sufriadi, 2022). This perspective was reinforced in legislative debates, with political factions such

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as the Indonesian Democratic Party of Struggle (Partai Demokrasi Perjuangan Indonesia Responses on Draft Plantation Law, 2002) and Golkar (Partai Golongan Karya Respones on Draft Plantation Law, 2022)emphasizing the plantation sector's contribution to national development while acknowledging its unresolved challenges.

The 2004 Plantation Law was ultimately expected to create a legal ecosystem that supported the sustainable growth of the plantation industry within the framework of national economic development. In principle, its underlying philosophy reflected distributive justice in the plantation economy, ensuring that the benefits of the sector would be more evenly shared among large enterprises, smallholders, and local communities. Accordingly, the governance of plantations was expected to embody values of fairness, transparency, professionalism, and accountability. Integrating cultivation, processing, marketing, and supporting activities was viewed as essential to maximizing the sector's contribution to national development. By expanding opportunities for participation, plantations were anticipated to enhance value addition and generate more equitable income distribution.

Notably, this philosophy remained largely unchanged in subsequent legislation, including the 2014 Plantation Law, which retained many of the principles articulated in the 2004 draft. Therefore, the regulation of plantation land size illustrates how lawmakers sought to balance economic growth with fairness toward farmers and surrounding communities.

The Paradigm of Cultivation Rights for Plantation Land Area under the Act Number 39 of 2014 on Plantation

Act Number 18 of 2004 on Plantations did not establish clear provisions on the maximum size of cultivation rights (*Hak Guna Usaha/HGU*) that could be held by individuals or plantation companies. This regulatory gap raised concerns about potential adverse consequences. Evidence shows that the majority of cultivation rights were already concentrated in the hands of large plantation enterprises. Such concentration posed risks of diminishing land availability for surrounding communities and indigenous peoples. Reduced land access frequently gave rise to land disputes and agrarian conflicts between local communities and plantation corporations (Academic Manuscript of Plantation Law, 2013). Actual cases of conflict substantiated these concerns. For instance, between 2011 and 2012, ten land disputes were recorded in Jambi involving communities and plantation companies. Of these, seven cases revolved around competing claims to land ownership between local communities and holders of cultivation rights, while three cases arose from unfair partnership arrangements. In many of these cases, partnership

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schemes were imbalanced, creating relationships that lacked mutual benefit and equity (Sutaryono et al., 2012).

Amendments proposed in the Act Number 18 of 2004 on Plantation did not focus on revising the minimum or maximum land size. The changes only added a new guideline requiring that "land use must conform to spatial planning in accordance with statutory provisions on spatial planning." This regulation reflected growing concerns about the conversion of forests into plantation areas. Indeed, such conversions had severe ecological consequences, including the homogenization of ecosystems, increased flooding, and peatland fires. One underlying cause was the absence of coherent spatial planning policies capable of restricting forest conversion (Academic Manuscript of Plantation Law, 2013).

In practice, Permanent Production Forests (*Hutan Produksi Tetap/HP*) could be reclassified as Convertible Production Forests (*Hutan Produksi Konversi/HPK*) and subsequently released for plantation development. Notably, the Spatial Planning Law (Act Number 24 of 1992) did not regulate forest areas until 2007, and therefore could not prevent such conversions. Even after the enactment of the 2007 Spatial Planning Law (Act Number 26 of 2007), there remained no explicit prohibition against converting forest areas into plantations.

Data from the Ministry of Agriculture between 2000 and 2009, further analyzed by Forest Watch Indonesia, reveal extensive forest-to-plantation conversion during this period. Significantly, the trend became particularly pronounced after 2004, the year of the first Plantation Act. Between 2004 and 2009, deforestation rates accelerated, with annual land conversion ranging from 0.20 to 1.6 million hectares. In 2004, approximately 5.28 million hectares of forest had already been converted into oil palm plantations, increasing to 8.42 million hectares by 2009.

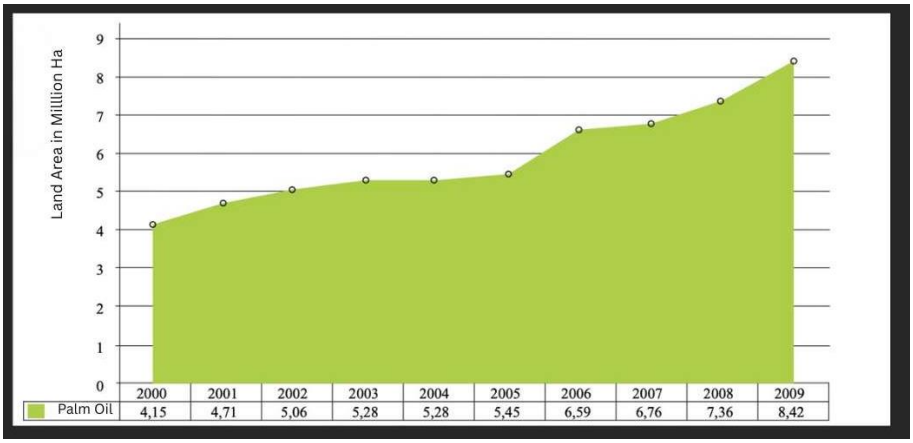

Figure 1. Palm Oil Plantation Land Area Increase in Indonesia from 2004 to 2009

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The figure above illustrates that forest areas in Indonesia have experienced deforestation as a result of land conversion for oil palm plantations. This trend has been evident since the early 2000s, yet because the first Plantation Law was enacted in 2004, the focus here is on the period from 2004 to 2009. During these years, deforestation accelerated, with land conversion increasing annually by approximately 0.20 to 1.6 million hectares. In 2004, an estimated 5.28 million hectares of forest had already been converted into oil palm plantations, and by 2009 this figure had risen to 8.42 million hectares. The root of this extensive land conversion lies in the authority granted under Article 4(2) of Act No. 41 of 1999 on Forestry, which empowers the state to designate forest areas and to reclassify them as non-forest areas. The legal sanctioning of such conversions—transforming forests into non-forest areas such as plantations—represents a manifestation of a capital-oriented development agenda. In practice, this authority has primarily served the interests of capitalist actors, particularly plantation enterprises, under the banner of national development (Maladi, 2013).

Forests hold a strategic position and serve multiple functions; therefore, forest areas must be given protection against land conversion. Forests, at least, have three essential functions: economic, social, and ecological. The economic function is tied to both tangible and intangible benefits. Forest products—such as timber and non-timber crops—can be traded in markets (tangible); on the other hand, they also provide resources for daily subsistence and community use. From a social perspective, forests are deeply intertwined with the lives of surrounding communities. Traditions, cultural practices, and patterns of social interaction are often shaped by the forest and the human relationships it fosters. Ecologically, forests perform crucial *intangible* roles as regulators of the ecosystem. They ensure the availability of clean water, maintain air quality, and influence local and global climates (Roslinda et al., 2025). The Plantation Act was designed, at least in principle, to safeguard these diverse functions and benefits of forests. It sought to achieve this by incorporating spatial planning provisions, thereby embedding ecological considerations into the legal framework for plantation development.

Land conversion was not confined to forests but also extended to paddy fields. At Banyuasin Regency, paddy field area declined from 225,237 hectares in 2007 to 172,263 hectares in 2010, while plantation land expanded from 120,424 hectares to 194,145 hectares over the same period (Fitriyana, 2018). It was only later, through the 2009 Sustainable Agricultural Land Protection Law (Act No. 41 of 2009) and its implementing regulations, that legal protection for agricultural land was introduced, explicitly to prevent such conversions. Plantations were not considered a legitimate basis for the conversion of agricultural land under these laws (Dewi, 2022).

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Land-use conversion has become an inevitable consequence of regional expansion and diverse human demands on land resources. In theory, land conversion refers to the transformation of land functions, either wholly or partially, from their original designation (Amir, 2018). Land conversion is often justified as meeting human needs and improving quality of life; in practice, such conversions have disproportionately benefited capital owners, exacerbating inequality in land control (Amir, 2018). According to Sutarjo, spatial planning is intrinsically linked to the fulfillment of human activities and the organization of space for sustaining life (Pradana, 2024).

Thus, the 2014 Plantation Act reflected a paradigm that, while seeking to regulate land allocation and prevent environmental degradation through spatial planning, remained capital-oriented in practice. In short, it sought to balance economic expansion in the plantation sector with the protection of ecological and social interests, yet its implementation revealed enduring tensions between these competing objectives.

The Paradigm of Cultivation Rights for Plantation Land Area under the Act Number 6 of 2023 on Job Creation

Act No. 6 of 2023, which ratified Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, repealed the provisions on land size limits for cultivation rights (*Hak Guna Usaha/HGU*) that had been contained in Law No. 39 of 2014 on Plantations. Under the 2023 Job Creation Law, the allocation of cultivation rights is now determined solely on the basis of crop type and agroclimatic land availability (Part Four, Paragraph Three, Article 29 Section 1, Article 14 of Law No. 6 of 2023.).

The 2023 Job Creation Law originated from Law No. 11 of 2020, which was declared conditionally unconstitutional by the Constitutional Court in Decision No. 91/PUU-XVIII/2020, primarily due to inadequate public participation in its drafting (Arifin, 2021). The Supreme Court ordered its revision within two years (Constitutional Court of the Republic of Indonesia, 2021). This legislation employed the *omnibus law* approach, consolidating numerous provisions across different sectors into a single statute (Gunanegara, 2022).

The government presented the enactment of the 2023 Job Creation Act as a response to the economic crisis precipitated by the COVID-19 pandemic. In this context, the law sought to create a more favorable investment climate and to stimulate job creation. The government invoked the constitutional doctrine of “compelling urgency” (*kegentingan yang memaksa*), as provided in Article 22 of the 1945 Constitution, to justify issuing a government regulation in lieu of law (Nazdirulloh & Hariri, 2023). Indonesia's Domestic Product growth fell–2.07% in 2020, marking Indonesia's sharpest contraction since the Asian financial crisis. The results, unemployment rose to

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7.07% by August 2020, while poverty increased, and many small and medium enterprises either closed or downsized their workforce (Sasmiharti & Karyati, 2024). Furthermore, the national budget deficit climbed to 6.27% of Gross Domestic Product (Indayani & Hartono, 2020). The Job Creation Act also aligned with Indonesia's long-term development vision, *Indonesia Emas 2025*, which aspires to transform the country into a developed economy. Indonesia faces the "middle-income trap," characterized by limited capacity to move beyond labor-intensive production. Low wages and weak productivity hinder competitiveness in higher value-added industries. Indonesia's average annual growth has stagnated at 3.5%, far below the 5.42% typical of advanced economies (Lisnawati, 2024).

The Academic Manuscript of the Job Creation Bill outlined several structural challenges (Academic Manuscript of Job Creation Law, 2020)(Academic Manuscript of Job Creation Law, 2020):

1. Indonesia aims to achieve a per capita income of IDR 320 million by 2045. At a growth rate of 5% per year, this target would take 13 years, whereas a 6% growth rate is necessary. The 2020–2024 Medium-Term Development Plan relied on employment expansion, capital investment, and total factor productivity, targeting increased labor force participation (70%), investment growth (7–8.1% per year), and productivity gains (30–40%).
2. Investment processes in Indonesia were deemed overly complex relative to neighboring ASEAN states, requiring multiple permits from different ministries and agencies. For example, electricity projects required 19 permits, while resort projects needed 22. Thus, regulatory fragmentation contributed to uncertainty, reduced investor interest, and weakened bureaucratic reform efforts. Indonesia's investment regulations remain fragmented. The Negative Investment List (*Daftar Negatif Investasi/DNI*) under Act Number. 25 of 2007 on Investment and its implementing regulations identifies 20 business sectors as fully closed and 495 sectors as conditionally open—figures that represent the highest number in the ASEAN region.
3. Indonesia is currently experiencing a demographic bonus, with a projected ratio of 60 productive workers for every 100 inhabitants. This workforce contribution is estimated to boost economic growth by approximately 0.2% annually until the period of 2030–2034. However, the labor market faces serious challenges: out of a total labor force of 138.18 million people, 129.36 million are employed, and the majority (76.12%) possess, at most, a secondary level of education. The relatively low level of education leaves much of the

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workforce vulnerable to the growing impact of technological disruption. Ironically, national development policies emphasize technological adoption and the strengthening of manufacturing industries to enhance corporate economic value—strategies that may inadvertently reduce labor absorption. Lessons from South Korea and Taiwan demonstrate, however, that improving the quality of human capital can accelerate economic growth. These cases suggest that without parallel Investment in education and skills development, Indonesia risks squandering its demographic advantage.

4. Business licensing regulations in Indonesia are marked by complexity, overlap, and inconsistency across sectors, as well as between central and regional levels of government. In 2016, approximately 180 regulations governing business licensing were identified, forcing enterprises to comply with a wide range of requirements. Frequently, these procedures and permits contained similar provisions, differing only in terminology or nomenclature. Such conditions created legal uncertainty and multiple interpretations of the licensing process, ultimately complicating business activities rather than facilitating them. Efforts to simplify these regulations through Government Regulation Number. 24 of 2018 on Integrated Electronic Business Licensing Services (Pelayanan Perizinan Berusaha Terintegrasi Secara Elektronik) encountered significant obstacles, as the regulation clashed with other statutory provisions. Because of its position subordinate to primary legislation, as stipulated in Law No. 12 of 2011 on the Formation of Laws and Regulations, the effectiveness of this Government Regulation was limited. In the end, these shortcomings hindered bureaucratic reform, weakened the investment climate, and diminished investor interest, particularly from abroad.

The simplification, reducing the requirements, of cultivation rights regulation under the Job Creation Act must be understood in terms of both licensing and economic policy. From a licensing perspective, eliminating overlapping guidelines accelerated the approval process for plantation investment. Rather than considering factors such as business scale, technology, and spatial planning, as required under the 2014 Plantation Law, applications were streamlined to focus only on crop type and agroclimatic conditions. This approach, therefore, reflected the government's broader objective of cutting bureaucratic "red tape" and expediting investment approvals. From an economic perspective, the reform aimed to stimulate new plantation development by lowering barriers for investors. Expanding plantations was expected to generate employment opportunities and increase state revenue, thereby contributing to the government's target of achieving average economic growth of 6% per year. In this sense, the 2023 Job Creation

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Law represents a significant paradigm shift: from a regulatory framework rooted in balancing economic development with spatial planning and environmental protection toward a liberal, investment-oriented model that prioritizes economic recovery and growth. Accordingly, the role of the state shifted from regulator to facilitator of national economic development.

The Paradigm Transformation in Cultivation Rights for Plantation Land Area from 1960 to 2023: The

The regulation of plantation cultivation rights (*Hak Guna Usaha/HGU*) in Indonesia has undergone significant transformations between 1960 and 2023. These changes can be understood as shifts in the legal and policy paradigms governing land tenure, reflecting broader socio-political and economic contexts. In 1960, the Basic Agrarian Law (UUPA) introduced a framework rooted in the values of *Pancasila* and social justice. At that time, the UUPA sought to dismantle colonial land tenure structures and redistribute land more equitably through the imposition of minimum and maximum limits on landholdings. Thus, this regulatory approach emphasized social welfare, agrarian justice, and the eradication of feudal landholding practices. Cultivation rights were explicitly linked to distributive justice, with the state assuming a central role in ensuring fair access to land for smallholders and communities.

The 2004 Plantation Act, in contrast, marked a shift toward a more economic and investment-oriented paradigm. Although it maintained the principle of state supervision, the law emphasized legal certainty for investors and positioned plantations as strategic contributors to economic growth, foreign exchange, and technological development. Notably, the proposal to allow cultivation rights up to 100,000 hectares reflected this orientation, even as it risked exacerbating inequality by marginalizing landless peasants and smallholders. In doctrinal terms, the law adopted a *lex specialis* character vis-à-vis the UUPA, thereby prioritizing sectoral regulation over general agrarian principles.

The 2014 Plantation Law introduced another modification, emphasizing conformity with spatial planning regulations. This change, in turn, reflected mounting ecological concerns, particularly the conversion of forests and paddy fields into plantations. However, while the law maintained the absence of explicit minimum and maximum land limits, it sought to integrate plantation development into spatial planning frameworks. In practice, the continued expansion of oil palm plantations revealed that capital-oriented priorities often overshadowed ecological and social safeguards.

A more dramatic transformation occurred with the 2023 Job Creation Law. By abolishing explicit land size restrictions, the law signaled a decisive move toward liberalization and

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investment facilitation. Instead, regulation of cultivation rights was simplified to focus only on crop type and agroclimatic conditions. This simplification, therefore, reflected the state's transformation from regulator to facilitator of economic growth, particularly in response to the economic crisis triggered by the COVID-19 pandemic. Furthermore, the adoption of the *omnibus law* model underscored the prioritization of efficiency and Investment certainty over participatory and distributive dimensions of agrarian law.

Taken together, these developments illustrate a paradigmatic evolution from a social justice–oriented framework (1960) toward a capital and investment–oriented framework (2004–2023). While the UUPA embodied distributive ideals rooted in Indonesian socialism and *Pancasila*, subsequent legislation increasingly subordinated agrarian justice to economic imperatives. Thus, the trajectory demonstrates how legal paradigms are not static but contingent upon political priorities, economic pressures, and global development discourses.

This shift raises important normative questions. On the one hand, the progressive dismantling of land size restrictions, once intended to prevent monopolization and protect smallholders, risks perpetuating inequality in land control. On the other hand, the prioritization of Investment underscores the enduring tension between promoting economic growth and realizing agrarian justice. Consequently, for Indonesia, the challenge lies in reconciling these competing objectives within a legal framework that ensures both economic dynamism and social equity.

4. CONCLUSION

This research shows state, plantation industry, small farmer interest affect the establishment of plantation cultivation rights regulation that has never been studied before. The regulation of plantation cultivation rights today has move far away from the Basic Agrarian Law of 1960 goals. It can be seen from paradigm shifts shaped by political, economic, and social contexts in 1960 to 2023. The Basic Agrarian Law of 1960 established a justice-oriented framework grounded in *Pancasila*, aiming to dismantle colonial landholding systems and prevent inequality through clear size limits. This distributive approach emphasized state responsibility for protecting smallholders and communities. By 2004, however, regulation shifted toward an investment-driven paradigm, promoting legal certainty for plantation businesses and positioning plantations as engines of economic growth. The 2014 Plantation Law integrated spatial planning to address ecological concerns but still prioritized capital expansion. The most decisive change came with the 2023 Job Creation Law, which abolished land size limits and simplified regulation, signaling a liberal model focused on Investment and rapid growth. Together, these shifts highlight the

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enduring tension between agrarian justice and economic liberalization, underscoring Indonesia's challenge to balance growth, equity, and sustainability.

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