

## Conflict of Norms for Plantation Transfer by the Government in the Labour Creation Law and Presidential Regulation Number 5 of 2025

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### Keywords

*Administration; Conflict of Norms; Plantations*

### ABSTRACT

*The plantation sector in Indonesia has experienced significant regulatory dynamics after the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Labour Creation Law into Law. The provisions in articles 110A and 110B provide administrative options for companies that have opened plantations in forest areas, namely by applying for legalization and paying administrative fines. However, Presidential Regulation Number 5 of 2025 introduces stricter sanctions in the form of land takeovers by the state without going through the administrative process regulated in the law, thus giving rise to a conflict of norms. The purpose of this study is to critically examine the contradictions between the two regulations and evaluate their impact on the legal principles of state administration, especially in the context of legal certainty and legal protection for business actors. The research method used is a normative-juridical approach through literature study and comparative analysis of relevant laws and regulations, as well as a review of administrative legal theories. The study reveals a fundamental inconsistency between the Labour Creation Law, which prioritizes administrative resolution, and Presidential Regulation 5/2025, which imposes direct land takeovers without due administrative process. This disparity creates legal uncertainty, undermines the principle of legality, and threatens the investment climate in the plantation sector. Regulatory harmonization and broad policy dissemination are needed to ensure alignment with the rule of law and promote justice for all stakeholders.*

## INTRODUCTION

One of the natural riches possessed by the Indonesian nation can be seen in the abundance of potential within the agrarian sector (Citrawan, 2015). This agrarian advantage is a vital asset that supports the national economy and the livelihoods of many Indonesians (Alvian & Mujiburohman, 2022). The utilisation and management of plantation land are intrinsically governed by Law No. 5 of 1960 concerning the Basic Agrarian Principles.

In accordance with its constitutional mandate, the Government of the Republic of Indonesia is obliged to optimise the use of the nation's natural resources in order to realise one of the primary objectives of the state: the enhancement of the welfare and prosperity of all citizens (Kasmanedi, 2022). Agriculture, including the plantation sector, is recognised as a vital natural resource under Article 33(3) of the 1945 Constitution of the Republic of Indonesia. Given its strategic importance, the plantation agriculture sector plays a pivotal role within the

national economy and holds substantial potential for sustainable growth and development (Pelawi et al., 2024).

Indonesia explicitly declares itself as a state governed by law (*rechtsstaat*), as stated in the explanatory section of the 1945 Constitution. The principle of *the rule of law* serves to prevent the abuse of power and the arbitrary use of discretion. The government is prohibited from exercising unnecessary privileges or acting outside the bounds of ordinary legal norms. The concept of a legal state encompasses the principles of legality, separation of powers, and judicial independence all of which are intended to restrain the government from acting arbitrarily, tyrannically, or beyond its lawful authority (Latifah, 2020).

The enactment of the Omnibus Law (Job Creation Law) introduced several amendments to key forestry regulations, specifically Law No. 41 of 1999 on Forestry and Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction (P3H). This paper focuses on the implications of Articles 110A and 110B of the Labour Creation Law, particularly Article 37 points 20, which incorporate the legal principle of *ultimum remedium*. This principle denotes that criminal sanctions are to be employed as a last resort, only when other legal approaches have proven ineffective (Bahary et al., 2023).

According to Drupsteen, from the perspective of environmental law, the use of criminal law to regulate environmental issues is inherently limited. Environmental protection should primarily be achieved through the implementation of state-driven environmental policies. These policies may be partially codified in legal norms and statutory regulations, while others are expressed outside the legal framework, such as through environmental education and public awareness initiatives (Faure & Schaffmeister, 2004). Where environmental policies are not legally codified, criminal enforcement is not applicable. Conversely, for those norms that are enshrined in law, criminal law serves more as a complementary measure rather than a primary regulatory instrument (Setiadi, 2017).

The plantation sector in Indonesia has undergone significant regulatory changes following the enactment of Law Number 6 of 2023, which formalized Government Regulation in Lieu of Law Number 2 of 2022 concerning the Job Creation Law. This legislation introduces important legal mechanisms, particularly through Articles 110A and 110B, which offer administrative remedies for companies operating plantations within forest areas. These provisions allow companies to apply for the legalization of their land use and to pay administrative fines as a form of compliance. This approach reflects a more facilitative regulatory stance, aiming to balance environmental governance with economic activity, while providing legal certainty to businesses that may have previously operated in a legal gray area.

However, the regulatory landscape shifted again with the issuance of Presidential Regulation Number 5 of 2025, which introduced more stringent sanctions. Under this regulation, the state is authorized to reclaim land used for plantation activities without the need to follow the administrative processes laid out in the Labour Creation Law. This move has created a conflict of norms between the legislative framework and the executive directive, raising serious questions about the consistency of law enforcement and the protection of legal rights. The tension between these two regulatory instruments has significant implications for legal certainty, due process, and investor confidence in Indonesia's plantation and forestry sectors.

According to the Indonesian Ministry of Environment and Forestry, as of early 2025, over 5 million hectares of plantation land have been involved in disputes over land use, where conflicting regulations have hindered the resolution of legal and environmental issues. The plantation sector, crucial to Indonesia's agricultural exports, now faces increased challenges in maintaining investor confidence and securing long-term business sustainability amidst shifting regulatory landscapes.

In this context, this study critically examines the contradictions between the Job Creation Law and Presidential Regulation Number 5 of 2025. By assessing the legal implications of these conflicting regulations, this research aims to highlight the broader consequences on the plantation sector's legal framework, especially in terms of legal certainty, due process, and the protection of business actors' rights. These factors underscore the urgency for regulatory harmonization and clearer policy dissemination to restore confidence and ensure fair legal protections for all stakeholders in Indonesia's plantation sector.

The purpose of this study is to critically examine the contradictions between the two regulations and evaluate their impact on the legal principles of state administration, especially in the context of legal certainty and legal protection for business actors.

## **METHOD**

The research employs a normative-juridical method (Z. Ali, 2016), utilizing literature review and comparative analysis of relevant laws and regulations (Qamar & Others, 2017). This includes the statute approach (Ibrahim, 2022), which focuses on the examination of codified legal norms, and the analytic approach (Marzuki, 2019), which systematically evaluates legal principles and administrative law theories to construct a coherent legal argument.

This study employs a normative-juridical approach, focusing on the analysis of legal norms and principles through literature study and comparative analysis of relevant laws and regulations. The literature review involves examining primary and secondary legal sources, including statutory laws, government regulations, presidential decrees, and legal commentaries. The sources were selected based on their relevance to the study's focus on the conflicts between Law No. 6 of 2023 concerning the Job Creation Law and Presidential Regulation No. 5 of 2025 regarding land repossession in plantation sectors.

The comparative analysis is guided by legal theory, specifically focusing on normative hierarchy and legal certainty. This framework examines the interaction between higher and subordinate legal instruments, with a particular focus on how Presidential Regulation No. 5/2025 contradicts the procedural mechanisms outlined in the Job Creation Law. The analytic approach is employed to evaluate the theoretical implications of these legal conflicts, drawing from administrative legal theories and principles of legal protection and due process.

## **RESULTS AND DISCUSSION**

### **The Conflict Between Law Number 6 of 2023 on the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation Law and Presidential Regulation Number 5 of 2025**

In recent years, Indonesia's regulatory framework for the plantation sector has experienced notable transformation. A key milestone was the adoption of Law No. 6 of 2023, which ratified Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation Law. This legislation introduced significant legal instruments particularly Articles 110A and 110B that provide administrative pathways for plantation companies operating within forest zones.

Through these provisions, companies are permitted to regularize their land use by submitting legalization requests and paying administrative fines, signalling a more accommodative approach by the government. The intent is to promote legal certainty and

regulatory compliance, especially for entities previously operating in ambiguous legal conditions, while also maintaining a balance between environmental regulation and economic development.

Nonetheless, this regulatory direction shifted with the promulgation of Presidential Regulation No. 5 of 2025, which imposes stricter enforcement measures. The decree grants the state the authority to repossess land used for plantation purposes without adhering to the administrative procedures outlined in the Job Creation Law, thereby reinforcing the state's control over land governance and signalling a more assertive regulatory stance.

In legal studies, the hierarchy *theory* posits that the legal system is structured in a tiered manner, resembling a staircase (Yitawati et al., 2024). This theory conceptualizes the relationship between legal norms as one of spatial subordination, wherein a superior norm governs or validates the actions of an inferior one. Consequently, the validity of the legal system as a unified whole depends on the authority of higher-level norms (Tanya et al., 2018).

In Indonesia, this normative hierarchy is codified in Law Number 12 of 2011 concerning the Formulation of Laws and Regulations. Article 7(1) of the law outlines the formal hierarchy of Indonesian legislation as follows (Asshididiqie & Safa'at, 2021; S., 2021):

1. The 1945 Constitution of the Republic of Indonesia;
2. Decrees of the People's Consultative Assembly;
3. Laws/Government Regulations in Lieu of Laws;
4. Government Regulations;
5. Presidential Regulations;
6. Provincial Regulations;
7. Regency/Municipal Regulations.

Article 7(2) affirms that the legal force of these regulations corresponds to their hierarchical order. Thus, the 1945 Constitution serves as the *basic norm* (as per Hans Kelsen) or the fundamental state law (*Staatsgrundgesetz*, as conceptualized by Nawiaky) (Maria, 2020). This implies two key consequences: first, the Constitution supersedes all subordinate regulations (*lex superior derogat legi inferiori*); and second, the content of the Constitution forms the basis for all subordinate legislation (A. Ali, 2018). Hence, all levels of legislation, from MPR Decrees to local regulations, must conform to the Constitution. According to Ni'matul Huda, any lower-level regulation that contradicts a higher-level one may be annulled or deemed null and void by operation of law (*van rechtswege nietig*) (Bakri, 2015).

Presidential regulation may originate directly from the authority attributed to the President under Article 4 paragraph (1) of the 1945 Constitution, in which case they are referred to as independent presidential regulation. These are issued without the need for prior delegation and reflect the President's constitutional authority. In addition to this, there are also presidential regulation issued based on delegated authority (*delegatie*) from higher legal instruments, such as laws or government regulations, intended to operationalize specific mandates provided by those norms (Huda, 2006).

Importantly, not all presidential regulation are one-time, case-specific determinations (*einmalig*). Some have a regulatory nature, meaning they contain provisions that apply generally and continuously (*dauerhaftig*). These regulatory function similarly to regulations and are meant to guide ongoing administrative conduct.

However, following the enactment of Law No. 10 of 2004 now repealed and replaced by Law No. 12 of 2011 along with its amendments there was a terminological and conceptual shift. Regulatory-type presidential decrees are now formally classified as presidential regulations, while presidential decrees are now limited to those that are determinative in nature, also known as *beschikking* (HR, 2018). According to legal doctrine, a *beschikking* refers to a decision that is individual, concrete, and final affecting specific parties and typically applying once. In contrast, a *regeling* (regulation) is abstract, general in scope, and continuously applicable over time (Husen, 2019).

The issuance of Presidential Regulation No. 5 of 2025 introduces a fundamental conflict within Indonesia's legal system, particularly when examined through the hierarchical framework outlined in Law No. 12 of 2011 on the Formulation of Laws and Regulations. While Law No. 6 of 2023, as a statutory law ratified by the legislature, occupies a superior position in the normative hierarchy (as per Article 7(1)), a presidential decree ranks lower. According to the principle of *lex superior derogat legi inferiori*, any legal instrument with a lower status must not contradict those above it in the hierarchy (Asshiddiqie, 2017). As such, Presidential Regulation No. 5 of 2025, which bypasses the administrative legalization and fine-based compliance mechanisms established by Articles 110A and 110B of the Job Creation Law, represents a potential breach of this core legal principle.

This contradiction creates a state of normative disharmony, which challenges the integrity of the legal system and undermines the principle of legal certainty. Legal certainty requires that legal norms be predictable, stable, and hierarchically consistent (Amin & Others, 2023). When a lower-ranking instrument such as a presidential regulation directly overrides the provisions of a higher law, it creates legal ambiguity for stakeholders, especially business actors in the plantation sector who had previously relied on the procedures of Law No. 6 of 2023 for regularizing their land use.

Moreover, the conflict raises concerns regarding the principle of legal protection, particularly for those who have acted in good faith under the previous regulatory regime (Marzuki, 2021). Businesses that complied with administrative processes under Articles 110A and 110B may now face land confiscation without due process, as permitted by the 2025 decree. This not only retroactively penalizes compliance but also creates a chilling effect for future investors and business operators, who may perceive the regulatory environment as unstable and prone to arbitrary shifts in policy.

Further complicating the matter is the nature of presidential decrees themselves. Based on post-2004 legal developments and reinforced under Law No. 12 of 2011, only *beschikking*-type presidential decrees those that are individual, concrete, and final in nature are formally recognized as presidential decrees. Regulatory provisions intended to apply generally and continuously must be issued in the form of presidential regulations, not decrees (Raharjo, 2021).

Therefore, to the extent that Presidential Regulation No. 5 of 2025 contains general and ongoing regulatory provisions concerning land repossession and enforcement, it may be procedurally flawed not only in terms of normative hierarchy but also in terms of formal classification. This opens the possibility for judicial review, where affected parties could argue that the decree is both substantively invalid (for contradicting a higher law) and formally defective (for being issued in an incorrect legal form).

## The Impact of Legal Conflicts on the Principles of State Administrative Law: A Focus on Legal Certainty and Legal Protection for Business Actors

The Principle of *Lex Superior Derogat Legi Inferiori* refers to a legal doctrine applicable when two or more legislative instruments exist within different hierarchical levels (Pratama et al., 2019). This principle asserts that a higher-ranking law overrides or takes precedence over a lower-ranking one. The principle conveys that legislation occupying a superior position in the legal hierarchy prevails over that which is inferior. Nonetheless, exceptions may arise in cases where the content of the superior regulation delegates specific matters or authority to be governed by subordinate legislation (Mertokusumo, 2020).

This principle aligns with the *Stufenbau der Rechtsordnung* theory, or the hierarchical structure of legal norms, which posits that the validity of a legal norm is determined by the norm situated above it in the legal framework (Machmudin, 2016). Consequently, a lower-tier norm must not contradict a higher-tier norm upon which its binding authority is based. In instances of conflict, the lower-tier regulation is rendered inapplicable or set aside in favour of the superior rule (Kelsen, 2019).

In legislative drafting, applying the *Lex Superior Derogat Legi Inferiori* principle is crucial to ensuring coherence and preventing disharmony among legal instruments once enacted. Legal disharmony may arise due to several contributing factors, including (Hamidi & Gultom, 2023):

1. Legislative instruments being formulated by different institutions at varying times;
2. Changes in the officials' authorised to draft laws due to term limits, reassignment, or replacement;
3. A stronger sectoral approach prevailing over a systemic one in regulatory drafting;
4. Weak inter-institutional coordination and insufficient interdisciplinary collaboration during the legislative process;
5. Limited public access and participation in the law-making process;
6. The absence of clear, standardised, and binding methods applicable to all legislative authorities.

Regulatory disharmony poses significant challenges, such as interpretative inconsistencies, legal uncertainty, ineffective implementation, and ultimately, legal dysfunction. In such a context, the law fails to fulfil its essential roles as a guide for societal conduct, a tool for social control, a mechanism for dispute resolution, and an instrument of orderly social transformation.

The legal conflict arising from the issuance of Presidential Regulation Number 5 of 2025, in contradiction to Law Number 6 of 2023, presents a clear manifestation of the detrimental impact that normative disharmony exerts on the foundational principles of state administrative law. The principles of legal certainty and legal protection are of particular significance in this context, as they are fundamental to the establishment of a predictable and reliable legal environment that is conducive to administrative governance and economic activity.

The legal certainty refers to the clarity of norms, so that they may serve as a guideline for the community subject to those regulations. This understanding of certainty can be interpreted as the presence of clarity and firmness in the application of the law within society. It aims to prevent multiple interpretations or misunderstandings (Mustika et al., 2021).

The principle of legal certainty necessitates that legislation must be lucid, coherent, and methodically harmonised, thereby empowering individuals and business entities to organise their conduct and expectations in accordance with these principles (Suseno, 2016). However, in instances where a subordinate legal instrument overrides a superior one, as evidenced here, the normative structure that ensures the coherence and legitimacy of the legal order is undermined (Soeroso, 2019).

From the standpoint of business actors operating within the plantation sector, this inconsistency introduces substantial risk and unpredictability. It is evident that companies which have acted in good faith by complying with the administrative legalisation mechanisms established under Articles 110A and 110B of the Job Creation Law are now facing the potential expropriation of land without due process, as permitted by the 2025 regulation.

This retroactive disruption not only contravenes the principle of non-retroactivity, but also erodes investor confidence, deters future compliance, and diminishes the attractiveness of Indonesia's legal system as a stable foundation for business operations. Moreover, the absence of a unified regulatory approach has been demonstrated to impede administrative efficiency, compel discretionary enforcement by state officials, and increase the likelihood of legal disputes.

In this light, the conflict between legal instruments highlights the urgent need for improved legislative harmonisation and procedural oversight to preserve the integrity of the rule of law (Mertokusumo, 2019). The State's obligation to uphold legal certainty and protect the legitimate expectations of regulated parties must remain paramount, particularly in the context of public administration and economic governance. A failure to do so risks fostering a regulatory climate marked by arbitrariness, administrative overreach, and erosion of the public trust in legal institutions.

The principle of legal certainty constitutes a fundamental component of the General Principles of Good Governance (AAUPB), which guide administrative practices in public administration. This principle is a hallmark of a state governed by the rule of law, emphasizing the importance of legal norms, appropriateness, consistency, and justice in every governmental decision-making process (Anggara, 2018).

Legal certainty encompasses both material and formal dimensions. The material aspect restricts administrative bodies from revoking or altering established decisions once enacted. Meanwhile, the formal aspect implies that any administrative decision whether it imposes obligations or confers benefits on certain parties must be formulated using clear and unambiguous language to avoid multiple interpretations (Hadjon & Martosoewignjo, 2022; Rahim et al., 2023).

In order to address the legal uncertainty and to safeguard the rights of business actors who have been adversely affected by the normative conflict between Law Number 6 of 2023 and Presidential Regulation Number 5 of 2025, a set of structured and legally grounded remedial measures must be implemented. Firstly, it is incumbent upon the government to undertake a formal harmonisation process, either through legislative clarification or judicial review, to reaffirm the supremacy of statutory law in accordance with the principle of *lex superior derogat legi inferiori*.

Secondly, in the interim period, it is incumbent upon the relevant authorities to promulgate interpretive guidelines or transitional regulatory instruments, such as ministerial

regulations or official circulars, with a view to reaffirming the continued validity and enforceability of the administrative procedures set out in Articles 110A and 110B of the Job Creation Law.

Thirdly, for entities that have acted in good faith under the previous legal framework, the government should provide transitional legal protection, including a moratorium on enforcement actions, to prevent retroactive harm and preserve legitimate expectations.

It is imperative that the legislative and executive branches strengthen institutional coordination, adopt a more integrated regulatory drafting methodology, and ensure meaningful stakeholder participation in the law-making process to prevent future instances of normative disharmony and uphold the principles of legal certainty and legal protection in administrative governance.

## **CONCLUSIONS**

The legal conflict between Law No. 6 of 2023 and Presidential Regulation No. 5 of 2025 exemplifies a serious breach of Indonesia's legal hierarchy and the principle of legal certainty. The issuance of the presidential regulation, which bypasses the procedures mandated by the Labour Creation Law, not only contravenes the superior authority of statutory law but also generates procedural inconsistencies that threaten the integrity of the legal system. This normative disharmony disregards the doctrine of *lex superior derogat legi inferiori*, undermining coherence and predictability in the legal order. Consequently, it exposes regulated entities especially those acting in good faith to uncertainty, retroactive legal risks, and potential judicial challenges arising from substantive contradictions and formal defects in the classification of the decree. The impact of such dissonance is particularly detrimental within the realm of state administrative law, as it erodes legal protection and predictability. To mitigate these risks, the government must prioritize a formal harmonization process, issue transitional regulatory frameworks, and offer interim protections for affected stakeholders. Institutional coordination must be strengthened through integrated, participatory legislative drafting, and a renewed commitment to the rule of law is essential to safeguard administrative governance and prevent similar conflicts in the future. The author wishes to express sincere gratitude to all who contributed to the completion of this article, especially the lecturers and academic staff of the Faculty of Law, Borobudur University, for their guidance and support. Deep appreciation is also extended to colleagues for their insights and to the author's family for their continuous encouragement throughout the research and writing process.

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