Juridical Analysis of The Land Bank Agency as a Land Provider Institution For The Government In Implementing Agrarian Reform

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Abstract
This research discusses the role and authority of the Land Bank in providing land for agrarian reform. Despite having a 30% land allocation for agrarian reform, its realization faces various obstacles, especially in realizing the principles of agrarian justice and welfare. This study focuses on three main aspects: first, the legal arrangement of the Land Bank as a land provider regulated in Article 126 of the UUCK jo. Article 16 of Government Regulation No. 64 of 2021; second, the provision and redistribution of land within the framework of agrarian reform which has not been clearly regulated, thus not providing legal certainty; and third, the position of the Land Bank as a land provider institution for the government which actually creates overlapping authority with other institutions. The research method used is normative legal research with a qualitative approach to primary, secondary, and tertiary legal materials. This research suggests that the government should increase the portion of land allocation for agrarian reform beyond 30%, develop detailed technical regulations regarding the provision and distribution of land by the Land Bank, and synchronize and harmonize institutions to avoid conflicts of authority in the implementation of agrarian reform.

Keywords: *Land Bank, Land Provider, Government, Agrarian Reform*

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Introduction

Article 125 of Law Number 6 of 2023 on Job Creation (Job Creation Law) states that the Central Government establishes a land bank agency, the land bank agency as intended is a special agency that manages land. The assets of the land bank agency are separated state assets. The land bank agency functions to carry out planning, acquisition, procurement, management, utilization, and distribution of land.

Furthermore, Article 126 of the Job Creation Law states that the Land Bank Agency guarantees the availability of land in the context of an equitable economy for:

a. Public interest;
b. Social interest;
c. The interests of national development;
d. Economic equalization;
e. Land consolidation; and
f. Agrarian reform

Agrarian reform is basically not a new policy pursued by the government in alleviating agrarian management problems in Indonesia, especially land that is directly related to people's welfare. The agrarian reform program has been carried out by the government in the past with the concept of land reform. The juridical basis refers to the provisions of Articles 7, 10 and 17 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) which are considered to be limited to land reform norms, only interpreted as an effort to distribute agricultural lands to eligible farmers.

Pada tahun 2020 Kementrian ATR/BPN mengklaim telah merealisasikan redistribusi tanah In the context of agrarian reform activities, there are 1,189,748 hectares (26.44%) with a total of 1,830,034 parcels of Land for Agrarian Reform Objects (TORA) originating from; Forest Area Release of 398,645 parcels with an area of 223,686 hectares; and Former HGU Abandoned Land and other State Land of 1,431,389 parcels with an area of 966,062 hectares; thus leaving a backlog (remaining target) of 3,310,252 hectares (73.56%). The availability of land as a source of TORA is one of the challenges and obstacles for the government in accelerating the completion of agrarian reform tasks. On the other hand, land as a capital asset has grown as a very important economic object. The increasing need for land use by humans is often inversely proportional to the amount of land availability, as if to justify the skyrocketing number of land cases. The possibility of land disputes arising is not only for unregistered parcels of land, but even land that has been registered still has problems. In other words, land rights also still have the potential to give rise to disputes of interest both concerning other parties (other rights subjects) and concerning themselves as rights holders.
Legal basis for the establishment of the Land Bank Agency:

1. 1945 Constitution Article 33 (3): The livelihood of many people is controlled by the State. The livelihood of many people is interpreted as land that needs to be managed by the State. In this case, the State needs to regulate the authority to manage and utilize it.
2. Basic Agrarian Law No. 5 of 1960 Article 2. Article 2 has mandated the right to control the state. It is emphasized in the elucidation section of the UUPA regarding the need for the role of the State as the Land Ruling Body that manages state land.
3. Perpu No. 2 Year 2022 on Job Creation. Chapter VII: Land Acquisition, fourth section: Land, Paragraph 1: Land Bank, Article 125-135: The Central Government establishes a Land Bank as a special agency that manages land. Article 180: license and concession rights that are deliberately not cultivated or abandoned for a maximum period of two years can be designated as Land Bank assets.

4. Government Regulation No. 2 of 2021 on the Land Bank Agency. Based on this Government Regulation, the Land Bank is established which is an Indonesian Legal Entity promulgated on April 29, 2021.
5. Presidential Regulation No. 113 on the Structure and Implementation of the Land Bank Agency. Establishes a Presidential Regulation on the Structure and Implementation of the Land Bank Agency. Promulgated on December 27, 2021.

The land bank agency exists not only to heed the command of the law for the benefit of the nation and the State, but also to ensure the availability of land in the context of implementing agrarian reform. The affirmation is written in the provisions of Article 22 paragraph (2) of Government Regulation Number 64 of 2021 concerning the Land Bank Agency which states implicitly that the availability of land for agrarian reform is at least 30% (thirty percent) of the state land designated for the Land Bank". From the above background, the following problems can be formulated:

1. How is the legal regulation of the Land Bank as a land provider institution in the implementation of agrarian reform in Indonesia?
2. What is the mechanism for the provision and redistribution of land by the Land Bank in order to support asset structuring activities within the framework of agrarian reform?

Literature Review

Many experts have studied agrarian reform in Indonesia. Gunawan Wiradi (2019) highlights land tenure inequality as the root of agrarian injustice that requires active state intervention. Agrarian reform is a constitutional mandate affirmed in Article 33 of the 1945 Constitution and technically regulated in BAL Number 5 of 1960. Land reform is the first step for the distribution of land justice to smallholders. However, its implementation still faces structural and political agrarian constraints.

According to M. Nazir Salim (2019), the implementation of agrarian reform faces major challenges, one of which is the availability of land. In this context, the establishment of the Land Bank by the state through UUCK and PP No. 64 of 2021 is a strategic instrument to ensure land supply. Celline Gabriella Tampi et al. (2021) examined the legal legitimacy of the Land Bank, stating that the concept of this institution is similar to the practice of land banks in developed countries such as the Netherlands, but the technical arrangements in Indonesia are not yet adequate.

Wahyu Bening and Ilham Dwi Rafiqi (2022) emphasized the importance of legal certainty in land redistribution, considering that unclear norms can widen agrarian conflicts. In this case, the theory of legal certainty (Radbruch) becomes a reference to formulate regulations that are logical and not multi-interpretive. In addition, Bentham's legal expediency theory highlights that agrarian policy must lead to people's welfare.

Methods

The methods used in this research are as follows:

1. Research Specifications
   In accordance with the problem and research objectives, the specification of this research is normative legal research or library research (document study), which means legal research that uses secondary data related to supporting documents.
2. Data Collection Techniques and Data Collection Tools
   Given that the research used is normative legal research, the data required is secondary data collected using library research techniques obtained either offline through direct

searches to libraries inside and outside Universitas Pembangunan Pancabudi, or online through internet searches. Secondary data collected in this study include the following:

a. Primary legal materials, namely those sourced from legislation, contract manuscripts, legal documents, and legal archives relevant to the formulation of the problem.
b. Secondary legal materials, namely those sourced from legal science literature books, legal research journals, legal research reports, legal reports in the print media, and other legal writings relevant to the formulation of the problem.
c. Tertiary legal materials, namely publications that are instructions for explanations of primary legal materials and secondary legal materials derived from dictionaries, encyclopedias, newspapers, and so on that have relevance to the study of problems in this research.

3. Data Analysis

The analysis carried out in this research is qualitative analysis, namely the explanation of existing theories, so that these theories can be drawn several things that can be used as conclusions in this study. This type of qualitative data analysis is analyzing data based on its quality (level of relationship) not based on its quantity. The quality referred to here relates to the norms, principles, and rules relevant to the research title. The analysis is based on the provisions contained in written legislation.

Result and Discussion

This research found that the Land Bank Agency, as stipulated in Article 126 of the UUCK jo. PP No. 64 of 2021, has a mandate to provide a minimum of 30% of land for agrarian reform. However, this figure is considered inadequate in ensuring social justice as mandated by Article 33 of the 1945 Constitution. In addition, the technical arrangements regarding the provision and distribution of land by the Land Bank are not yet rigid, which creates legal uncertainty and hampers the effectiveness of the implementation of agrarian reform.

From an institutional perspective, the Land Bank experiences overlapping authority with other institutions such as ATR/BPN and GTRA, which has the potential to create normative conflicts and hamper synergy between agencies. Conceptually, the role of the Land Bank has not fully reflected the principle of a welfare state, as it has not been able to become an effective instrument in equitable land redistribution. Therefore, it is necessary to strengthen technical regulations and affirmative policies so that the Land Bank can optimally carry out its functions in supporting equitable agrarian reform and the welfare of the people.

This finding shows that the existence of the Land Bank still needs improvement to be effective as an instrument of agrarian reform. Unclear regulations have caused the implementation of land redistribution by the Land Bank to not provide legal certainty for the community, especially agrarian reform subjects. Therefore, this study recommends several things: First, the government needs to increase the land allocation for agrarian reform above 30%, in accordance with the spirit of economic equality and social justice. Second, it is necessary to prepare technical and operational regulations that regulate in detail the mechanism for the provision and distribution of land by the Land Bank. Third, it is important to synchronize the authority between the Land Bank, ATR/BPN, and other related institutions to avoid overlapping functions and encourage institutional effectiveness. Overall, the Land Bank has strategic potential in supporting the implementation of agrarian reform in Indonesia. However, this role will only be maximized if it is supported by clear regulations, a solid institutional structure, and a strong political commitment from the government to realize agrarian justice in a real and sustainable manner.

1. Weaknesses in Normative Regulations
   Regulations regarding the role of the Land Bank in agrarian reform are still general in nature and are not accompanied by detailed technical regulations. The absence of detailed implementation guidelines causes legal uncertainty, especially in terms of land provision and distribution mechanisms. In fact, the principle of rechtszekerheid or legal certainty is a key pillar of the rule of law. The provision that 30% of state land managed by the Land Bank is allocated for agrarian reform (Article 22 paragraph (2) of Government Regulation No. 64 of 2021) is also considered too minimalist compared to the actual need for land for agrarian reform (TORA), which still has a backlog of millions of hectares.
2. Institutional Overlap
   In addition to normative aspects, the issue of overlapping authority between the Land Bank, ATR/BPN, and the Agrarian Reform Task Force (GTRA) poses a serious obstacle. The lack of clarity in the coordination lines between institutions leads to inefficiency and even the potential for normative conflicts (conflict of norms). From an administrative law perspective, this reflects the absence of an institutional system based on the principles of effectiveness and integration of government functions.
3. Welfare State Perspective
   In the theory of the social welfare state, the existence of institutions such as the Land Bank must be able to become an active instrument of the state in guaranteeing public access to agrarian resources. The principle of social justice cannot be achieved solely through the provision of land, but also requires affirmative action towards marginalised communities and smallholder farmers who are the subjects of the reform.

Conclusion

The legal provisions governing the Land Bank as a land provider are set out in Article 126(1) and (2) of the UUCK in conjunction with Article 16 of Government Regulation No. 64 of 2021, one of which is for agrarian reform amounting to 30%. Based on the analysis, the percentage of land provision is too small compared to investment interests and violates the mandate of Article 33(3) of the 1945 Constitution, which states that land should be used to the greatest extent possible for the prosperity of the people in the form of equitable and welfare-oriented land as the primary objective of agrarian reform. Such land provision is also deemed contrary to the theory of the welfare state, which requires every regulation to serve as a guideline for the state to create the welfare of the people. The provision and redistribution of land in asset restructuring activities within the framework of agrarian reform have been regulated in detail in Presidential Regulation No. 62 of 2023, along with its subsidiary regulations in the form of technical guidelines and other government instruments. However, this is not the case with the provisions for the provision and distribution of land for agrarian reform by the Land Bank, which have not been regulated in a rigid manner, thereby failing to provide legal certainty. The Land Bank, as an institution that provides land for the government to implement agrarian reform, raises institutional issues. This is because before the establishment of the Land Bank based on the UUCK and Presidential Regulation No. 64 of 2021, there were already several state institutions that had the authority to carry out the provision and distribution of land within the framework of agrarian reform, namely the Ministry of State (ATR/BPN) and the Agrarian Reform Task Force (GTRA). Such a situation, from the perspective of legal utility theory, is ineffective and even has the potential to cause conflicts of norms/antinomy (conflict of norm) and overlapping authority.

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