

RESEARCH PAPER

Land Acquisition for the Public Interest as an Alternative to Building a Food Estate in Indonesia: An Effort to Achieve Proportional Justice

Prof. Dr. Sri Hajati*Faculty of Law, Universitas Airlangga*
Email: sri.hajati@fh.unair.ac.id**Dr. Sri Winarsi***Faculty of Law, Universitas Airlangga***Xavier Nugraha***Faculty of Law, Universitas Airlangga***Rahajeng Dzakiyya Ikbar***Faculty of Law, Universitas Airlangga***Stefania Arshanty Felicia***Faculty of Law, Universitas Airlangga***ABSTRACT**

PURPOSE: To ensure the right to food, Indonesia has implemented the Food Estate programme, using the State's right to control land acquisition in the public interest. However, land acquisition for the Food Estate programme affects people's right of ownership. In that context, this article discusses the proportionality of the right to food and right of ownership in relation to land acquisition for the Food Estate programme.

DESIGN/METHODOLOGY/APPROACH: Legal research, with a statutory and conceptual approach.

FINDINGS: The paper outlines the urgent need for the Food Estate programme, characterises the right to food and right of ownership, and describes the concept of land acquisition in the public interest based on Indonesian Law.

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RESEARCH LIMITATIONS/IMPLICATIONS: Focused solely on discussing how to fulfil citizens' rights while proceeding with land acquisition for the Food Estate programme.

ORIGINALITY/VALUE: This work presents a recent analysis of land acquisition for the public interest, as part of the National Strategic Projects, which was only recently included in Indonesian legislation.

KEYWORDS: *Food Estate; Right to Food; Right of Ownership; Land Acquisition for Public Interest*

INTRODUCTION

Food represents a primary need for humans that must be fulfilled at all times (Mohamed and Patwary, 2021). On this basis, food is classified as a human right guaranteed in Article 27 Section 2 of the 1945 Constitution of the Republic of Indonesia, as well the 1996 Rome Declaration. To ensure the fulfilment of this right, the Government of Indonesia established Law 18 of 2012, the Food Law. In Article 1 Point 4 of the Food Law, food security is described as fulfilment by the state of its provision of food to individuals; this is reflected in the availability of sufficient food, both in quantity and quality. This food should be safe, diverse, nutritious, equitable, and affordable. It must not conflict with any religion, belief, or culture of the community. The food provided should sustainably support healthy, active, and productive lives for everyone in the community. As set out in the Food Law, Indonesia strengthens its food security and safety by upholding food sovereignty (Uddin *et al.*, 2020).

In addition to the Food Law, Indonesia is committed to the Sustainable Development Goals (SDGs).¹ One of the SDGs is to achieve zero hunger through long-term agricultural productivity and by implementing a sustainable food production system that achieves food security and improves nutrition over time. National and international commitments to fulfil food security are based on the need to (i) fulfil human rights, (ii) develop the quality of the nation's human resources, and (iii) establish the foundations of national security. In reality, however, food security in Indonesia has still not been fully realised, with the current risk of a food crisis representing a critical issue for the nation (Yestati and Noor, 2021).

Achieving zero hunger and food security, as legal ambitions in Indonesia (*rechtide*), are still new if understood solely through the 'law in the book' (*das sollen*), although they are long-established in terms of the 'law in society' (*das sein*). Presently, Indonesia is at high risk of falling into a food crisis due to the COVID-19 pandemic. As with other existing pandemics, COVID-19 is threatening to create food issues for the nation. Strategic policies in the food sector are absolutely necessary if a crisis is to be avoided, as emphasised by the Food and Agriculture Organization (FAO), a specialised agency of the United Nations that leads international efforts to defeat hunger. The FAO has described several ways of noting the impact of a pandemic on the world's food, which can cause a domino effect for the global food supply chain. For instance, if food supplier countries

¹ See Government Regulation 59 of 2017 on the Implementation of Achieving Sustainable Development Goals.

lockdown and pause their supply activities, this can cause immediate disruption in the food industry and to agriculture, resulting in a potential economic downturn (Schmidhuber, 2020).

To avoid such a scenario, several policies in Indonesia support food availability, affordability, and security, such as by developing “agropolitan” areas, implementing urban farming, and creating Food Estates (Marwanto and Pangestu, 2021). Of these various policies, the one policy that is believed to best support all three aspects of food provision is the Food Estate. In 2014-2019, this idea featured in Indonesia’s National Medium-Term Development Plan, but it was only in 2020 that President Joko Widodo’s government began developing Food Estates in response to the threat of a food crisis brought on by the COVID-19 pandemic. As well as Central Kalimantan and North Sumatra, Food Estates are also planned for development in provinces such as South Sumatra, East Nusa Tenggara, and Papua. As a follow-up to this policy, the Ministry of the Environment and Forestry of Indonesia issued a release, Regulation P.24/MENLHK/SETJEN/KUM.1/10/2020, about the Provision of Forest Areas for Food Estate Development (Ministerial Regulation LHK 24/2020). In its release, the Ministry guaranteed that the development of Food Estates would be carried out while considering sustainability and preserving the environment, as reflected by various provisions that must be met according to LHK 24/2020 (Basundoro and Sulaeman, 2020).

In this, Article 1 Number 10 states that Food Estates are large-scale food supply initiatives that utilise natural resources through human efforts supported by capital, technology, and other resources, to produce food products to meet human needs. The overarching initiative covers food crops, horticulture, plantations, animal husbandry, fisheries, and forestry. The Food Estate concept was developed in keeping with strategic plans to make Indonesia a centre for food agriculture and to improve the nation’s food reserves, to support food security with a resulting benefit for national defence. The food commodities that will be produced on Food Estates include rice, cassava, corn, and other such strategic commodities depending on land conditions in the area.

In 2020, President Joko Widodo decided on three Food Estate locations in Indonesia: South Sumatra, Central Kalimantan, and Papua. On 26 June 2020 in Central Kalimantan, the Government of the Republic of Indonesia designated 770,601 hectares of former peatland development area, in the Pulau Pisang Regency and Kapuas Regency (WALHI Central Kalimantan, 2021), as a Food Estate. According to the Financial Note of the 2021 State Revenue and Expenditures Draft, its development, at first across 165,000 hectares of the land, was organised using an empowerment programme for transmigration and farmers, with a budget of Rp. 2.55 trillion (US\$163,308,696) (Nasution and Bangun, 2020).

To generate sufficient food production to execute the Food Estate programme, the state must first provide land; because of this, various elements of people’s human rights are affected by the implementation of Food Estates. This creates a conflict between the right to food and right of ownership. On the one hand, procuring Food Estates fulfils citizens’ rights to food provision that supports the nation’s sovereignty (WALHI Central Kalimantan, 2021). The right to food is a manifestation of the mandate of Article 28H of the 1945 Constitution of the Republic of Indonesia

on the right of every citizen to live in physical and spiritual prosperity. The Universal Declaration of Human Rights (1948) and The International Covenant on Economic, Social, and Cultural Rights (1966) ensure that food is a human right. The need for food is primary to our survival as it cannot be replaced; it affects all other aspects of human life, be they economic, social, political, or cultural (Krisjanti and Quita, 2020).

However, creating Food Estates to support food security is not without issue. Although currently the land acquisition for the initial Food Estate only affects former peatland, we cannot rule out the possibility that more land will need to be acquired to make the programme a success. To that end, the state could use its authority in the State's Right to Control to take possession of land that belongs to the community, as part of land acquisition in the public interest (WALHI Central Kalimantan, 2021). The State's Right to Control refers to the mandate of Article 33 in the 1945 Constitution of the Republic of Indonesia; this sets out that there is no issue as long as the use of the land is in the public interest, as it is in this case for food security.

A problem arises when the land in question is owned by the people, as Article 28H Section 4 of the 1945 Constitution of the Republic of Indonesia guarantees that it cannot be taken over arbitrarily by anyone. Moreover, the right of ownership is described as the strongest and most complete right that a person can have on land in Article 20 Section 1 of Law 5 of 1960 about the Basis of Agrarian Land Law. This creates a dilemma because, on the one hand, land acquisition for Food Estates is necessary to benefit the majority of the people, but on the other hand, there are minority interests related to land rights. Does upholding the interest of the community justify derogating the rights of existing community minorities?

A legal policy construction is needed for proportional protection of rights, i.e., both the right to food through Food Estates, which is guaranteed in Article 27 Section 2 of the 1945 Constitution of the Republic of Indonesia and reflects the interests of the majority of the community, and the land property rights guaranteed in Article 28H Section 4 of the 1945 Constitution of the Republic of Indonesia, which reflects the interests of community minorities. In that context, this paper will discuss how to create land acquisition policies in the public interest for Food Estates, as a manifestation of proportional protection of both the right to food and the right of ownership. To that end, this paper investigates: 1) the legal basis for the right of ownership, 2) land acquisition for the public interest, and 3) land acquisition for the public interest as a Food Estate development procedure.

In terms of practicality and/or research implications, this paper supports land acquisition for the public interest in the context of the urgent need to develop Food Estates in Indonesia, with implications for citizens' rights to food and land ownership. Setting the premise for this research, two works have previously been published on a similar topic to that of this paper.

1. A thesis written in 2018 by Mestika Dewi Sari Sagala, titled "*Peralihan Hak atas Tanah Petani melalui Program Food Estate dikaitkan dengan Batas Tanah Maksimum Kepemilikan Tanah*"

(Transfer of Farmers' Land Rights through the Food Estate Program related to the Limitation of Maximum Land Ownership):

This thesis analysed several issues, including how the law regulates the transfer of farmers' land rights and how those transfers of land have benefitted the investors in cultivation businesses related to Government Regulation 18 of 2010 about the cultivation business and legal protection of farmers' land rights regarding Food Estates and land law in Indonesia. Although it was written in 2018, this thesis came the closest to discussing the topics covered in this paper. However, several factors differentiate the thesis from this paper. First, the thesis limits its discussion to just farmers, while this paper has a wider scope, taking into account all Indonesian citizens who own land and might therefore be affected by Food Estates. Second, the legal basis for the conclusions of the thesis is outdated. The writer concluded that there was no justification for the transfer of land rights (including land acquisition) for Food Estates since there was no clear provision for the Food Estate programme in any legislation as a justification for land acquisition through the states' right to control. However, this paper is written in the context of the updated legal basis for land acquisition, taking into account the enactment of the Job Creation Law that justifies the Food Estate programme as being in the public interest.

2. An article published in 2021 by Syahrudin Nawi Salmi, Sufirman Rahman, and Ilham Abbas, titled "The Legal Nature of Land Acquisition for Development for the Public Interest in Indonesia":

This article generally discussed the legal nature of land acquisition for the public interest in Indonesia, as regulated through the Job Creation Law and Land Acquisition Law, and then explained its mechanism and the role of the government in using imperative law principles. The writers of this article only briefly mentioned Food Estates as justifying land acquisition, without clearly dissecting each type of land right that can be counted as being in the public interest. Therefore, this paper builds on the work of the article by further contributing to analysing in detail how the right of ownership, as part of the land rights in Indonesia, can justifiably be overridden for land acquisition in the public interest to support the Food Estate programme.

Based on the two legal issues mentioned above and the foundational research presented in previous works, this paper looks to fill the gaps in our existing knowledge that warrant holistic research into the legal implications of continued development of the Food Estate programme. Looking ahead, since this paper only focuses on the right of ownership, which is one of many land rights, other interesting lines of inquiry concern analysis of further types of land rights in Indonesia. Second, although historically many cabinets have worked on a similar initiative but using different names, the Food Estate proposed by President Joko Widodo is undeniably still in its early stage. In the future, therefore, researchers may be better positioned to investigate factual cases of land acquisition for the Food Estates, seeking to determine whether the law has provided sufficient regulation to protect citizens' rights.

Legal Basis for the Right of Ownership

In Article 28H Section 4 of the 1945 Constitution of the Republic of Indonesia, it is decreed that: “Everyone has the right to have ownership rights and such Right of Ownership may not be taken over arbitrarily by anyone”. Article 28H Section 4 has a constitutional consequence, as it establishes the right of ownership as the only primary right among other land property rights, thus placing it in the strongest position and ensuring that no one (not even the government) can instantly confiscate a person’s land. This is also reaffirmed in Article 20 Section 1 of the Land Law; this states that the right of ownership is hereditary, and the strongest and most complete of rights possessed by people in terms of their land. The provisions of Article 6 further distinguish the right of ownership from other types of land property rights. However, the right of ownership is not absolute, unlimited, or inviolable. As with other land property rights, such as the rights to build, use, and cultivate, only individuals are entitled to the right of ownership, and they must be Indonesian citizens. Article 20 Section 2 of the Land Law stipulates that the right of ownership can then be transferred to other parties in circumstances where there is a legal event.

The right of ownership, as stipulated in Article 22 of the Land Law, is upheld by customary law; this is either regulated by a government regulation or through a government determination based on the methods and conditions stipulated by a government regulation. Land property rights that are upheld by a government stipulation are processed through the procedure whereby they are granted. Article 27 of the Land Law states, in essence, that the abolition of the right of ownership can occur when the land falls to the state. This might happen due to the revocation of the right of ownership based on Article 18 of the Land Law; this states that for the public interest (including the interests of the nation and the state as well as the common interests of the people) land property rights can be revoked according to the method regulated by law and with the landowner awarded appropriate compensation. This provision guarantees for people that their land property rights may only be revoked under certain conditions, i.e., for the sake of the public interest, when providing appropriate compensation, and according to the method regulated by the law (Dirgantara *et al.*, 2020).

Further to this, Article 6 of the Land Law states that all land property rights have a social function. There are several primary principles to this (Sulaiman, 2021), which are:

1. Formulating the collective and social nature of land property rights according to the principles of the Land Law. This has a religious, communalistic nature, underpinned by the notion that the earth, water, and space, including the natural resources contained within the territory of the Republic of Indonesia, are a gift from God Almighty and the nation of Indonesia is a national treasure;
2. Land that is occupied by a person not only has a function for the person with the right to it but also for the nation as a whole. As a consequence, when using that land, not only should individual interests be accounted for but also the interests of the community. Accordingly, a balance should be struck between personal and public interests;

3. The social function of land property rights means they depend on certain circumstances, including the condition of the land, its nature, and the purpose of granting the rights. It is intended that the land must be properly maintained and the quality of its fertility and soil conditions upheld so that the benefits of the land can be enjoyed not only by the owner of land property rights but also others in the community. Therefore, the obligation to maintain the land is not only borne by the owner or holder of the right in question but also becomes a burden for every person, legal entity, or agency that has a legal relationship with the land.

The social function of land property rights is technically regulated by Law 2 of 2012 on Land Acquisition for Development in the Public Interest, as amended by Law 11 of 2020 on Job Creation; Government Regulation 19 of 2021 on Implementation of Land Acquisition for Development for Interest, and Regulation 5 of the Head of the National Land Affairs Agency of 2012 on Technical Guidelines for the Implementation of Land Acquisition.

Regarding Land Acquisition for Public Interest

One of the mandates of Law 1 of 2020 about Job Creation (the Job Creation Law) is that land may be acquired for development in the public interest that aims to improve the community's or people's welfare or support economic activity/development, the ease of investment, infrastructure development, or basic services.

To uphold the mandate of Law 2 of 2012 about Land Acquisition for Development in the Public Interest (the Land Acquisition Law) and the Job Creation Law (in particular, Articles 123, 173, and 185-b), the government issued Regulation 19 of 2021 about the Implementation of Land Acquisition for Development in the Public Interest (the Government Regulation on Land Acquisition). According to Article 1 Point 2 of the Land Acquisition Law, land acquisition is the act of sourcing land and providing appropriate and fair compensation to the entitled party. The same thing is also stated in Article 1 Point 2 of the Government Regulation on Land Acquisition, describing land acquisition as an act of obtaining land by providing appropriate and fair compensation. Based on Article 1 Point 3 of the Land Acquisition Law, the party entitled to compensation is the one who controls or owns the land in question. Furthermore, Article 1 Point 4 clarifies that the object of land acquisition can be above ground or underground space, or other areas that can be assessed.

Based on these stipulations, land acquisition has three elements (Isnaeni, 2020):

1. activities to acquire land in the context of fulfilling development for the public interest;
2. providing compensation to those affected by land acquisition activities;
3. release of legal rights from landowners to other parties.

There are two types of land acquisition: for government purposes and for private purposes. The former can be further divided into land acquisition for the public interest and for commercial

interests. Land procured for development in the public interest by the national or local government is obtained when the private party relinquishes or surrenders their land property rights (Wijaya, 2020).

To ensure that this land acquisition is carried out in the interests of the majority of the community, not just of certain parties, the process is regulated somewhat to ensure there are reasons for using this method of land acquisition in the public interest. There are 24 such justifiable reasons, as listed in Article 123 Point 2 of the Job Creation Law, which amended Article 10 of the Land Acquisition Law. Accordingly, when the reason is one of the 24 stipulated, the landowner is obliged to relinquish their land for the public interest after the provision of compensation or based on a court decision after the power of attorney has been secured (see Article 5 of the Law on Land Acquisition).

The concept of “public interest” is defined in the Land Acquisition Law as the interests of the nation, state, and society that must be realised by the government and upheld as much as possible for the prosperity of the people. Based on that definition and the 24 reasons provided in Article 123 Point 2 of the Job Creation Law, activities categorised as being in the public interest can be understood to fulfil one of five criteria (Lestari, 2020):

1. meets the interests of all levels of society;
2. conducted and owned by the government;
3. not-for-profit usage;
4. qualifies for one of 24 previously established reasons;
5. supports national or regional development plans.

Land Acquisition for the Public Interest as a Food Estate Development Procedure

The legal basis for land acquisition for Food Estates generally concerns land in areas of forest, as detailed in Ministerial Regulation LHK 24/2020; it may sometimes override the right of ownership in the public interest, therefore necessitating the transfer of ownership rights. Currently, the legal basis for this is regulated by the Land Acquisition Law, as amended by the Job Creation Law. Changes to the provisions of this law were followed-up by Government Regulation 19 of 2021 regarding the Implementation of Land Acquisition for Development in the Public Interest. Previously, when the Food Estate programme was included in National Strategic Projects, the Attachment to Government Regulation 109 of 2020 on the Acceleration of the Implementation of National Strategic Projects stated that land acquisition was expected to be necessary, as justified by Article 173 of the Job Creation Law.

Article 123 Point 2 of the Job Creation Law, which amended the provisions of Article 10-w of the Land Acquisition Law. Article 2-w Government Regulation 19 of 2021, states that: “food

security areas are initiated and/or controlled by the Central Government, Regional Governments, state-Business Entity, or regional-Business Entity”. Therefore, it can be understood that the Food Estate programme requires food security areas to be created that fall within the definition of development using land for the public interest, as initiated by the central government. As there is currently no precise definition for a Food Estate, this must be outlined in Ministerial Regulation LHK 24/2020, so that in the future, there can be no problems or debate. However, regardless of the precise definition, land acquisition for Food Estates is justified because it is in the public interest.

The amendment to the Land Acquisition Law in the Job Creation Law allows land to be acquired for the benefit of a Food Estate by taking away ownership rights. That process is regulated by Government Regulation 19 of 2021 and involves planning, preparation, implementation, and result submission stages.

We can understand that developing a Food Estate by acquiring land in the public interest is a manifestation of agrarian legal policy that reflects proportional protection of the interests of the majority in the community, by fulfilling their right to food as guaranteed in Article 27 Section 2 of the 1945 Constitution of the Republic of Indonesia, and the right to ownership of land guaranteed by Article 28H Section 4 of the same constitution, which reflect the interests of the community’s minorities, because:

- 1. There is a regulated legal procedure**

This means that the government cannot immediately seize someone’s land and take away their right of ownership, even with the aim of acquiring land in the public interest. If the established procedures are violated, the land acquisition may be cancelled. Therefore, the procedure offers legal protection for the interests of community minorities (i.e., landowners).

- 2. There are various forms of compensation**

In Article 36 of the Land Acquisition Law, it is stipulated that: “Compensation may be given in the form of a. money; b. replacement land; c. resettlement; d. shareholding; or e. other forms agreed by both parties”. Therefore, it can be understood that the compensation should be appropriately tailored to suit the landowner. So, for example, if the landowner does not want money, they may be otherwise compensated according to their expectations, such as with replacement land or resettlement.

- 3. There is a process for deliberation**

To accommodate the interests of stakeholders, Section 4 on Deliberation in Compensation Determination, according to Articles 37-39 of the Land Acquisition Law, sets out a deliberation procedure. This brings together the government party in a land acquisition, reflecting the interests of the majority, and landowners, who have minority interests. The procedure means that landowners’ interests cannot be ignored.

CONCLUSIONS

Food is a primary human need that must be fulfilled at all times: the right to food is a human right. Indonesia, as a country committed to SDGs through Government Regulation 59 of 2017 on the Achievement of Sustainable Development Goals, has set targets and goals to eliminate hunger. These are to be achieved by maximising agricultural productivity and developing a sustainable food production system. Food Estates are an answer to the problem of determining how to ensure food security in Indonesia, and so the Food Estate programme was included in the National Strategic Projects, as stated in the Attachment to Government Regulation 109 of 2020 on Acceleration of the Implementation of National Strategic Projects. However, to implement the Food Estate programme, the government must source land with which to support food production; this creates a potential conflict of rights between the right to food and the right of land ownership.

Referring to Article 18 of the Land Law, that states that in the public interest land property rights can be revoked (providing appropriate compensation and according to the method regulated by law), then the revocation of rights is possible. Food Estates have been determined to justify land acquisition in the public interest, which supports the transfer of ownership rights. In Article 123 Point 2 of the Job Creation Law, which amended the provisions in Article 10-w of the Land Acquisition Law. Article 2-w Government Regulation 19 of 2021, the Food Estate programme is stated to fall within the definition of development that uses the land for the public interest. Although the phrase ‘Food Estate’ is not explicitly stated, it matches the description of “a food security area initiated and/or controlled by the Central Government, Regional Government, State-Business Entity, or Regional-Business Entity”. Ministerial Regulation LHK 24/2020 still needs to be adjusted to include the precise definition of a Food Estate so that in the future any uncertainty will not cause problems. Even so, in essence, land acquisition for Food Estates is justified because it meets the public interest as outlined in Government Regulation 19 of 2021.

The procedure of acquiring land for Food Estates reflects proportional protection, both of the interests of the majority of the community, by fulfilling their right to food, as guaranteed in Article 27 Section 2 of the 1945 Constitution of the Republic of Indonesia, and the right to ownership of land that is guaranteed in Article 28H Section 4 of the same constitution, and that reflects the interests of minority communities. Further to this, the land acquisition procedure is ratified as there are legal, regulated processes to follow in carrying it out, the forms of compensation are varied, and a deliberation procedure is included that means the interests of the minority cannot be ignored.

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BIOGRAPHY



Prof. Dr. Sri Hajati, S.H., M.S., is a Senior Professor of Law at the Faculty of law Universitas Airlangga in Agrarian and *Adat* law. She is actively conducting research in the subject of agrarian especially in land law in conjunction with *adat* community land rights. She also delivers community services for societies and local governments, focusing on agrarian law, spatial law and land rights procurement law. She has spent the last five years researching on the Management of Indigenous Land Post-Enactment of the Indonesian

Village Act; Exchange of Land Under *Adat* Law as One of Models of Sustaining the Existence of Land Under *Adat* Law; The Existence of *Adat* Land Post-Enactment of Law Number 6 Year 2014 on Village; Division of Land Services Based on Local Government Authority; Application of Agreement Principles in Land Procurement for Development Public Interest.



Dr. Sri Winarsi is a Senior Lecturer whose teaching is focused on Local Government Law, Land Law, and Administrative Law in the Faculty of Law, Universitas Airlangga, Indonesia. Her research and writing are rooted within Law and Policy of Land in Indonesia, as well as the Implementation of the Law Principles and the Government Authority. Her recent research is an Exchange of Land: A Model of Sustaining the Existence of Land Under *Adat* Law, Psychology and Education. She has written many academic text books that are used as the main reference of related subjects.



Xavier Nugraha, S.H., is an alumnus of the Faculty of Law, Airlangga University. Xavier graduated in 2019 with an undergraduate thesis entitled *Development of the Abuse of Circumstances Doctrine (Misbruik Van Omstandigheden) as a Reason for Cancellation of Agreements in Court Decisions*. Xavier has written many articles in reputable journals and several international journals indexed by Scopus, as well as three law books written with colleagues. During college, Xavier also spoke at many national and international conferences. Currently, Xavier works in an attorney's office in Surabaya.



Rahajeng Dzakiyya Ikbar is a law student at the Faculty of Law, Airlangga University. In 2022, Rahajeng received an award as the 2nd place in the NMCC MA 24 and the best Public Prosecutor in the final round. In addition, Rahajeng is actively researching and writing; with colleagues, one of her published works is “Urgency of Controlling Content Supervision of Video on Demand (VOD) Service Providers in Indonesia”.



Stefania Arshanty Felicia is an undergraduate law student in the Faculty of Law, Universitas Airlangga, and IISMA Awardee at Vrije Universiteit Amsterdam. She is experienced in legal debate, parliamentary debate, and legal research and writing. She is passionate to work with people to develop their debate and research skills and eager to help people in community development through her notable experiences in several organisations.

