

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Legal Review of the Authority of Land Banks in National Agrarian Reform.

Hamidun Noor

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: hamidunnoor.std@unissula.ac.id

Abstract. *In national land law, there is the right of state control over land and rights that can be owned individually. In accordance with the provisions of Article 28H paragraph (4) of the 1945 Constitution, it states that "Everyone has the right to have private property rights and such property rights may not be taken over arbitrarily by anyone." However, in the provisions of Article 33 paragraph (3) of the 1945 Constitution, it states that land is controlled by the state and is intended for the greatest prosperity of the people. From this provision, there is a crossroads as to when land rights can become private property of individuals and land that can be owned by the state to realize the welfare of the people by revoking land rights for the public interest. The method used in this research is the normative legal research method or doctrinal legal research, namely legal research that positions law as a system of normative structures. The normative system in question is regarding the principles, norms, rules of statutory regulations, court decisions, agreements and doctrines (teachings). This research was conducted using a conceptual approach and a statutory approach by examining all interrelated laws and regulations as well as legal principles and doctrines or views from legal experts. The implementation of Agrarian Reform can be realized optimally if there is political will from the government, support from legislative institutions, separation of interests between officials and business people, support from law enforcement officers, community involvement, availability of needed materials, and optimal preparation related to the implementation of agrarian reform.*

Keywords: *Agrarian; Reform; Regulation; Society.*

1. Introduction

A legal review of the Land Bank's authority in agrarian reform shows that the Land Bank has broad authority covering the planning, acquisition, procurement, management, utilization, and distribution of land to support agrarian reform, as stipulated in Government Regulation Number 64 of 2021. However, its implementation faces legal challenges such as concerns about the centralization of authority, potential conflicts of interest, and overlapping functions with other agencies such as the National Land Agency (BPN).

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

A complex land issue concerns the availability of land for development, including infrastructure, public facilities, food security, national defense, natural disaster mitigation, and investment. Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, along with its derivative regulations, is considered ineffective in addressing the various issues related to rising land prices and the availability of land for various development purposes.

Land is a natural resource that significantly impacts human life. In addition to its economic function, land also has social and production functions that support and encourage human well-being through its utilization, ownership, and empowerment. Given the importance of land, the state has an obligation to manage it for the prosperity of the people, as stipulated in the preamble to the Law.

The 1945 Constitution (UUD 1945) states that one of the state's goals is to realize the welfare of the people. This effort to improve the people's welfare is concretely stated in Article 33 paragraph (3) of the 1945 Constitution, which states that "Land, water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This constitutional basis places the state as the holder of the obligation to control land as the surface of the earth and the wealth contained within the land for the prosperity of the people.

Indonesia's vast geographical area, with 1/3 (one-third) of its territory consisting of land or approximately 1.9 million km², must be controlled and managed by the state. Land regulations after Indonesia's independence were regulated through Law Number 5 of 1960 concerning Basic Agrarian Regulations ("UUPA") as a national land law that replaced a number of colonial land regulations that were detrimental to the Indonesian people and ended the dualism in land law in Indonesia.

Land also has a very strategic function, both as a natural resource and as a space for development. However, in Indonesia's vast country, there is still a significant amount of abandoned land with unclear uses. This abandoned land tends to be used only for speculation. Furthermore, land acquisition is a recurring issue in development activities. The problem is the frequent emergence of land speculators who profit from infrastructure development projects.

Ultimately, this makes development projects difficult to implement, and even leads to failure or even complete abandonment. If this problem continues, it will become a serious development problem, which in turn will hamper economic growth and prosperity.

Therefore, to address this issue, the Government issued Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law) to reform the agrarian sector. The solution to improve land governance issues in Indonesia is addressed in Article 125 of the land acquisition cluster, where the central government establishes an agency called the Land Bank Agency. The Land Bank Agency itself is an agency specifically tasked with managing land (Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia Number 245 of 2020, Supplement to the State Gazette of the Republic of Indonesia Number 6573), Article 125).

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

This new legislation in the land sector provides a legal basis for the Land Bank Agency in Indonesia as one of the efforts for agrarian reform and improving land governance in Indonesia.

As time goes by, human demand for land continues to increase, but this is not accompanied by adequate land availability. The existence of the Basic Agrarian Law (UUPA), which only covers the basic principles of land administration, is deemed necessary to be followed by the establishment of regulations in other land areas to complement and perfect the UUPA, considering the increasing public need for legal certainty and justice to address and resolve various land issues. One of the land issues in Indonesia is related to the provision of land, especially for development for the public interest. Often, the implementation of national development programs is hampered by land acquisition or acquisition. Although according to the UUPA, the state has the right to control land, this does not mean that the state can easily acquire land for development. The state's right to control land is limited to regulating and organizing the allocation, use, supply, and maintenance of the earth (land), determining and regulating legal relationships between people and the earth (land), determining and regulating legal relationships between people and legal acts concerning the earth (land).

In reality, most of the land in Indonesia has been divided and owned by individuals and/or certain legal entities, used to improve living standards, provide means of production, and provide assets for investment purposes. Therefore, even though national development is necessary, the state cannot immediately use the land. If the land is already owned by an individual, the state must acquire or procure it by paying a compensation fee to the landowner. The problem arises when the government begins development but the land is not yet available. Therefore, when land acquisition for development is carried out, the costs become increasingly large and expensive, considering that land prices, especially in urban areas, are decreasing. Therefore, prices do not correspond to the taxable value of the object but are adjusted to the very high market price. Furthermore, there are land mafias or brokers who purchase land to resell it in the future, hoping for higher prices. These factors make land a trading commodity subject to the laws of supply and demand, thus hampering and protracting the land acquisition or acquisition process. Article 6 of the UUPA states that all land rights have a social function where land use must be adjusted to the circumstances and nature of the rights. This provision is the basis that land must be used to realize the greatest possible social welfare for the Indonesian people.

In national land law, there is the right of state control over land and rights that can be owned individually. In accordance with the provisions of Article 28H paragraph (4) of the 1945 Constitution, it states that "Everyone has the right to have private property rights and these property rights may not be taken over arbitrarily by anyone." However, in the provisions of Article 33 paragraph (3) of the 1945 Constitution, it states that land is controlled by the state and is intended for the greatest prosperity of the people. From this provision, there is a conflict between when land rights can be owned by individuals and land that can be owned by the state to realize the welfare of the people by revoking land rights for the public interest. In this case, Abdul Latif and Hasbi Ali stated that there is no conflict between the two provisions but rather a general and specific legal relationship (Latif and Ali, 2011). To avoid difficulties in land

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

acquisition for the public interest, the government initiated the concept of a Land Bank which aims to record, collect, and distribute lands that, according to their conditions and nature, can be included in the Land Bank. The legal regulation of Land Banks was initiated in Law Number 11 of 2020 concerning Job Creation which is regulated in Chapter VIII concerning Land Acquisition, Part Four concerning Land, Paragraph 1 (One) concerning Land Banks, Articles 125-135.

In essence, a land bank is a government-provided land reserve acquired before the need arises, making it relatively affordable (Bernhard Limbong, Land Bank, Pustaka Margaretha, 2003). The land reserve can be derived from abandoned land or unused state land. A land bank is a land management tool designed to make land use and utilization more productive to achieve overall development goals and targets.

2. Research Methods

The method used in this research is the normative legal research method (Soekanto & Mamudji, 2014) or doctrinal legal research (Suteki & Taufani, 2018), namely legal research that positions law as a system of norms. The norm system in question concerns the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings) (Fajar & Achmad, 2017). In this research, a conceptual approach and a statutory approach were used to examine all interrelated laws and regulations as well as legal principles and doctrines or views of legal experts. Data collection in this research was through literature study using secondary data with primary, secondary, and tertiary legal materials (Marzuki, 2019). Primary legal materials consist of the 1945 Constitution, Law Number 11 of 2021 concerning Job Creation, Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 64 of 2021 concerning the Land Bank Agency, Government Regulation Number 2 of 2012 concerning Land Acquisition for Development in the Interest, Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest. While secondary data is obtained from research results, scientific writings, and expert doctrines including theories of legal benefit, legal certainty, legal justice, and the theory of legal ideals which form the basis for analysis of the implementation and regulation of the Land Bank concept in Indonesia as regulated in Law Number 11 of 2020 concerning Job Creation in connection with Government Regulation Number 64 of 2021 concerning the Land Bank Agency as its implementing regulation, All of these data will be analyzed using qualitative analysis methods.

3. Results and Discussion

3.1. Implications of Land Banks for National Land Law

In general, the definition of a Land Bank is any government activity to provide land for future use (Maria, 2005). Theoretically, a Land Bank has the following functions:

- 1) land keeper or land reserve;

Legal Review of the
(Hamidun Noor)



Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

- 2) land warrantee;
- 3) land control controller (land purchaser);
- 4) land management;
- 5) land appraiser (land appraisal); And
- 6) land distributor which was later adopted in the Job Creation Law (Limbong, 2013).

Land banks are divided into 2 (two) based on their nature, namely:

- 1) Public land bank, namely a land bank whose management involves public institutions; and
- 2) Private Land Bank, namely a land bank run by the private sector (Flechner, 1974).

Based on Article 7 and 8 of the PP of the Land Bank Agency, the Land Bank collects or acquires land in the form of former land rights, abandoned areas and land, land released from forest areas, emerging land, reclaimed land, ex-mining land, land on small islands, land affected by spatial planning change policies, land that has no control over it, land from the central government, regional governments, BUMN/BUMD, business entities, legal entities, and communities obtained through purchase, grants, exchanges, release of rights, and other legitimate forms of acquisition that are managed and utilized and distributed according to their utilization. Success in implementing a land bank can be influenced by several factors, including:

- a. regulation, the formation of regulations regarding land banks in order to realize justice and prosperity for the people through land distribution, providing physical land for the continuity of development for both public and commercial interests, and controlling land prices;
- b. land bank institutions, in this case the Job Creation Law only states that the Land Bank Agency is a special body that manages land;
- c. land bank financing, the implementation of land banks will be very dependent on stable and sustainable funding sources considering the costs required for land acquisition and the operation of land bank institutions are very large; and
- d. other factors such as the political will of the government, especially in making regulations;

Regional spatial planning; and qualified and professional resources so that the implementation of land banking becomes more efficient (Limbong, 2013).

Legal Review of the
(Hamidun Noor)



Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

The regulated authority of the Land Bank is as follows:

1) Planning:

Conduct long-term, medium-term, and annual activity planning to ensure land availability.

2) Acquisition and Procurement:

Obtaining land from government or other party designated land and procuring land for public interest.

3) Management:

Managing the land acquired, including security, control, development and maintenance activities.

4) Utilization and Distribution:

Carrying out land utilization cooperation with other parties and carrying out land provision and distribution activities.

The legal challenges that will be faced by all groups regarding land banks cannot be separated from the role of all parties, these challenges are:

1) Centralization of Authority:

The establishment of a Land Bank is considered to have the potential to centralize land management authority, which could give rise to issues of legality and agrarian justice.

2) Potential Conflict of Interest:

Broad authority risks giving rise to conflicts of interest and abuse of authority, which could conflict with the goals of equitable agrarian reform.

3) Overlapping Functions:

There are concerns about overlapping functions with the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), which could create bureaucratic inefficiencies and potential inter-agency conflict.

The establishment of the Land Bank is inseparable from the government's efforts to provide land for development and the public interest to prevent land grabs from land mafias who exploit the people. Land Banks were not recognized in regulations prior to the Job Creation Law. The Land Bank concept was implemented by the Land Bank Agency by procuring land for government development projects well in

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

advance of their implementation, in preparation for future development plans. The land requirement was readily available well in advance of construction, ensuring that land acquisition processes were smooth and the state budget (APBN) prices were not inflated by the rigors of land trading by speculators/land mafias after the project location had been determined. Considering the land bank's function of providing land for the public interest, Government Regulation Number 19 of 2021 concerning Land Acquisition for Development in the Public Interest was previously enacted. This Government Regulation authorizes the state to acquire citizens' land rights through a compensation/profit-making mechanism intended for development in the public interest, based on the Regional Spatial Plan and development priorities outlined in the Medium-Term Development Plan, Strategic Plan, and Work Plan of the relevant Government/Agency. The establishment of the Land Bank, a legal entity representing the state, reserves land for state purposes. This Government Regulation does not grant the state the authority to reserve land for future development purposes, so the reserves are based on the projects to be implemented.

The history of land provision in Indonesia through the practice of providing and selling land to the public began during the Dutch colonial era, known as the Grond Bedrift institution in several cities in Java, such as Batavia, Semarang, and Surabaya. This institution later transformed into the Land and Building Company after Indonesian independence (Tisnawan, 2005). This company provided land and built supporting facilities and infrastructure, which were then divided into plots to be sold at below-market prices to employees. Over time, the government established companies to manage industrial areas to provide land for industrial activities, such as the Jakarta Industrial Estate Pulo Gadung (JIEP) in Jakarta and the Surabaya Industrial Estate Rungkut (SIER) in Surabaya. These companies procured and purchased land, then developed it and resold it for the construction of factories or other industries (Ganindha, 2016).

The existence of the Land Bank, as stipulated in the Job Creation Law, certainly has consequences for national land law. Article 129 of the Job Creation Law authorizes the Land Bank Agency to support investment by procuring land, and the Land Bank owns or obtains management rights as stipulated in Article 137 of the Job Creation Law. This provision potentially grants the authority to acquire land as long as it is used for investment activities, prepare plans for the allocation, use, and utilization of land in accordance with spatial plans, use and utilize all or part of the land with management rights for personal use or in collaboration with third parties, and determine tariffs and receive income/compensation and/or annual mandatory fees from third parties in accordance with the agreement.

Practices like these are similar to the principle of domain verklaring that occurred during the Dutch colonial period, where the government could take people's lands (Wardhani, 2020). The principle that land has a social function as stipulated in Article 6 of the UUPA is no longer meaningful because the right to manage land (HPL), which is the right to control the state, allows the recipient of HPL to exploit the land for the benefit of certain groups only. HPL, which is HMN, is actually under the rights of the

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Indonesian people as the rights of the Indonesian people that must be used for the greatest prosperity of the people, and then its regulation and management are delegated to the state to be carried out fairly.

Article 129 of the Job Creation Law stipulates that the Land Bank is granted management rights that can be granted HGU, HGB, and HP. Article 28 paragraph (1) of the UUPA states that HGU is the right to cultivate land directly controlled by the state for agricultural, fishery, or livestock companies. From this provision, it is clear that HGU can only be granted directly by the state, not by the Land Bank, which is delegated authority by the state to grant HGU. Meanwhile, Article 40 of the PP of the Land Bank Agency states that the transfer of land rights is carried out by agreement and can be burdened with mortgage rights. With an agreement, the utilization period of the land granted can be freely extended in accordance with the agreement of the parties as regulated in civil law, which would conflict with the UUPA which provides a term for land rights.

Another problematic provision related to the establishment of the Land Bank Agency as regulated in Article 125 paragraph (1) of the Job Creation Law, there are concerns that the Land Bank Agency is not carrying out its duties and authorities with integrity, honesty, and trustworthiness. Many corruption cases that have occurred recently have involved a number of state officials in corruption cases who were caught red-handed by the Corruption Eradication Commission. especially in land issues which have been considered to be controlled by brokers, extortion in the licensing process, and so on. There is a very open potential for land officials to accommodate the interests of capital owners only by being lured by something and then enter into cooperation that is detrimental to the interests of the people under the pretext of national interests.

In Article 126 of the Job Creation Law, the Land Bank's acquisition of land to support Agrarian Reform is deemed inconsistent with the objectives of agrarian reform to reduce land ownership inequality, reduce conflicts, disputes, and agrarian cases, and realize access for economically disadvantaged communities to maximum economic resources so that prosperity and welfare of the people are achieved. The land management rights granted to the Land Bank are considered not much different from the principle of private land which contains the right of ownership as in the Dutch colonial period. The principle of land reform contained in the UUPA will be uprooted if the land bank is continued to be implemented. Therefore, the establishment of the Land Bank must contain a balance between land acquisition for the national interest and land acquisition for Agrarian Reform so that the common people, especially farmers, plantation owners, and land cultivators, have access to utilize state land as best as possible to realize the objectives of Agrarian Reform.

The existence of legal instruments is a supporting factor in the implementation of the Land Bank Agency. Legal instruments must be formulated to achieve legal objectives, which according to Gustav Radburch, have three basic values or legal ideals, namely (Rahadjo, 2012):

1) Legal Certainty (Rechtssicherheit);

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

- 2) Justice (Gerechtigkeit); and
- 3) Legal Benefit (Zweckmassigkeit).

The value of legal certainty in the regulation of the Land Bank provides an obligation for the state to form laws in the form of legislation that specifically and comprehensively regulates the implementation of the Land Bank in Indonesia. In the view of Jan Michiel Otto, legal certainty allows for the availability of clear, concrete, and easily obtained rules that are issued and recognized, government agencies implement, submit to, and obey the rules of law, and citizens adjust their behavior to these rules (Shidarta, 2006). The value of justice in the implementation of the Land Bank is aimed at creating a balance of rights and obligations among stakeholders, on the one hand the people as land owners and the government that organizes land acquisition through the Land Bank are not disadvantaged. Aristotle distinguishes justice into 2 (two), namely:

- 1) Distributive Justice should provide incentives or special treatment for land rights owners who have relinquished their rights for the benefit of national development; and
- 2) Cumulative Justice which provides equal rights for everyone without regard to their achievements, where in the implementation of the Land Bank, it provides equal opportunities for everyone to own land through a land redistribution process which is part of the authority of the land bank (Friedrich, 2004).

Everyone has rights according to their achievements. Meanwhile, the value of legal benefits in the implementation of land banks is aimed at creating the greatest prosperity and welfare for all Indonesian people as mandated in Article 33 of the 1945 Constitution. In the theory of utilitarianism put forward by Jeremy Bentham. According to Darji Darmodiharjo, the purpose of law is to provide benefits and happiness to as many people as possible based on the social condition that every citizen desires happiness and the law is one of the tools (Rhiti, 2011).

The implementation of a land bank generally has advantages and disadvantages. The advantages of the land bank concept (Tanawijaya, 1995) are:

- a. land controlled by the Land Bank is more in line with the RTRW because before purchasing the land it has been adjusted to the RTRW and the land's designation itself;
- b. can provide land of a certain area, quickly, cheaply and on time;
- c. availability of fast and accurate information without having to go through a series of unreasonable permits and asset purchases;
- d. Land Banks can control land prices, implement cross-subsidies, and utilize development in accordance with spatial planning.

Meanwhile, the disadvantages of the Land Bank are: (a) land owners may be tempted to quickly sell their land on the grounds that the sale is carried out because of the designation and use of the land by the

Legal Review of the
(Hamidun Noor)



Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

government; (b) land sales are based on the basic price (NJOP) of the land, whereas after being matured and developed by the manager (land bank) it is feared that it will be resold at a higher price; (c) land has become a trading commodity which is contrary to the social function of land in Article 6 of the UUPA and Article 13 of the UUPA which prohibits monopoly activities in the agrarian sector by individuals or legal entities.

Several countries have used Land Banks to ensure future land availability. In the Netherlands, land banking practices are intended for general land banking activities, where the government carries out activities to provide, develop, and distribute public and private land with predetermined uses. In Japan, there is a policy that anyone who buys land and resells it within less than 10 years is categorized as a land broker/speculator and will be subject to very high taxes (Mutia, 2004).

The existence of the Land Bank conceptually has a very good goal to ensure the availability of land and reduce the gap in land ownership for the community. A good concept must be supported by a good legal system. The legal instruments governing the land bank must be clear, comprehensive, and fair, which must include transparency, oversight, and public participation as a preventive measure to prevent the abuse of authority by the Land Bank Agency. This is in line with the opinion of Lawrence M. Friedman who stated that the legal system consists of sub-systems: legal substance, legal structure, and legal culture, and all three must function and work together to achieve a goal (Friedman, 2011).

The implementation of the Land Bank must be supported by fair laws and be able to realize its goal of realizing the welfare of the Indonesian people and nation, not the other way around, adding to the complexity of land problems that have been going on for a long time and harming the people's rights.

3.2. Agrarian Reform as a National Priority Program

Agrarian reform is the restructuring of land control, ownership, use, and utilization for greater equity through asset management and access management for the prosperity of the Indonesian people. The UUPA also regulates the reform of unequal land structures to achieve fairer outcomes, resolve land disputes, and improve public welfare after the implementation of agrarian reform (Martini, S., Ash-Shafikh, MH, & Afif, NC, 2019).

That the spirit and idea of Agrarian Reform is a noble and lofty ideal in order to reorganize the ownership, control, use and utilization of land for justice and the welfare of the people which is carried out based on law, peace and sustainability. Therefore, its implementation must be carried out and organized in a neat and orderly manner (Letter a Section Considering the Decree of the Head of the National Land Agency of the Republic of Indonesia Number: 77/Kep-7.1/III/2012 Concerning the Practice of Agrarian Reform).

Agrarian Reform aims to reduce inequality in land control and ownership in order to create justice; to handle agrarian disputes and conflicts; create a source of prosperity and welfare for the community

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

based on agrarian principles through regulating land control, ownership, use and utilization; create employment to reduce poverty; improve community access to economic resources; increase food security and sovereignty; and improve and maintain the quality of the environment (Article 2 of Presidential Regulation of the Republic of Indonesia Number 86 of 2018 concerning Agrarian Reform).

As mentioned earlier, agrarian reform, as part of President Joko Widodo's "Nawacita" program, is one of the National Priority Programs. Broadly speaking, agrarian reform can be defined as a land redistribution and ownership program, specifically legalizing land assets for the wider community.

The National Priority Program covers 6 (six) aspects, namely strengthening the regulatory framework and resolving agrarian conflicts; structuring the control and ownership of land subject to agrarian reform; legal certainty and legalization of rights to land subject to agrarian reform; empowering communities in the use, utilization and production of land subject to agrarian reform; allocating forest resources to be managed by communities; and implementing institutions for central and regional agrarian reform (Presidential Staff Office, 2017).

These programs and policies were ultimately followed up with the issuance of Presidential Regulation of the Republic of Indonesia Number 86 of 2018 concerning Agrarian Reform. Agrarian reform is one of the government's efforts to achieve economic equality. Through agrarian reform, people's productivity will increase and disparities in land ownership will be addressed. Agrarian reform was expected to reduce inequality in land ownership and control, as well as reduce land disputes. However, in reality, Agrarian Reform has not been implemented as hoped.

Article 2 of Presidential Regulation of the Republic of Indonesia Number 86 of 2018 concerning Agrarian Reform aims to reduce inequality in land control and ownership in order to create justice; handle agrarian disputes and conflicts; create a source of prosperity and welfare for the community based on agrarian through regulating control, ownership, use and utilization of land; create employment to reduce poverty; improve community access to economic resources; increase food security and sovereignty; and improve and maintain the quality of the environment (Article 2 of Presidential Regulation of the Republic of Indonesia Number 86 of 2018 concerning Agrarian Reform).

This is because the implementation of Agrarian Reform on Land Objects of Agrarian Reform (hereinafter abbreviated as TORA) is land controlled by the state and/or land that has been owned by the community, which has only been implemented to the extent of land redistribution and legalization and has not yet reached the stage of reducing inequality in land ownership and control and reducing land disputes.

The implementation of Agrarian Reform can be realized optimally if there is political will from the government, support from legislative institutions, separation of interests between officials and business people, support from law enforcement officers, community involvement, availability of required materials, and optimal preparation related to the implementation of agrarian reform (Fitra Alvian and Dian Aries Mujiburohman, 110).

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

In relation to Agrarian Reform, in 2020 a new regulation was issued called Law Number 11 of 2020 concerning Job Creation which became a topic of discussion due to the controversial content contained therein and also related to the drafting of the Law until it then underwent formal testing and the Constitutional Court (hereinafter referred to as the MK) has issued a decision regarding the case of Formal Testing of the Job Creation Law against the 1945 Constitution of the Republic of Indonesia on November 25, 2021 through Decision Number 91/PUU-XVIII/2020.

The ruling stated that the Job Creation Law was inconsistent with the 1945 Constitution and had no legally binding force, provided it was not interpreted as "not being amended within two years of the pronouncement of this ruling."

Furthermore, the Job Creation Law remains in effect until it is amended by the legislators within a maximum period of 2 (two) years from the date this decision was pronounced and if no amends are made within this time period, the Job Creation Law will become permanently unconstitutional.

The Job Creation Law contains various cross-sectoral regulations, one of which concerns the land sector, a crucial point that has sparked controversy among many parties. It also regulates a new strategic policy, namely the establishment of the Land Bank Agency.

Constitutional Court Decision Number 91/PUU-XVIII/2020, point 7, ordered the government to "suspend all strategic and far-reaching actions/policies." Therefore, the government cannot be justified in issuing new implementing regulations or derivative regulations related to the Job Creation Law. What is confusing is the issuance of derivative regulations from the Job Creation Law regarding Land Banks, namely Government Regulation Number 64 of 2021 concerning the Land Bank Agency (hereinafter referred to as the Land Bank PP), which was enacted on April 29, 2021.

Furthermore, in connection with Constitutional Court Decision Number 91/PUU-XVIII/2020, President Joko Widodo finally issued a new legal product on December 30, 2022, namely Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as the Ciptaker Perppu). This Ciptaker Perppu was issued to implement Constitutional Court Decision Number 91/PUU-XVIII/2020, which stated that improvements through replacement of the Ciptaker Law were necessary.

Article 185 of the Job Creation Perppu states that with the enactment of this Perppu, the Job Creation Law is revoked and declared null and void. Furthermore, this Perppu re-introduces the provisions regarding the Land Bank Agency, which are exactly the same as those contained in the Job Creation Law, which has been formally reviewed by the Constitutional Court. Therefore, the provisions regarding the Land Bank still have a legal basis. However, beyond the controversy surrounding the formal review of the Job Creation Law and the Perppu, if we focus on the substance of the existing material, we will find that the PP on the Land Bank also touches on the topic of Agrarian Reform.

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

The Land Bank Regulation states that the Land Bank has the functions of planning; land acquisition; land procurement; land management; land utilization; and land distribution. Land distribution here refers to the implementation of the Land Bank's duties in order to fulfill the availability of land for public interest, social interest, national development interest, economic equality, land consolidation, and agrarian reform. Land distribution carried out by the Land Bank differs from land redistribution, which is the direct distribution of land to individuals or entities by the ministry that administers government affairs in the agrarian, land, and spatial planning sector (Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning the Land Bank Agency). Meanwhile, land provision refers to provision for public interest, social interest, economic equality interest, development interest, land consolidation interest, and Agrarian Reform.

It is stated that land has a very strategic function, both as a natural resource and as a space for development. However, in this vast country of Indonesia, there is still a lot of abandoned land whose direction and purpose of use are unclear. Thus, in carrying out its duties and functions, the Land Bank has a special authority, namely to guarantee the availability of land in the context of a just economy, one of which is for Agrarian Reform (Article 2 paragraph (2) letter f of Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning the Land Bank Agency). Agrarian Reform is expected to increase the income of the community as the subject of land redistribution recipients.

Government support in guaranteeing the availability of land for national development interests is a guarantee of land provision for development carried out by the Central Government and Regional Governments in order to support economic growth and investment. In the implementation of the Land Bank, the Implementing Agency must implement good governance consistently and sustainably within the Land Bank environment, which in the Regulation of the Head of the Implementing Agency at least includes planning; land acquisition and procurement; asset management; utilization and cooperation; implementation of risk management; compliance; human resources; finance; investment; formation of regulations/decisions; information systems; audits; and procurement of goods and services.

This shows that the Land Bank Agency focuses more on land provision and acquisition for economic and investment purposes, focused on national growth and profit. Therefore, the central government must immediately reform the agrarian sector, particularly regarding land management for public interest, social interests, national development, economic equality, land consolidation, and agrarian reform.

The Land Bank's primary authority in agrarian reform is to provide and manage land (the object of agrarian reform) prepared from various sources, such as abandoned land or ex-HGU land. The Land Bank is tasked with planning, acquiring, managing, utilizing, and distributing this land, with the obligation to provide a minimum of 30% of its Land Management Rights (HPL) for the agrarian reform program. This land is then distributed to eligible communities in the form of Right of Use (Hak Pakai), which can subsequently be upgraded to Right of Ownership (Hak Milik).

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

The Land Bank stated that support in guaranteeing the availability of land for agrarian reform is a guarantee of land provision in the context of land redistribution. Furthermore, the availability of land for agrarian reform as stated in the Land Bank PP is at least 30% (thirty percent) of state land designated for the Land Bank. The availability of land for Agrarian Reform is determined by the Minister.²³ In this case, the Government must provide a quick and appropriate response in reformulating policies in the land sector to improve land governance problems. With this Perppu Ciptaker, it is hoped that it will be able to face strategic environmental challenges and answer a number of problems as well as carry out the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, and provide a legal basis for the Land Bank institution in Indonesia as one of the efforts for agrarian reform and improving land governance in Indonesia as well as efforts to create jobs for the Indonesian people.

4. Conclusion

The existence of the Land Bank, as stipulated in the Job Creation Law, certainly has consequences for national land law. Article 129 of the Job Creation Law authorizes the Land Bank Agency to support investment, is authorized to procure land, and the Land Bank owns or obtains management rights as stipulated in Article 137 of the Job Creation Law. The implementation of Agrarian Reform can be optimally realized if there is political will from the government, support from legislative institutions, separation of interests between officials and businesspeople, support from law enforcement officials, community involvement, availability of necessary materials, and optimal preparation related to the implementation of agrarian reform. Article 2 of Presidential Regulation of the Republic of Indonesia Number 86 of 2018 concerning Agrarian Reform aims to reduce inequality in land control and ownership in order to create justice; address agrarian disputes and conflicts; create a source of prosperity and welfare for the community based on agrarian principles through regulating land control, ownership, use, and utilization; create jobs to reduce poverty; improve community access to economic resources; increase food security and sovereignty; and improve and maintain environmental quality.

5. References

Journals:

- Alvian, Fitra dan Dian Aries Mujiburohman, Implementasi Reforma Agraria Pada Era Pemerintahan Presiden Joko Widodo, *Jurnal Tunas Agraria*, Vol. 5 No. 2 Mei 2022.
- Djaja, B. (2018). Quo vadis Undang-Undang Pokok Agraria. Suatu tinjauan terhadap permasalahan pertanahan di usia undang-undang pokok agraria yang ke lima puluh delapan tahun. *Jurnal Era Hukum*, 16(1).
- Ganindha, R. (2016). Urgensi pembentukan kelembagaan Bank Tanah sebagai alternatif penyediaan tanah bagi masyarakat untuk kepentingan Umum. *Jurnal Arena Hukum*, 9 (3).

Legal Review of the
(Hamidun Noor)

**Proceeding of International Conference
on The Law Development For Public Welfare**

ISSN 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Kantor Staf Presiden 2017, Pelaksanaan Reforma Agraria, arahan Kantor Staf Presiden: Prioritas nasional Reforma Agraria dalam Rencana Kerja Pemerintah Tahun 2017.

Mutia, C. L. (2004). Bank tanah: Antara cita-cita dan utopis. *Jurnal Lex Jurnalica*, 1(2).

S, Martini., Ash-Shafikh, M. H., & Afif, N. C. (2019). Implementasi Reforma Agraria Terhadap Pemenuhan Harapan Masyarakat Yang Bersengketa Lahan. *BHUMI: Jurnal Agraria dan Pertanahan*.

Tanawijaya, H. (1995). Bank tanah: Suatu tinjauan hukum dan ekonomi. *Jurnal Era Hukum*, 3(1).

Van Dijk, T and D Kopeva. (2006). Land Banking and Central Europe: Future Relevance Current Initiatives, Western European Past Experience. *Journal Land Use Policy*, Vol. 30.

Wardhani, D. K. (2020). Disharmoni antara RUU Cipta Kerja Bab Pertanahan dengan prinsip-prinsip UU Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA). *Jurnal Komunikasi Hukum*, 6(2).

Zamroni, Mohammad, Rachman Maulana Kafrawi, Perlindungan Masyarakat Hukum Adat di Wilayah Pesisir Pasca Berlakunya UU Nomor 11 Tahun 2020 Tentang Cipta Kerja, *Jurnal Perspektif Hukum*, Vol. 21 No.2 November 2021: 235-256.

Books:

Admosudirjo, P. (1998). Hukum administrasi negara. Ghalia Indonesia.

Flechner. (1974). Land banking in the control of urban development. Praeger Publishers.

Limbong, Bernhard. (2013). *Bank Tanah*, Jakarta: Margaretha Pustaka.

Marzuki, Peter Machmud. (2011). *Penelitian Hukum*, Jakarta: Kencana Pradana Media Group.

Mudjiono. (1977). *Politik dan Hukum Agraria*, Yogyakarta: Liberty.

Rubaie, Achmad. (2007). *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Malang: Banyumedia Publishing.

Soekanto, Soerjono & Sri Mahmudji. (2003). *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada.

Soemitro, Ronni Hanitijo. (1985). *Metodologi Penelitian Hukum*, Jakarta: Ghalia Indonesia.

Sumardjono, Maria S.W. (2008). *Tanah Dalam Perspektif Hak Ekonomi, Sosial dan Budaya*, Jakarta: Kompas.

Legal Review of the
(Hamidun Noor)



Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Winoto, Joyo. (2010). *Tanah Untuk Keadilan dan Kesejahteraan Rakyat*. BPNRI.

Regulation:

Decree of the Head of the National Land Agency of the Republic of Indonesia Number: 77/Kep7.1/III/2012 Concerning Agrarian Reform Practices.

Government Regulation Number 19 of 2021 concerning Land Acquisition for Development in the Public Interest.

Government Regulation Number 64 of 2021 concerning the Indonesian Land Bank Agency.

Presidential Regulation Number 86 of 2018 concerning Agrarian Reform.

Law Number 11 of 2020 concerning Job Creation.

Law Number 12 of 2011 concerning the Formation of Legislation.

Law Number 5 of 1960 concerning Basic Agrarian Regulations. Indonesia.

Legal Review of the
(Hamidun Noor)