

THE DISHARMONIZATION OF STATE CONTROL RIGHTS OVER LAND IN AGRARIAN REFORM AFTER THE ENACTMENT OF THE JOB CREATION LAW

Desi Rahmawati

Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia
rahmahhattaraais@gmail.com

Annalisa Y.

Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia
annalisay@fh.unsri.ac.id

Firman Muntaqo

Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia
firmanmuntaqo@fh.unsri.ac.id

Iza Rumesten RS.

Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia
izarumestenunsri@yahoo.com

Abstract

This research aims to find out the concept of the Right to Control the State (HMN) over land in agrarian reform after the enactment of the Job Creation Law (UU CK). Through juridical normative law research that focuses on the norms contained in the CK Law and its implementing regulations, namely PP 18 of 2021 and PP 64 of 2021 on the norms regulated in the UUPA. This research uses qualitative research, which is a form of social research whose research design is influenced by the data obtained in the research, in this case analyzing the articles in the CK Law, and its implementing regulations. The concept of HMN over land is regulated in the constitution of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely the concept of HMN over agrarian resources with the authority to regulate the planning, management, and utilization of agrarian resources for the greatest prosperity of the people in the concept of the state as a ruler with the authority to regulate, not the state as the owner of land as stated in the CK Law. The HMN regulation in the CK Law creates disharmony in agrarian reform regulations because it causes an overlap of authority that causes a conflict of interest, the expansion of land objects of agrarian reform (TORA), namely HGB, HGU and Pause Rights.

Keyword: *Agrarian Reform, Job Creation Law, Regulations, State's Right to Control.*

A. INTRODUCTION

That the right to control land is an important element for the Indonesian people, as formulated by Mohammad Hatta, that the earth and the management of natural resources are gifts from God Almighty, which is regulated in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), along with its explanation which was promulgated in the Republic of Indonesia News (BRI) Year II Number 7, on August 17, 1945. This formulation is regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads, "The earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people,"¹ which is the legal basis for the state's legitimacy over agrarian resources in Indonesia which gave birth to HMN.²

HMN is something concepts based on understanding that the state is something organization power highest from all the people so that the country as owner power make an effort For influence other parties with make his power as central through regulations legislation that he formed. The concept of HMN on land giving birth to the upper HPL land. Although in Regulation of the Minister of Agrarian Affairs Number 9 of 1965 has confirm that HPL's position is HMN, however regulation same level minister Not yet Can considered as umbrella the laws that govern related interests desire people's lives in general overall, for That need existence arrangement same level the law that regulates it. The CK Law first regulated HPL in regulation same level law, starting from Article 136 to Article 142, and regulations implementing regulations, namely: PP 18 of 2021, and PP 64/2021 concerning the Land Bank Agency.³

The HMN concept aims for the welfare of the people, including through agrarian reform which is regulated in the Basic Agrarian Law (called UUPA).⁴

¹ Mohammad Hatta, *Explanation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia* (Jakarta: Mutiara, 1977), 34.

² Achmad Miftah Farid, "Degradasi Makna Reforma Agraria dalam Undang-Undang Cipta Kerja," *Supremasi Hukum: Jurnal Penelitian Hukum* 31, no. 2 (2022): 134. See too, Suparto, "Interpreting the State's Right to Control In the provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia," *Jurnal UIR Law Review* 4, no. 2 (2020): 5; Suyanto Edi Wibowo, "Memahami Makna Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Perihal Penguasaan Oleh Negara Terhadap Sumber Daya Alam Comprehend the Meaning of Article 33 Of The 1945 Constitution of the Republic of Indonesia on State Authority Over Natural Resources," *Jurnal Legislasi Indonesia* 12, no. 4 (2018): 14.

³ Aqliyah Hafifah Elsurra, and Syaddan Dintara Lubis, "Peralihan hak guna bangunan menjadi hak milik berdasarkan peraturan pemerintah no. 18 tahun 2021 tentang hak pengelolaan, hak atas tanah, satuan rumah susun, dan pendaftaran tanah," *Mizan: Jurnal Ilmu Hukum* 13, no. 2 (2024): 194.

⁴ Alwaahab Agirda Nugraha Effendi, and Akhmad Darajati Setiawan, "Legal Certainty on Land Ownership Rights Above Management Rights," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 3, no. 2 (2023): 196. See too, Retno Sulistyaningsih, "Reforma Agraria di Indonesia," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 26, no. 1 (2021): 58.

According to Maria Soemardjono, the concept land reform appear when in its journey, UUPA only arrange affairs land in things the main thing, so that felt need existence regulation functioning executor as complementary and at the same time perfection the substance of the UUPA. This Because desire Indonesian society is increasingly tall will certainty law must in line with principles base in the 1945 Constitution of the Republic of Indonesia and UUPA.⁵

Study about HMN above land Once conducted by Julius Sembiring⁶ who researched difference HMN's conception of state land in system law land colonial with system law land national. In system law land colonial, HMN concept above state land is land owned by the state, while HMN is for state land in system law national is land controlled by the state.

The HMN concept following the enactment of the UUCK positions the state as the landowner through the establishment of a land bank and the granting of HPL (Land Use Right) for land, which is considered to have the potential to create *a domein verklaring* (land clearing) that was abolished with the enactment of the UUPA.⁷ This is because the UUCK is considered to be more biased towards capital-owning investors than towards improving the welfare of the people, thus creating disharmony with the goal of agrarian reform in the UUPA, namely the welfare of all Indonesian people.⁸

The concept of HMN in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is draft state control for people's welfare.⁹ This means that the state protects people's rights through arrangement legislation with objective people's welfare. Concept the control of the state in question in constitution is a country not as owner land, but Allah as owner land, as regulated in Article 1 paragraph (1), (2) and (3) UUPA, that, "The entire territory of Indonesia is unity homeland of all the united Indonesian people as

⁵ Maria SW Sumardjono, "Tata Kelola Pertanahan Pasca-UU Cipta Kerja," *Kompas. Id*, 16 March 2021, <https://www.kompas.id/artikel/tata-kelola-pertanahan-pasca-uu-cipta-kerja>, Accessed on October 32, 2025.

⁶ Julius Sembiring, "Konstruksi Hukum Penguasaan Tanah Negara Dalam Sistem Hukum Tanah Nasional," (PhD diss., Universitas Gadjah Mada, 2016), 34.

⁷ Rahadiyan Veda Mahardika, and Gatot Suyanto, "Kedudukan Hukum Badan Bank Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum," *Jurnal Ilmu Kenotariatan* 3, no. 2 (2022): 59.

⁸ Achmad Miftah Farid, "Degradasi Makna Reforma Agraria dalam Undang-Undang Cipta Kerja," *Supremasi Hukum: Jurnal Penelitian Hukum* 31, no. 2 (2022): 136. See Endang Pandamdari, "Penguatan Reforma Agraria Untuk Kemakmuran Rakyat Dalam Perspektif Hukum Tanah Nasional," *Jurnal Hukum Nawasena Agraria* 1, no. 1 (2023): 53.

⁹ Suparto, "Interpreting the State's Right to Control In the provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia," *Jurnal UIR Law Review* 4, no. 2 (2020): 6. See too, Setiyo Utomo, "Penguatan Pasal 33 Ayat (3) Dalam Amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Majelis* 9, (2019): 51.

the Indonesian nation, which is gift God is Almighty and Almighty eternal.”¹⁰ The state's duty is only arranging management land and limited by the contents of the land rights.

The people as *natuurlijke persoon* who have priority rights based on their religious magical relationship, ownership and control of land should be prioritized, compared to the ownership and control of land by public legal entities or private legal entities, because both legal entities are human creations and do not have a religious magical relationship with land. It should be, only for the sake of the National Strategic Project in the true sense of public interest, in the sense that the project belongs to the government, is funded by the government, and does not seek profit, then the people's priority rights to own and control land can be limited.¹¹

Therefore, it is important to conduct a critical review and harmonize certain articles in the CK Law, especially those related to agrarian reform, to ensure that these regulations are in sync and harmonious with the UUPA which is based on Article 33 paragraph (3) of the 1945 NRI Constitution.

Based on background behind problem said, giving rise to question:

1. How is it? draft regulation of the State's Right to Control over land in implementation reform agrarian post its validity Job Creation Law?
2. How is it? draft regulation of the State's Right to Control over land in reform agrarian as it should be?

B. RESEARCH METHODS

Method in study This use study juridical normative which is a research process for find rule law, principles and/ or doctrine law for answer issue current law happen.¹² Study law normative This used for research upper HMN settings land to implementation reform agrarian in the articles in the CK Law, PP 18 of 2021, PP 64 of 2021 and other regulations implementer others.

In addition, this study examines the constitutional foundation of HMN over land as regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The provision establishes the concept of HMN over

¹⁰Article 1 paragraph (1), (2), (3) UUPA, is base legitimacy law ownership of the Indonesian people over all over source Power Agrarian Affairs in Indonesia, <https://spi.or.id>. wp -content, Uploads May 2021

¹¹ Firman Muntaqoa, Muhammad Syaifuddin, Desi Rahmawati, Bagoes Mahendra Jaya, "Konsep Hukum Pengelolaan Dan Pemanfaatan Tanah Berdasarkan Hukum Adat Sebagai Bahan Hukum Tanah Nasional (Studi Sejarah Hukum Tanah di Daerah Semende, Kabupaten Muara Enim, Provinsi Sumatera Selatan)," *Simbur Cahaya* 31, no 2 (2024): 304. See too, Sembiring Julianti, Nababan Ramsul, Juliani Br Tarigan Putri, Vioni Pinem Octa, And Sanusi Hasibuan Rizal, "Analisis Perlindungan Hukum Terhadap Kepemilikan Hak Atas Tanah Bagi Kepentingan Umum," *Jurnal Relasi Publik Учредители: Fakultas Hukum, Universitas Katolik Widya Karya Malang* 2, no. 1 (2023): 68.

¹² Peter Mahmud Marzuki, *Penelitian hukum: Edisi revisi* (Jakarta: Prenada Media, 2017), 34.

agrarian resources by granting the state the authority to regulate the planning, management, and utilization of agrarian resources for the greatest prosperity of the people. Within this framework, the state acts as a regulator and controller with the authority to manage and organize agrarian resources, rather than as the owner of land. This constitutional concept serves as an important benchmark in assessing the regulation of HMN as reflected in the provisions of the CK Law. The approach used is approach legislation, approach philosophical approach conceptual approach comparative approach futuristic, and approach interpretation. Collection material law study normative This through studies literature with material primary, secondary, and tertiary law. Analysis of the data used in the CK Law regulations with technique collection material study through upper *research library* regulation legislation and also through *technology research*, namely browsing on *Google search* for get information on problems faced. Research This synchronize regulation laws that discuss in a way deep on content regulation For withdrawn in conclusion in a way *sylogism deductive*, with logic on essence law, source laws and types law, for avoid bias results study.¹³

C. RESULTS AND DISCUSSION

1. Concept Regulation of the State's Controlling Rights over Land in Agrarian Reform after the Job Creation Law

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia orders to the state to master and manage source Power agrarian in Indonesia to bring as much as possible prosperity of the people. Command constitution the is trust from the Indonesian nation as owner source Power agrarian, which is gift Almighty God riches Indonesian nature as riches national, which mandates to the state as organization power the highest people for arrange planning, utilization and use.

State control over agrarian resources is regulated under Article 2 of the Basic Agrarian Law (UUPA). Based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and the provisions referred to in Article 1 of the UUPA, the earth, water, and airspace, including the natural resources contained therein, are at the highest level controlled by the State as the organization of the power of all the people. This provision establishes the constitutional foundation for the State's Right to Control (Hak Menguasai Negara/HMN) over agrarian resources.

The HMN grants authority to the State to regulate and administer the allocation, use, availability, and maintenance of land, water, and airspace. Furthermore, the State is authorized to determine and regulate legal relations

¹³ Bahder Johan Nasution, *Metode Penelitian Hukum* (Bandung: CV Mandar Maju, 2008), 23.

between individuals and agrarian resources, as well as legal actions concerning land, water, and airspace. Through these powers, the State functions as a regulator and manager of agrarian resources in order to ensure their utilization in accordance with national interests and social welfare objectives.¹⁴

The authority derived from the State's Right to Control is exercised in accordance with Article 33 of the 1945 Constitution and must be directed toward achieving the greatest possible prosperity of the people. Such prosperity encompasses national welfare, social justice, and the realization of an independent, sovereign, and prosperous Indonesian society and state based on the rule of law. Accordingly, the exercise of HMN is not intended to establish state ownership over land and natural resources, but rather to ensure that their management and utilization contribute to the public interest and national development.

In its implementation, the State's Right to Control may be delegated to regional governments and customary law communities to the extent necessary and provided that such delegation does not conflict with national interests and remains consistent with the applicable laws and regulations. This delegation reflects the recognition of regional autonomy and customary rights while maintaining the State's responsibility to safeguard the broader objectives of agrarian governance and national welfare.¹⁵

The concept of "controlled" by the state in Article 2 of the UUPA contains meaning that the state is not as owner on source Power natural the but something rights which are people's mandate with give authority of the state to control source Power natural resources from HMN which is public.¹⁶ This HMN No give authority for control land in a way physical and use it like right mastery on land others, because its nature solely only authority public, so that on base authority said, the government emit various policy for handle arrangement repeat ownership, control, utilization and use land. This is due to governance land that has been run by the government "not yet reflect and provide answer as well as solution related settlement dispute increasingly land increase".¹⁷

¹⁴ Endang Pandamdari, "Penguatan Reforma Agraria Untuk Kemakmuran Rakyat Dalam Perspektif Hukum Tanah Nasional," *Jurnal Hukum Nawasena Agraria* 1, no. 1 (2023): 56. See too, Muhammad Yasir, "Sinergitas Antara Lembaga Pemerintahan, Non Pemerintahan, dan Masyarakat untuk Mewujudkan Reforma Agraria di Kabupaten Bojonegoro," *Binamulia Hukum* 12, no. 1 (2023): 6.

¹⁵ Putra Hutomo, and H. Yuhelson, "Ownership of flat units for foreigners in the agrarian legal order," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 1 (2024): 158.

¹⁶ Irawan Soerodjo, *Land Law and Management Rights on Land, Existence, Regulation and Practice* (Yogyakarta: Print Second, Laksbang Mediatama, 2024), 243.

¹⁷ N. Noegroho, "Application of the Land Banking Concept in Indonesia in Urban Areas." *ComTech: Computer, Mathematics and Engineering Applications* 3, no. 2 (2012): 967.

In principle, the regulations agrarian which has been This become base control utilization source Power agrarian no supported by various law.¹⁸ Regulations that are sectoral create separate laws. Based on matter mentioned, it is necessary existence policy arrangement management source Power agrarian in a way overall. Need review return various regulation legislation related reform agrarian with followed by policy reform and institutional reform. Agrarian reform No only understood as policy arrangement asset aja (asset reform) in the form of legalization assets and redistribution land, but basically is asset reform concept with access reform, namely mapping social, improvement capacity institutional, mentoring business, improvement skills, use appropriate technology, facilities access to capital, access marketing, strengthening databases and information commodities and/ or provision infrastructure supporters so that subject reform agrarian can develop capacity. ¹⁹In additions existence protection law and justice through the regulations that govern it. This is Already arranged in UUPA Articles 7, 10, 11, 12, 13, 14, 15 and Article 17.

In policy arrangement repeat ownership and control land, concept reform agrarian what the country's predecessors aspired to is draft reform agrarian that returns land to the people who give access to reform for the people to utilize and use the land as source livelihood, which is guaranteed and protected by regulations that favor the people. Birth of UUPA and reform agrarian, aims for as much as possible prosperity of the people based on Pancasila, which includes: 1). Renewal law agrarian; 2). Elimination rights on land foreign; 3). Ending suction colonization feudal in a way gradually; 4). Restructuring ownership and control land and relationships law; 5). Planning supplies, allocation source Power planned agrarian in accordance Power support and capability."²⁰ Agrarian reform aims to achieve justice in land redistribution, addressing extreme land ownership and control disparities by prioritizing the needs of small farmers over the interests of large corporations.²¹

¹⁸ Putra Hutomo, and H. Yuhelson, "Ownership of flat units for foreigners in the agrarian legal order," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 1 (2024): 158.

¹⁹ Jusuf Ano, Daswati Daswati, and Sitti Chaeriah Ahsan, "Agrarian Reform Policy Implementation (Study on the Role of the Indonesian National Land Office of Palu City)," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 1 (2024): 1367.

²⁰ Budi Harsono, *Hukum agraria Indonesia: sejarah pembentukan undang-undang pokok agraria, isi dan pelaksanaannya* (Yogyakarta: Djambatan, 2007): 35.

²¹ Radhityas Kharisma Nuryasinta, and Padhina Pangestika, "Legality of Assets and Land Management as Strengthening Agrarian Reform: A Case Study of Improvement Welfare Small Farmers," *Tunas Agraria*, 8 no. 2 (2025): 245. See too, Rizky Syahputra Sutikno, "Hukum agraria dan kebijakan agraria di Indonesia," *COURT REVIEW: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)* 3, no. 03 (2023): 25.

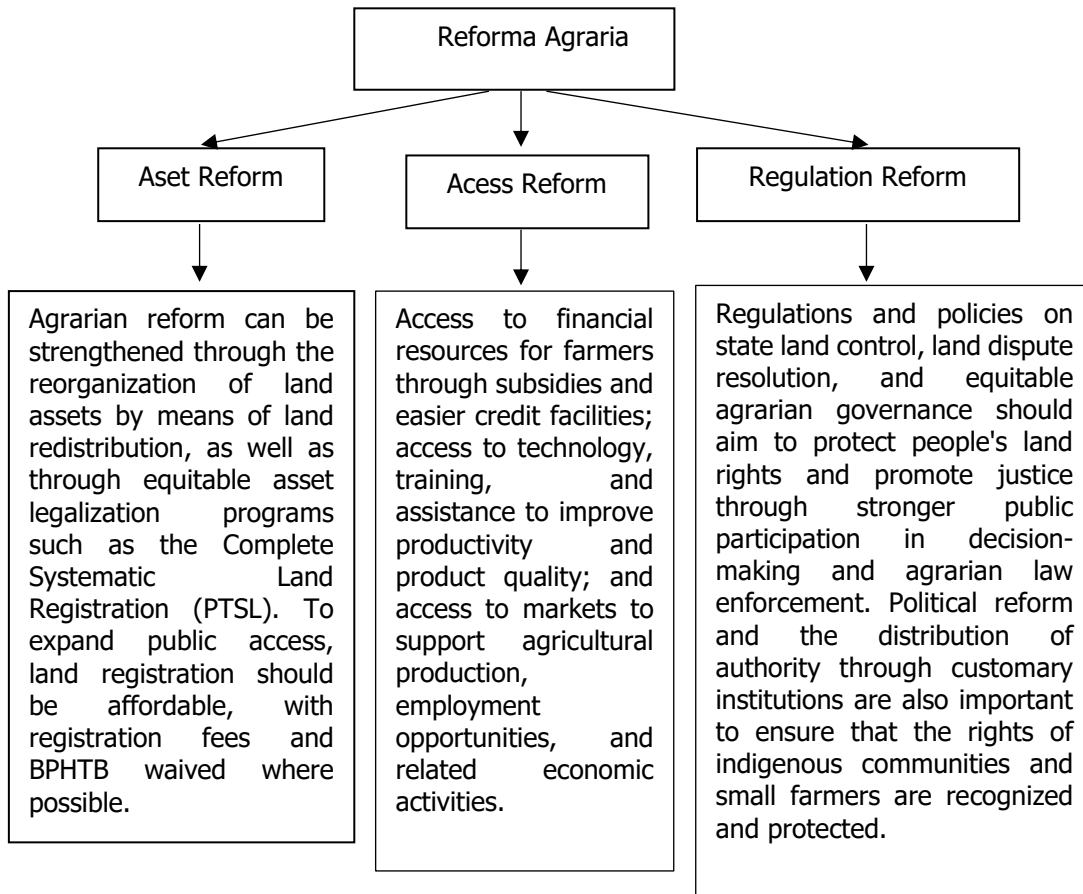


Figure 1. Concept reform Agrarian

In agrarian reform, the use of the terms HGU, HGB and land rights, is different when in the UUPA, the term land rights is intended for land per se, namely land rights for the surface of the earth, but the terms and abbreviations adopted in the UUCK are used for broader material and substance, namely used in addition to the surface of the earth, also used for rights in the upper and lower space of the earth.²² The CK Law even re-regulates the subject, object and period of granting land rights above HPL, without revoking the validity of the UUPA or revising it, but contains new regulations in which new articles are regulated that change the norms of UUPA regulations.²³

Land acquisition for agrarian reform must be regulated in such a way that the regulations are in favor of the people. According to Maria SW Soemardjono, various legal concepts must be taken into account in the implementation policy of land acquisition regulations, namely: a) Land

²² Carrissa Shannon Lie, and Yohanes Kristian Pranata, "The Land Rights Which Can Be Given on the Land Management System," *Jurnal Daulat Hukum* 4, no. 4 (2021): 455427.

²³ Ananda Prima Yurista, "Implikasi Penafsiran Kembali Hak Menguasai Negara Terhadap Pengelolaan Wilayah Pesisir Dan Pulau-Pulau Kecil," *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 5, no. 3 (2012): 343.

ownership and its use must be based on legal grounds; b) All land rights originate from national rights; c) There must be an agreement from the parties involved regarding property ownership by an individual or legal entity; d). The President authorized pull-out right-on land and objects on without agreement subject rights, based on Law No. 20/1961 concerning revocation of land and object rights on,²⁴ with accompanied by change appropriate loss.

For this reason, the role of the government is a real manifestation of state sovereignty in achieving its goals through regulations (*regelen*) and administration (*bestuur*), which are controlled by basic norms and values that influence the relationship between the state and its people to achieve the goal of social welfare for all people as mandated by the Constitution.²⁵

Through a formal test of the CK Law at the Constitutional Court in Case No. 91/PUU-XVIII/2020, in its decision which granted and was adopted by the Constitutional Court in legal considerations, that "...the CK Law has become difficult to understand whether it is a new law, an amendment law, or a revocation law..." with the ruling of its decision "conditionally unconstitutional", meaning that if it is not corrected within a period of 2 years, the CK Law becomes permanently unconstitutional. This means that if the Government and the DPR fail to carry out *law remaking* the CK Law within 2 (two) years, according to the ruling of the a quo Constitutional Court, the CK Law and its implementing regulations will be null and void.

The mechanism for establishing the CK Law through a Government Regulation in Lieu of Law (Perppu) based on the existence of an urgent need must be able to demonstrate two characteristics: a crisis and urgency. According to Bagir Manan, a crisis is defined as a disturbance that creates urgency and occurs suddenly. Urgency is defined as a condition that cannot be anticipated in advance that requires immediate action without waiting for deliberation, which if not implemented will disrupt the running of government. Agreeing with Bagir Manan, Jimly Asshidiqie emphasizes the urgent legal need or urgency related to time constraints. He added three conditions for a Perppu, namely: a. there is an urgent need (*reasonable necessity*); b. limited time available (*limited time*); c. there is no other alternative that can overcome it except by issuing a Perppu.²⁶ In reality, these conditions are not met because

²⁴ Lina Jamilah, "Government Policy Regulating Land Acquisition Through the Land Bank According to the Job Creation Law," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 22, no. 1 (2023): 34.

²⁵ Mohamad Fasyehhudin, "Protection and Certainty of Social Welfare Law in the Concept of a Welfare State: Perspective of State Administrative Law," *Jurnal Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 1 (2023): 34.

²⁶ Nurasikin, "Constitutional Court (MK) Interpretation of the Element of Urgency in the Formation of a Government Regulation instead of Law (PERPPU): Constitutional Court (MK) Interpretation of the Element of Urgency in the Formation of a Government Regulation instead of Law (PERPPU)," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 1 (2024): 138.

there is still plenty of time to discuss the CK Law regulations, there is no legal vacuum that regulates it, and there are thousands of articles that can be called emergency laws.

Although in the journey of the CK Law has become law. HMN concept on land realized through HPL which is delegation part authority implementation of HMN to HPL holder. The CK Law is considered as regulation strengthening of HPL because arranged special in PP 18/2021.²⁷ Apart from that, the CK Law also established the Land Bank Agency as institutions that are special *sui generis* arrange land in PP 64/2021 concerning Land Bank Agencies.

Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution is implementation of HMN in reform agrarian done through policy government that regulates management, use, and redistribution land for reach justice social and people's welfare, which becomes base implementation reform agrarian with objective organize return structure control, use, ownership and utilization land in a way fair.

In In practice, the state runs function policy (beleid), regulation (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad), as well as management (bestuurdaad) above land so that it can utilized as much as possible For prosperity of the people, especially through redistribution state land to poor farmers and communities that do not own land, will but matter the it turns out Far from what is aspired to by the 1945 Constitution of the Republic of Indonesia and the UUPA.

The concept of HPL in the CK Law is regulated in Article 136 Jo. Article 1 PP 18/2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (hereinafter referred to as PP 18/2021). Article 1 defines HPL as HMN whose authority implementation part delegated to holder his rights.²⁸ According to Abdul Wahid²⁹ HPL is part from HMN, is arrangement return political agrarian through the CK Law which places a land bank as central in implementation policy agrarian, including planning, acquisition,

²⁷ Aqliyah Hafifah Elsurah, and Syaddan Dintara Lubis, "Peralihan hak guna bangunan menjadi hak milik berdasarkan peraturan pemerintah no. 18 tahun 2021 tentang hak pengelolaan, hak atas tanah, satuan rumah susun, dan pendaftaran tanah," *Mizan: Jurnal Ilmu Hukum* 13, no. 2 (2024): 196.

²⁸ Article 1 of PP 18/2021 is regulation implementing the CK Law, where HPL is HMN for land that is partly his authority delegated to holder rights, authority as regulated in Article 7 for compile plan designation, use and utilization land according to spatial planning, using all over or part HPL land for used Alone or in collaboration with party other, determine mandatory fee /money annual in accordance with agreement. <https://spi.or.id>. wp -content, Uploads May 2021.

²⁹ Abdul Wahid, Rohadi Rohadi, and Siti Sumartini, "Disharmonisasi Kebijakan Politik Hukum Agraria: Analisis Hak Pengelolaan Tanah Pasca Terbitnya Undang-Undang Cipta Kerja," *Jatijajar Law Review* 3, no. 1 (2024): 28. See too, Mohammad Wira Utama, Riana Wulandari Ananto, and Wafda Vivid Izziyana, "Reorientasi Politik Hukum Hak Menguasai Negara atas Tanah dalam Perspektif Negara Kesejahteraan di Indonesia," *Jurnal Hukum Lex Generalis* 6, no. 9 (2025): 343.

utilization until distribution land for 5 (five) interests, namely: interests general, interests social, development national, equality economy, consolidation land, and reform agrarian. In its implementation, Article 136 of the CK Law regulates land banks as subject law given HPL's authority to manage land in accordance its purpose and provide authority that can delegated to subject law.

The problem of HPL in UUPA is because no arranged in a way firm, is it including HMN or not right on Land. According to Budi Harsono³⁰, "HPL is a land ownership right, not classified as a land right, but rather a "gembelan" of HMN. This means that HPL is not a land right in the classification of land ownership rights, but rather represents a partial delegation of its implementation authority by the state to the rights holder to exercise authority over the land."

PP18/2021 regulates that, rights on land above HPL can done cooperation with other parties through agreement utilization land, so that the concept of "distribution benefits" on reform agrarian, namely ownership permanent land, will but the benefits can shared to other parties." As with delegation authority or delegation rights, arrangements the has cause error because HPL is delegation HMN's authority, it should be to mandate or delegation authority, there is element trust that the party entrusted with the responsibility authority the can carry it out in accordance with what is bestowed by the giver authority, when delegation authority the No implemented, then delegated authority must withdraw back. The party receiving delegation No may divert authority the two other parties even though with form agreement cooperation. In matter this is a country with HMN above the land bestow part his authority to HPL subject according to with its intended use. Subject the law that accepts the HPL No can divert the authority of the state with divert it to other parties through cooperation utilization land. If the transfer the diverted to other parties, then the country has the potential will lose land. Potential This happen when right on land above the HPL is made right liability by the party third, although through agreement HPL holder. Potential fail paid by the party third at the lending bank loans, making the country lose land.³¹

HMN problems in weaken reform agrarian post the implementation of the CK Law through granting of HPL to the right on land, HGU, HGB and Right of Use. The remaining land of HGU, HGB and Right of Use which has expired is used as as TORA. Lands the taken over returned by the state and released

³⁰ Budi Harsono, *Hukum agraria Indonesia: sejarah pembentukan undang-undang pokok agraria, isi dan pelaksanaannya* (Yogyakarta: Djambatan, 2007): 34.

³¹ Tri Hayati, "Hak penguasaan negara terhadap sumber daya alam dan implikasinya terhadap bentuk perusahaan pertambangan," *Jurnal Hukum & Pembangunan* 49, no. 3 (2019): 768.

his rights become state land for furthermore label it with HPL (Article 10 of PP 18/2021 in conjunction with Article 40 of PP 64/2021).³² The HPL land become source land bank assets through determination government and land from other parties. Land bank the functioning distributes the HPL land (Vide Article 2, Article 3 paragraphs (1) and (2) PP 64/2021) to farmer small, laborers, teachers, people whose economy is poor low with given Ownership Certificate. Meanwhile in UUCK regulations, HPL land does not given for individual.

Problems other that is existence convenience procurement land for interest General and Projects National Strategy in UUCK, so that use land for project there are so many and so many with evict people's land. Never mind for get land but precisely people's ownership of the land becomes lost, besides That open potential damage environment and conflict agrarian.³³ Procurement process land for interest project that's easy without supervision tight, has harm right constitutional public will the land and worsen inequality ownership land.

Besides that, TORA redistribution takes longer to implement, is profitable company Because time 2-year gap after the end giving right for extend or renew Application for HGU, HGB, and Right of Use (Vide Article 14 of Presidential Decree 62/2023). Provisions This different in the UUPA which does not give time wait and update right after the end giving right on the land. Giving term time right on land, HGU, HGB and Right of Use in over the older HPL will close access public will the land.

Granting of HGB or HP above Freehold land or above old HPL land, referring to the system *brazier Saxon* that is *lease hold* or *covenant*, will but right on land the still just different with *leasehold* or *covenant*, because HGU, HGB and Right of Use above HPL adopt term longer time following the concept of a monarchical state that adheres to *long life covenant* or *long life lease* in the imperial ideology. This cause question because Indonesia adheres to draft that land That is a Nation's Right. As owner source Power Indonesian agrarian, the HMN concept only limited to organize and manage it for interest prosperity of the people.³⁴ The right to land the No as well as immediately Can entered in the concept of dominium or empire. So, if depart from draft Therefore, HGB, HGU and Right of Use in Indonesia are not institution rent land.

³² Muhammad Fitron, and Muhammad Wildan, "Penerapan Peraturan Pemerintah Nomor 64 Tahun 2021 Tentang Badan Bank Tanah Berkaitan Dengan Agraria," *Pancasakti Law Journal (PLJ)* 1, no. 1 (2023): 119.

³³ Aditya Nurahmani, "Revitalisasi Kebijakan Reforma Agraria Dalam Rangka Penguatan Hak Perekonomian Rakyat," *Majalah Hukum Nasional* 53, no. 2 (2023): 299. See too, Ahmad Fauzi, "Reformasi agraria dalam kerangka otonomi daerah," *Jurnal Bina Mulia Hukum* 6, no. 2 (2022): 21.

³⁴ Saripudin, "Konsep Penertiban Dan Pendayagunaan Tanah Terlantar Dalam Perspektif Reforma Agraria," *DiH: Jurnal Ilmu Hukum* (2015): 114. See too, Baiq Rara Charina Sizi, and Usman Munir, "Kebijakan reforma agraria yang berkeadilan," *Unizar Law Review* 6, no. 2 (2023): 72.

"Countries with dominium system allows for countries to implement system lease, lease hold or covenant, with term time long and long time. Problem constitutional come to the fore if Indonesia does not adhere to dominium system, not ex kingdom or monarchy, which provides term 80 or 90 years for right on land. System ownership land rights adopted by Indonesia, such as HGB, HGU, and Right of Use, are legally conceptual No The same with lease hold or covenant concept."³⁵

Lease hold and *covenant* in agreement rent No published certificate land, while HGB and Right of Use are above Freehold land and HPL, their utilization given certificates of various forms and types the certificate The same with HGB and HP on State Land. The HGB or HP granted above Freehold land or above HPL land is called with loading rights, occur from action carry on results agreement uses land between party third with owner land. Uniquely, Indonesia provides certificate right on land to tenants. whereas in other countries only limited to deed agreement *land lease agreement*.

In the CK Law, Presidential Decree acceleration reform agrarian, regulating giving land to the people must give access more land fair, with results Abundant agriculture and people's prosperity are expected increased. In addition, justice economy in agrarian too related with compensation that worthy for public affected procurement land.³⁶ Therefore that, policy procurement land for interest general must consider aspect economy in order not to harm society. Problems emerging agrarian in implementation procurement land For interest general, fishing conflict agrarian which is often caused by inequality ownership land and lack of transparency in the procurement process land, also not give freedom for the people to process allocation the land, for example for TORA area forest, for TORA recipients can plant the same plant with those planted by the company plantation local (Vide Article 14 paragraph 3 of Presidential Decree 62/2023).

Land bank agency has authority for provide land for implementation reform regulated agrarian in UUCK, in Part Four Paragraph 1st Article 125 to Article 135, Jo regulation PP 64/2021 concerning Land Bank Entities, which have authority special for ensure availability land for various needs including for reform agrarian. According to Sofyan Djalil,³⁷ establishment of a land bank in the CK Law aims so that the state owns and controls land through authority of the Ministry of Agrarian Affairs and Spatial Planning/BPN. Different with the

³⁵ Gunanegara, "Kebijakan negara pada pengaturan hak atas tanah pasca Undang-Undang Cipta Kerja," *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 2 (2022): 165.

³⁶ Hairani, "Studi tentang land reform dalam perspektif reformasi hukum agraria," *Jurnal Cakrawala Hukum* 19, no. 1 (2014): 12.

³⁷ Sofyan Djalil, "Minister Of ATR: Land Bank Allows States to Provide Land for Urban People's Houses," *medcom.id*, 07 Oktober 2020, <https://voi.id/en/amp/16039>, Accessed on October 30, 2025.

BPN abroad which is known with *national land authority* or authority land national which has two functions as *land regulator* or regulations functioning land arrange right own and give certificate land, and *land manager* or manager land. However, in Indonesia, BPN only functioning as *land regulator* just. "For that's it the existence of a land bank in the UUCK which functions as *land manager* land."

With the birth of the land bank, has add authorized state institutions in management land in Indonesia, namely ATR/BPN whose authority is regulated by the 1945 Constitution of the Republic of Indonesia. Apart from that existence group task reform agrarian (GTRA) which was formed through Regulation President of Indonesia Number 86 of 2018 which caused overlapping overlap in authority and *conflict of interest* in institution land.³⁸ Overlapping overlap authority related with authority management and procurement the land that becomes BPN's authority is also authority of the Land Bank Agency. In implementation, many deviate from ideals constitution.

Regarding Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, there is question, when right on land can owned in a way personal and when control by the state for people's welfare with pull-out right-on land for interest general.³⁹ In the UUCK there are 10 things that are regulated by land banks, namely: a. Article 125, contains explanation as well as functions that must be carried out by the Land Bank; b. Article 126, explains nature of Land Bank in ensure availability land for society; c. Article 127, related to implementation the duties of the Land Bank are transparent, accountable and non- profit - oriented; d. Articles 128-129, provisions about Land Bank wealth, management right on land, and the Land Bank organization; and e. Articles 130-135, related to explanation every organization in the Land Bank.⁴⁰

UUCK states that rule law authority management right on land in a way clear stated that rule law new emerging in authority management right on land

³⁸ Riski Nur Jamali, and Haris Kusumawardana, "Penegakan Peraturan Pemerintah Nomor 64 Tahun 2021 Tentang Badan Bank Tanah Terhadap Rencana Pembangunan Ekonomi di Indonesia," *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 27, no. 2 (2025): 12. See too, I. Made Pria Dharsana, and I Gusti Agung Jordika pramanditya, "Legal Review of Management Rights in the Creative Work Law (Land Cluster)," *Journal of Public Administration Finance and Law* 19 (2021): 238; Nova Yatiar Mawaddah, Sri Zanariyah, and Martina Male, "Implementasi Peraturan Presiden Republik Indonesia Nomor 86 Tahun 2018 Tentang Reforma Agraria Terhadap Pelaksanaan Redistribusi Tanah Negara," *Viva Themis: Jurnal Ilmu Hukum dan Humaniora* 4, no. 1 (2021): 79.

³⁹ Setiyo Utomo, "Penguatan Pasal 33 Ayat (3) Dalam Amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Majelis* 9, (2019): 54.

⁴⁰ Firman Muntaqoa, Muhammad Syaifuddin, Desi Rahmawati, Bagoes Mahendra Jaya, "Konsep Hukum Pengelolaan Dan Pemanfaatan Tanah Berdasarkan Hukum Adat Sebagai Bahan Hukum Tanah Nasional (Studi Sejarah Hukum Tanah di Daerah Semende, Kabupaten Muara Enim, Provinsi Sumatera Selatan)," *Simbur Cahaya* 31, no 2 (2024): 309.

carried out by the State. UUCK emphasizes that the presence of the state is not only related with upper HMN land but also about HPL land in Indonesia. Based on Article 2 paragraph (1) of PP 64/2021, that form land bank assets owned by legal entities, separate from state assets, so that based on regulation this, the existence of a land bank become flexible and accountable.⁴¹ It means that the land bank is subject laws and legal entities granted authority wide in area land that is regulated and protected by law.

Several important provisions concerning the authority of the Land Bank Agency are regulated under Government Regulation Number 64 of 2021. First, the Land Bank is mandated to ensure land availability in order to achieve economic justice, including the implementation of agrarian reform, as stipulated in Article 2 paragraph (2). In carrying out this mandate, the Land Bank also performs a land distribution function. Pursuant to Article 3 paragraph (1) letter f, it is responsible for providing and distributing land to economically disadvantaged communities, managing state land assets, and supporting development and public interests, although the land assets remain under Management Rights (HPL).

Furthermore, the regulation provides support for agrarian reform by guaranteeing the availability of land for redistribution through the Agrarian Reform program, as regulated in Article 22 paragraph (1). The Land Bank obtains land from various sources, including land determined by the government, land acquired from other legal entities, and assets derived from state budget allocations, business cooperation, land utilization, state capital participation, and other lawful sources. Such land is granted to the Land Bank under Management Rights (HPL).

Although the Land Bank is normatively intended to support agrarian reform through the management and redistribution of land assets, in practice Agrarian Reform Object Land (TORA) is often utilized for other purposes. In addition, regulatory inconsistencies, unequal land control that tends not to favor small and poor communities, and overlapping authorities may hinder the implementation of agrarian reform and contribute to the emergence of agrarian conflicts.⁴²

One of the main criticisms of the Land Bank policy is the perceived shift in its objective from achieving social justice to facilitating investment and development. Critics argue that the primary purpose of the Land Bank, as mandated by the Job Creation Law (UUCK), is to support investment activities,

⁴¹ Firman Muntaqoa, Muhammad Syaifuddin, Desi Rahmawati, Bagoes Mahendra Jaya, "Konsep Hukum Pengelolaan Dan Pemanfaatan Tanah Berdasarkan Hukum Adat Sebagai Bahan Hukum Tanah Nasional (Studi Sejarah Hukum Tanah di Daerah Semende, Kabupaten Muara Enim, Provinsi Sumatera Selatan)," *Simbur Cahaya* 31, no 2 (2024): 310.

⁴² Endang Pandamdari, "Harapan sejahtera dan adil melalui peraturan presiden nomor 86 tahun 2018 tentang reforma agraria," *Hukum Pidana dan Pembangunan Hukum* 1, no. 2 (2019): 232.

while the provision of land for agrarian reform is no longer treated as a priority.⁴³ This approach is considered inconsistent with the principles of the Basic Agrarian Law (UUPA), which emphasizes the social function of land rights and agrarian justice. Some scholars further contend that the policy reflects a revival of the domain verklaring doctrine, potentially enabling the conversion of community land into state-controlled land.

Another issue concerns differences in the regulation of Agrarian Reform Object Land (TORA). Under Article 7 paragraph (1) letter a of Presidential Regulation Number 86 of 2018, redistribution objects include former HGU and HGB lands whose rights have expired and have not been renewed within one year after expiration.⁴⁴ However, following the enactment of the Job Creation Law, Article 129 paragraphs (1) and (2) provide that land managed by the Land Bank under Management Rights (HPL) may be granted as HGU, HGB, and Rights of Use. This introduces Rights of Use as an additional object within the framework of agrarian reform, creating a notable difference from the previous regulatory scheme.

As a legal entity of a legal nature *sui generis*, land bank authority so wide in planning, acquiring, managing and utilizing as well as redistribute land, so that potential cause monopoly mastery land that can Look at Articles 6, 7 and 8 of PP 64/2021 which explain sources land acquired by the land bank, Article 6, namely, acquisition land as referred to in Article 3 paragraph (1) letter b, originates from: a. land results determination government; and/ or b. land from other parties. Article 7 of PP 64/2021, namely, product land determination government as intended in Article 6 letter a consists of on state land originating from land used rights, area and land abandoned, land release area forest, land arise, land results reclamation, land used mines, land islands small, affected land policy changes in spatial layout, land that does not there is control over it." Furthermore, Article 8 paragraphs (1) and (2) explain acquisition land from source others, namely: (1). Land from party others, as intended in Article 6 letter b, originating from government central government, region, BUMN, BUMD, business entity, legal entity, community, through the process of purchasing, acceptance grants / donations, or the like swap exchange, release rights, acquisition form other legitimate ones."

Besides that, TORA redistribution takes longer to implement, is profitable company Because time 2-year gap after the end giving right for extend or renew Application for HGU, HGB, and Right of Use (Vide Article 14

⁴³ Ari Tri Wibowo, "Kajian yuridis dampak Undang-Undang Cipta Kerja terhadap pelaksanaan reforma agraria di Indonesia," *Jurnal Hukum Dan Kenotariatan* 6, no. 1 (2022): 535.

⁴⁴ Nova Yatiar Mawaddah, Sri Zanariyah, and Martina Male, "Implementasi Peraturan Presiden Republik Indonesia Nomor 86 Tahun 2018 Tentang Reforma Agraria Terhadap Pelaksanaan Redistribusi Tanah Negara," *Viva Themis: Jurnal Ilmu Hukum dan Humaniora* 4, no. 1 (2021): 78.

of Presidential Decree 62/2023). Provisions This different in the UUPA which does not give time wait and update right after the end giving right on the land. Giving term time right on land, HGU, HGB and Right of Use in over the older HPL will close access public will the land.

In the CK Law, there is significant changes in the provision term HGU and HGB periods, in particular in PP 18/2021 compared in UUPA and PP 40/1996. Term time granting of HGU is granted for 95 years, namely 35 years giving first 25 years' time extension and 35 years update rights, whereas for term The HGB period is 80 years, which is 30 years giving first 20 years extension and 30 years for the update. The provisions of this HGB can give at once in front in agreement utilization land with accompanied by Certificate of Functional Worthiness (SLF). Provisions This different with the arrangement in UUPA, long-term HGU time is 25 years and is extended by 25 years without There is update rights, with a total term the time is 50 years. The provisions extension right on the land above the HPL is also regulated in Article 14 related TORA source from non- forest areas and related Article 16 cancellation of HGU, HGB and Right of Use.

The presence of a land bank, potentially trigger conflict agrarian, thing This Because existence dualism arrangement between regulated land banks in PP 64/2021 concerning the regulated Land Bank and Agrarian Reform Agency in Presidential Decree 62/2023 concerning Agrarian Reform, so that cause overlapping overlap authority and lack of certainty law. In addition, TORA objects from 30% of the area forest, its release must involve the Ministry of Forestry, so that existence dualism arrangement area forests in the Ministry of Forestry and reform agrarian from the Land Bank Agency. So, the presence of a land bank should be become solution availability land for redistribution of TORA instead become tool state legitimacy for control people's land for interest investment or for development interest general and development project national.

2. The Concept of Regulation of Control of State Rights to Land and the Implementation of Agrarian Reform

The concept of HMN is base state authority to control source Power agrarian through its arrangement and management, as trust from the people to the state that constitutes it holder power highest organization power all the people. Agrarian reform is policy operations that direct the country to use HMN's authority to do arrangement asset through redistribution land and legalization land, and arrangement access through empowerment economy, for reach as much as possible prosperity of the people and justice social for all Indonesian people.

Draft upper HMN settings land is runway juridical, philosophical, and political for implementation reform agrarian in Indonesia, because this HMN

concept is trust from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states, "The earth, water and natural resources nature contained inside it controlled by the state and used For as much as possible prosperity of the people."⁴⁵ Based on provision constitution In this case, the words "controlled by the state" are present meaning that the state is not the "owner" of everything source Power existing agrarian within the territory of the Republic of Indonesia, but only as " ruler ".

The relationship between the State's Right to Control (Hak Menguasai Negara/HMN) and agrarian reform is inseparable, as HMN serves as the primary instrument through which the State implements agrarian reform policies. Through the authority granted by Article 33 paragraph (3) of the 1945 Constitution and further elaborated in Article 2 of the Basic Agrarian Law (UUPA), the State is empowered to regulate, manage, and allocate land resources to achieve social justice and public welfare. In this context, agrarian reform functions as a mechanism to ensure that land is distributed and utilized for the greatest benefit of the people.

One important aspect of this relationship is the strengthening of people's land rights. Within the framework of HMN, agrarian reform aims to improve community access to land and provide stronger legal protection for land rights. The State has an obligation to facilitate access to land ownership, address agrarian disputes, and correct historical inequalities in land tenure that have disadvantaged certain groups within society.

Furthermore, HMN plays a crucial role in reducing inequality in land control and ownership. Through its regulatory authority under Article 2 paragraph (2) of the UUPA, the State may reorganize land tenure structures and redistribute land more equitably. Excessive landholdings, abandoned land, and certain forest areas controlled and utilized by local communities may be designated as Agrarian Reform Object Land (TORA). This policy is consistent with Article 17 paragraph (3) of the UUPA, which allows land exceeding the maximum ownership limit to be acquired by the State and redistributed to those in need.

The implementation of HMN is also intended to promote social justice and public welfare. Agrarian reform seeks to create a fairer agrarian structure by providing legal certainty and equitable access to land for farmers, indigenous peoples, workers, low-ranking civil servants, military personnel, and other agrarian reform beneficiaries. In this way, land becomes an instrument for improving livelihoods and reducing social inequality.

HMN provides authority to the state to manage and utilize land, for that the country must prevent neglect land, especially land with HGU, HGB, or land

⁴⁵ Formulation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, <https://spi.or.id>. wp -content, Uploads May 2021

status right use. If abandoned so right on land they can take transferred by the state to Then made into TORA. As provisions of Article 6 of the UUPA which states that all right on land functioning social, meaning that land No may abandoned, but must utilized in accordance with objective giving his rights and provide benefit for e society. Prohibition neglect land is also regulated in Article 10 of the UUPA, namely any person or legal entity required for do or try land his agriculture alone in a way active with prevent ways extortion. Then Article 15 which regulates obligation for look after land, add fertility land and prevent the damage. Article 27 regulates the abolition of ownership rights due to abandoned, Article 34 regulates the removal of HGU because neglected and Article 40 of the UUPA regulates the removal of HGB because abandoned.

In the process of formation something regulation law, must realize that law is something system laws that can realized through harmonization and synchronization moreover before. Meaning harmonization more emphasized on the same indicators and characteristics in something regulations, whereas synchronization more prioritize element alignment, that regulation harmonized regulations, no may contradictory with regulation legislation other.⁴⁶

Indonesian land policy is still Not yet stable and frequent experience change follow interest ruler or government. Land policy should more responsive in answer problematic regulations land. Responsive law also means the fundamental values of the Indonesian nation contained in Pancasila and the 1945 Constitution of the Republic of Indonesia must become soul from policy land.⁴⁷

Implementation reform agrarian, ideally must oriented for realize justice social and people's prosperity, accordingly mandate of the 1945 Constitution of the Republic of Indonesia and UUUPA. This means Agrarian Reform No may only limited to technical programs distribution certificate, but must become movement structural and systemic, which is capable change structure inequality mastery land and together with That capable change life economy poor recipient communities land become more prosperous. The aim is main harmonization reform agrarian is the harmonization of laws and regulations is essential to ensure legal certainty by preventing the existence of multiple rules governing the same issue with conflicting provisions. It also helps avoid regulatory overlap and normative conflicts that may create confusion for both the public and law enforcement authorities. Furthermore, harmonization promotes justice and legal utility by ensuring that regulations reflect not only technical legal requirements but also the philosophical and sociological values of society. In addition, it supports a consistent national legal system by

⁴⁶ Firman Freaddy Busroh, "Conceptualization of omnibus law in resolving land regulation problems," *Jurnal Arena Hukum* 10, no. 2 (2017): 343.

⁴⁷ Bernhard Limbong, *Konflik pertanahan* (Jakarta: Margaretha Pustaka, 2012): 34.

ensuring that newly enacted regulations remain in accordance with the hierarchy of laws and do not contradict higher legal norms.

Agrarian reform represents a form of public service provided by the State through the National Land Agency. Its implementation should be easily accessible, with information and procedures that are clear and understandable to the public. Agrarian reform services must also be efficient, transparent, and free from complicated bureaucratic processes that may hinder access or create social conflict. In addition, the procedures should be affordable, with transparent and measurable costs. The implementation of agrarian reform must promote justice in land control, ownership, use, and utilization, while adhering to the principles of good governance, transparency, and accountability to the community.

In order for the implementation reform agrarian become okay then must done harmonization to the regulations that provide impact bad things that hinder reform agrarian. Harmonization is as a process of alignment or harmonization regulation legislation to be enacted or currently compiled, so that the regulations legislation produced in accordance principles laws and regulations good legislation. An important process in formation regulation legislation that aims for align and synchronize something design regulations to be appropriate, harmonious, and not contradictory with regulation other in system law national.⁴⁸ Harmonization law This developed with objective for show that in the world of law policy government and relations between both of them there is diversity that can result in disharmony.⁴⁹

To address agrarian reform issues arising after the enactment of the Job Creation Law (CK Law), regulatory harmonization is necessary to ensure consistency with the principles of the Basic Agrarian Law (UUPA).⁵⁰ First, harmonization is required between the provisions on agrarian reform contained in Article 126 paragraphs (1) and (2) of the CK Law, Government Regulation Number 64 of 2021 concerning the Land Bank Agency, and Government Regulation Number 62 of 2023 concerning Agrarian Reform. All regulations related to agrarian reform should remain aligned with the objectives and principles established under the UUPA.

Second, harmonization is needed regarding the duration of land rights granted over Management Rights (HPL). Certain provisions in PP 64/2021 and

⁴⁸ Risky Dian Novita Rahayu Rochim, "Harmonisasi Norma-Norma Dalam Peraturan Perundang-Undangan tentang Kebebasan Hakim," (PhD diss., Brawijaya University, 2014), 5.

⁴⁹ Inche Sayuna, "Harmonisasi dan Sinkronisasi Hukum Surat Kuasa Membebaskan Hak Tanggungan (SKMHT) Ditinjau Dari Otentisitas Akta Menurut Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris," *Surakarta: Universitas Sebelas Maret* 16 (2016): 23.

⁵⁰ Ari Tri Wibowo, "Kajian yuridis dampak Undang-Undang Cipta Kerja terhadap pelaksanaan reforma agraria di Indonesia," *Jurnal Hukum Dan Kenotariatan* 6, no. 1 (2022): 537.

PP 18/2021 regulate extended periods for HGU, HGB, and Rights of Use, including a requirement that expired rights may only become agrarian reform objects after a two-year waiting period. These provisions differ from the framework of the UUPA, which does not impose such a requirement and regulates land rights within specific limitations. Therefore, these regulations should be adjusted to conform with the provisions of Articles 28 and 35 of the UUPA.

Third, harmonization is necessary concerning the types of land rights that may become objects of agrarian reform. Article 129 paragraph (2) of the CK Law allows land under the Land Bank's Management Rights (HPL) to be granted as HGU, HGB, and Rights of Use. However, the determination of agrarian reform objects should remain consistent with the UUPA framework to ensure that the redistribution of land serves the objectives of agrarian justice, legal certainty, and equitable land ownership.

D. CONCLUSION

The implementation of the State's Right to Control (HMN) in agrarian reform after the enactment of the Job Creation Law (CK Law) has raised significant legal and practical concerns. This study finds that the strengthening of Management Rights (HPL) and the establishment of the Land Bank Agency have shifted the orientation of agrarian reform from social justice and equitable land redistribution toward investment and economic development. Consequently, the concept of HMN, which under Article 33 paragraph (3) of the 1945 Constitution and the Basic Agrarian Law (UUPA) positions the State as a regulator and manager of agrarian resources, tends to be interpreted in a manner resembling state ownership of land. This is reflected in the broad authority of the Land Bank Agency, the expansion of HPL, the extension of HGU and HGB periods, overlapping institutional authority, and regulatory inconsistencies with the UUPA. These conditions risk weakening agrarian reform, delaying land redistribution, limiting public access to land, and increasing agrarian conflicts.

This study indicate that without regulatory harmonization, agrarian reform may shift away from its constitutional objective of social justice and become increasingly oriented toward investment interests. This could worsen land tenure inequality, weaken legal certainty, and reduce public trust in agrarian governance. Therefore, revisions to the CK Law and its implementing regulations are needed to remove provisions that hinder agrarian reform and strengthen legal norms that support equitable land distribution, protection of community land rights, transparency, and accountability. Such reforms are essential to prevent agrarian conflicts and promote sustainable public welfare.

The concept of HMN in agrarian reform should remain consistent with the constitutional mandate that the State acts as a public authority entrusted to regulate, manage, supervise, and allocate agrarian resources for the greatest prosperity of the people. Agrarian reform should therefore be understood not merely as asset redistribution and land legalization, but also as a comprehensive process involving access reform, empowerment, legal protection, and the reduction of structural inequalities in land ownership and control. To achieve these objectives, maker regulation legislation in reharmonize regulation related land they must synchronize the rules with UUPA through revision of the CK Law and if need delete articles that cause obstruction reform agrarian and replace it with regulatory norms that favor the people.

Acknowledgements

Thank You to Prof. Dr. Annalisa Yahanan, SH, M.Hum., as lecturer top supervisor 1 his guidance and direction so that writer can finish article scientific This, thank you to father Firman Muntaqo, SH, M.Hum., as lecturer supervisor 2, above his guidance and direction to material article, thank you to Mrs. Prof. Iza Rumesten RS, SH, M.Hum., as supervisor 3 who has give his guidance and direction on writing article scientific This.

BIBLIOGRAPHY

Books:

- Harsono, Budi. *Hukum agraria Indonesia: sejarah pembentukan undang-undang pokok agraria, isi dan pelaksanaannya*. Yogyakarta: Djambatan (2007).
- Hatta, Mohammad. *Explanation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia*. Jakarta: Mutiara, 1977.
- Johan Nasution, Bahder. *Metode Penelitian Hukum*. Bandung: CV Mandar Maju, 2008.
- Limbong, Bernhard. *Konflik pertanahan*. Jakarta: Margaretha Pustaka, 2012.
- Marzuki, Peter Mahmud. *Penelitian hukum: Edisi revisi*. Jakarta: Prenada Media, 2017.
- Soerodjo, Irawan. *"Land Law and Management Rights on Land, Existence, Regulation and Practice."* Yogyakarta: Print Second, Laksbang Mediatama, 2024.

Dissertation:

Rochim, Risky Dian Novita Rahayu. "Harmonisasi Norma-Norma Dalam Peraturan Perundang-Undangan tentang Kebebasan Hakim." PhD diss., Brawijaya University, 2014.

Sembiring, Julius. "Konstruksi Hukum Penguasaan Tanah Negara Dalam Sistem Hukum Tanah Nasional." PhD diss., Universitas Gadjah Mada, 2016.

Journal:

Ano, Jusuf, Daswati Daswati, and Sitti Chaeriah Ahsan. "AGRARIAN REFORM POLICY IMPLEMENTATION (Study on the Role of the Indonesian National Land Office of Palu City)." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 1 (2024): 1361-1375.

Busroh, Firman Freaddy. "Conceptualization of omnibus law in resolving land regulation problems." *Jurnal Arena Hukum* 10, no. 2 (2017).

Dharsana, I. Made PRIA, and I Gusti Agung Jordika PRAMANDITYA. "Legal Review of Management Rights in the Creative Work Law (Land Cluster)." *Journal of Public Administration Finance and Law* 19 (2021): 238.

Effendi, Alwaahab Agirda Nugraha, and Akhmad Darajati Setiawan. "Legal Certainty on Land Ownership Rights Above Management Rights." *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 3, no. 2 (2023): 194-205.

Elsura, Aqliyah Hafifah, and Syaddan Dintara Lubis. "Peralihan hak guna bangunan menjadi hak milik berdasarkan peraturan pemerintah no. 18 tahun 2021 tentang hak pengelolaan, hak atas tanah, satuan rumah susun, dan pendaftaran tanah." *Mizan: Jurnal Ilmu Hukum* 13, no. 2 (2024): 189-197.

Farid, Achmad Miftah. "Degradasi Makna Reforma Agraria dalam Undang-Undang Cipta Kerja." *Supremasi Hukum: Jurnal Penelitian Hukum* 31, no. 2 (2022): 129-140.

Fasyehhudin, Mohamad. "Protection and Certainty of Social Welfare Law in the Concept of a Welfare State: Perspective of State Administrative Law." *Ournal Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 1 (2023).

Fauzi, Ahmad. "Reformasi agraria dalam kerangka otonomi daerah." *Jurnal Bina Mulia Hukum* 6, no. 2 (2022): 218-233.

Fitron, Muhammad, and Muhammad Wildan. "Penerapan Peraturan Pemerintah Nomor 64 Tahun 2021 Tentang Badan Bank Tanah Bekaitan Dengan Agraria." *Pancasakti Law Journal (PLJ)* 1, no. 1 (2023): 117-128.

- Gunanegara, Gunanegara. "Kebijakan negara pada pengaturan hak atas tanah pasca Undang-Undang Cipta Kerja." *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 2 (2022): 161-184.
- Hairani, Hairani. "Studi tentang land reform dalam perspektif reformasi hukum agraria." *Jurnal Cakrawala Hukum* 19, no. 1 (2014): 10-19.
- Hayati, Tri. "Hak penguasaan negara terhadap sumber daya alam dan implikasinya terhadap bentuk pengusahaan pertambangan." *Jurnal Hukum & Pembangunan* 49, no. 3 (2019): 768-787.
- Hutomo, Putra, and H. Yuhelson. "Ownership of flat units for foreigners in the agrarian legal order." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 1 (2024): 155-165.
- Jamali, Riski Nur, and Haris Kusumawardana. "Penegakan Peraturan Pemerintah Nomor 64 Tahun 2021 Tentang Badan Bank Tanah Terhadap Rencana Pembangunan Ekonomi di Indonesia." *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 27, no. 2 (2025): 9-14.
- Jamilah, Lina. "Government Policy Regulating Land Acquisition Through the Land Bank According to the Job Creation Law." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 22, no. 1 (2023).
- Julianti, Sembiring, Nababan Ramsul, Juliani Br Tarigan Putri, Vioni Pinem Octa, And Sanusi Hasibuan Rizal. "Analisis Perlindungan Hukum Terhadap Kepemilikan Hak Atas Tanah Bagi Kepentingan Umum." *JURNAL RELASI PUBLIK Учредители: Fakultas Hukum, Universitas Katolik Widya Karya Malang* 2, no. 1 (2023): 63-78.
- Lie, Carrissa Shannon, and Yohanes Kristian Pranata. "The Land Rights Which Can Be Given on the Land Management System." *Jurnal Daulat Hukum* 4, no. 4 (2021): 455427.
- Mahardika, Rahadiyan Veda, and Gatot Suyanto. "Kedudukan Hukum Badan Bank Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum." *Jurnal Ilmu Kenotariatan* 3, no. 2 (2022): 58-65.
- Mawaddah, Nova Yatiar, Sri Zanariyah, and Martina Male. "Implementasi Peraturan Presiden Republik Indonesia Nomor 86 Tahun 2018 Tentang Reforma Agraria Terhadap Pelaksanaan Redistribusi Tanah Negara." *Viva Themis: Jurnal Ilmu Hukum dan Humaniora* 4, no. 1 (2021): 72-82.
- Muntaqoa, Firman, Muhammad Syaifuddin, Desi Rahmawati, Bagoes Mahendra Jaya. "Konsep Hukum Pengelolaan Dan Pemanfaatan Tanah Berdasarkan Hukum Adat Sebagai Bahan Hukum Tanah Nasional (Studi Sejarah Hukum Tanah di Daerah Semende, Kabupaten Muara Enim, Provinsi Sumatera Selatan)." *Simbur Cahaya* 31, no 2 (2024): 308-326.
- Noegroho, N. "Application of the Land Banking Concept in Indonesia in Urban Areas." *ComTech: Computer, Mathematics and Engineering Applications* 3, no. 2 (2012): 961-965.

- Nurahmani, Aditya. "Revitalisasi Kebijakan Reforma Agraria Dalam Rangka Penguatan Hak Perekonomian Rakyat." *Majalah Hukum Nasional* 53, no. 2 (2023): 296-320.
- Nurasikin, NurasiKin. "Constitutional Court (MK) Interpretation of the Element of Urgency in the Formation of a Government Regulation instead of Law (PERPPU)." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 1 (2024): 137-149.
- Nuryasinta, Radhityas Kharisma, and Padhina Pangestika. "Legality of Assets and Land Management as Strengthening Agrarian Reform: A Case Study of Improvement Welfare Small Farmers." *Tunas Agraria*, 8 no. 2 (2025): 236-251.
- Pandamdari, Endang. "Harapan sejahtera dan adil melalui peraturan presiden nomor 86 tahun 2018 tentang reforma agraria." *Hukum Pidana dan Pembangunan Hukum* 1, no. 2 (2019).
- Pandamdari, Endang. "Penguatan Reforma Agraria Untuk Kemakmuran Rakyat Dalam Perspektif Hukum Tanah Nasional." *Jurnal Hukum Nawasena Agraria* 1, no. 1 (2023): 49-63.
- Saripudin, Saripudin. "Konsep Penertiban Dan Pendayagunaan Tanah Terlantar Dalam Perspektif Reforma Agraria." *DiH: Jurnal Ilmu Hukum* (2015): 110-153.
- Sayuna, Inche. "Harmonisasi dan Sinkronisasi Hukum Surat Kuasa Membebankan Hak Tanggungan (SKMHT) Ditinjau Dari Otentisitas Akta Menurut Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris." *Surakarta: Universitas Sebelas Maret* 16 (2016).
- Sizi, Baiq Rara Charina, and Usman Munir. "Kebijakan reforma agraria yang berkeadilan." *Unizar Law Review* 6, no. 2 (2023).
- Sulistyaningsih, Retno. "Reforma Agraria di Indonesia." *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 26, no. 1 (2021): 57-64.
- Suparto, Suparto. "Interpreting The State's Right to Control In the provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia." *Jurnal UIR Law Review* 4, no. 2 (2020): 1-8.
- Sutikno, Rizky Syahputra. "Hukum agraria dan kebijakan agraria di Indonesia." *COURT REVIEW: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)* 3, no. 03 (2023): 22-27.
- Utama, Mohammad Wira, Riana Wulandari Ananto, and Wafda Vivid Izziyana. "Reorientasi Politik Hukum Hak Menguasai Negara atas Tanah dalam Perspektif Negara Kesejahteraan di Indonesia." *Jurnal Hukum Lex Generalis* 6, no. 9 (2025): 320-356.

- Utomo, Setiyo. "Penguatan Pasal 33 Ayat (3) Dalam Amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Majelis* 9, (2019): 51.
- Wahid, Abdul, Rohadi Rohadi, and Siti Sumartini. "Disharmonisasi Kebijakan Politik Hukum Agraria: Analisis Hak Pengelolaan Tanah Pasca Terbitnya Undang-Undang Cipta Kerja." *Jatijajar Law Review* 3, no. 1 (2024): 25-35.
- Wibowo, Ari Tri. "Kajian yuridis dampak Undang-Undang Cipta Kerja terhadap pelaksanaan reforma agraria di Indonesia." *Jurnal Hukum Dan Kenotariatan* 6, no. 1 (2022): 529-541.
- Wibowo, Suyanto Edi. "Memahami Makna Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Perihal Penguasaan Oleh Negara Terhadap Sumber Daya Alam Comprehend the Meaning of Article 33 Of The 1945 Constitution of the Republic of Indonesia On State Authority Over Natural Resources." *Jurnal Legislasi Indonesia* 12, no. 4 (2018): 1-57.
- Yasir, Muhammad. "Sinergitas Antara Lembaga Pemerintahan, Non Pemerintahan, dan Masyarakat untuk Mewujudkan Reforma Agraria di Kabupaten Bojonegoro." *Binamulia Hukum* 12, no. 1 (2023): 1-10.
- Yurista, Ananda Prima. "Implikasi Penafsiran Kembali Hak Menguasai Negara Terhadap Pengelolaan Wilayah Pesisir Dan Pulau-Pulau Kecil." *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 5, no. 3 (2012): 339-358.

Website:

- Djalil, Sofyan. "Minister Of ATR: Land Bank Allows States to Provide Land for Urban People's Houses." *medcom.id*, 07 Oktober 2020. <https://voi.id/en/amp/16039>, Accessed on October 30, 2025.
- Sumardjono, Maria SW. "Tata Kelola Pertanahan Pasca-UU Cipta Kerja." *Kompas.Id*, 16 March 2021. <https://www.kompas.id/artikel/tata-kelola-pertanahan-pasca-uu-cipta-kerja>, Accessed on October 32, 2025.