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# Indonesia's Land Bank Authority: Aligning with Agrarian Law or Facilitating Land Grabbing?

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## Abstract

This research critically examines Indonesia's land bank regulations, introduced under the Job Creation Law to boost investment, but which risk promoting land grabbing, particularly affecting farming and indigenous communities. The study's novelty lies in its focus on assessing the compatibility of land bank policies with Indonesia's agrarian legal framework through the lens of legal utilitarianism. By employing normative research methods, including theoretical and regulatory analysis, the study identifies significant legal flaws in both the legislative process and the content of the regulations. These issues

undermine the principles of agrarian justice, particularly in ensuring equitable land ownership rights. This research offers urgent recommendations to policymakers, advocating for the protection of vulnerable communities from the adverse effects of land bank policies.

**Keywords** *Land Bank, Land Grabbing, Agrarian Reform*

# Introduction

Legal concept called the Omnibus Law refer to regulation-making that unifies multiple laws with various regulatory components under a single legislative heading[1]. The concept is shown by the Job Creation Law, which has been modified by Law Number 6 of 2023. The core substance of this rule relates to environmental management law, spatial planning law, and employment law. However, there are concerns that this law might negatively affect labor and indigenous land rights, which has led to criticism.[2]

The contentious debate on land, more especially the section about land banks, is thought to be harmful to Indonesian society. The technical execution of land banks is governed by the subject matter of Government Regulation Number 64 of 2021 concerns the jurisdiction of land banks. The responsibilities of a land bank include planning, purchasing, managing, utilizing, and dividing land in compliance with specific rules. The establishments legal foundation of a new body that has the right to regulate and manage land. Compared to Presidential rules Number 47 of 2020, specifically Article 5, pertains to the Ministry of Agrarian Relations[3] The Job Creation Law already addresses the

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1 Abdul Hakim Siagian, "Omnibus Law Draft in the Perspective of Constitutionality and Legal Politics," *Jambura Law Review* 3, no. 1 (2021): 93–111.

2 Sudharto P. Hadi, Rizkiana S. Hamdani, and Ali Roziqin, "A Sustainability Review on the Indonesian Job Creation Law," *Heliyon* 9, no. 2 (2023): e13431.

3 Republic of Indonesia, Presidential Regulation Number 47 of 2020 Concerning the Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN) (State Gazette No. 83 of 2020).

Ministry's responsibilities in these areas when it comes to land banks' roles in acquiring land and development.

Apart from that, it is feared that land bank authority are the government's version of land speculators and become another version of a *domeinverklaring. Domeinverklaring* is a concept of land ownership during Dutch colonialism that was interpreted as a rule stating that All land that the state cannot independently verify as being legitimately owned by an individual becomes state property. Even though it is claimed to be one of the foundations for land management in contemporary Indonesia[4] this concept has no longer been valid since the promulgation of Act Number 5 of 1960. The existence of this land bank authority, even though it is not the same as the *domeinverklaring* during Dutch colonialism, still has the potential to give rise to arbitrariness by the government in managing land in Indonesia.

This is demonstrated by the verdict rendered by the Constitutional Justice to halt the implementation of the Job Creation rule owing to formal procedural flaws. It denotes a halt to the land bank authority's execution. On December 30, 2022, the government approved land bank implementation procedures, apparently ignoring the court's decision. Various social community groups have initiated legal proceedings against the authorities, requesting that the land bank regulations be withdrawn from existence. These groups include 13 (thirteen) Federation of Labor Unions, 11 (eleven) Civil Society Organizations,[5] and 10 (ten) Civil Society Movement Organizations. The lawsuit filed is related to the formal process of establishing land bank regulations and the substantive material contained in the land bank. The court rejected each of these lawsuits.

The content of land bank regulations, which is the cause of this lawsuit, has the potential to cause land grabbing and harm the community, especially farming communities and customary law communities. The land managed by the Land Bank Authority originates from the government's stipulation and other parties, namely Former

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[4] Hilary Oliva Faxon et al., "Territorializing Spatial Data: Controlling Land through One Map Projects in Indonesia and Myanmar," *Political Geography* 98 (2022): 102651.

[5] Hendrik Yaputra, "Aturan Tentang Bank Tanah Digugat," https://koran.tempo.co/read/nasional/480276/aturan-tentang-bank-tanah-digugat, February 14, 2023.

land rights, abandoned land, land that has been freed from forest areas, emergent land, reclaimed land, land that was previously mined, land on small islands, and land affected by changes to spatial planning laws, and land that has no-ownership over it.[6] The meaning of the word 'no-ownership' needs to be clarified for certain land object criteria, such as physical possession of land and land possession carried out by indigenous peoples over their customary rights. Indeed, many societies nowadays still possess land through physical possession, that is, without written proof such as a land ownership certificate. Community land with this status can easily be taken over by Land Bank Authority, this is a potential form of land grabbing. Land grabbing is inherently unjustifiable as it directly impacts the fundamental the protection of community rights is an essential duty of the state.

Several conflicts occurred in several regions in Indonesia, one of which is the installation of Land Bank Authority signs on customary land controlled by the community in five villages in Poso district, Central Sulawesi.[7] This conflict is a reflection that the existence of banking entities has the potential to harm the community, especially indigenous communities, who are the main entities that must be protected in agrarian legal policy in Indonesia. This reflection and the legislative process for land bank regulations are in fact out of line with the three fundamental values of law: utility, fairness, and legal certainty.[8] Furthermore, to obtain more comprehensive study results this research will be analyzed used utilitarian legal theory to find out the relevance of land banks to agrarian legal policy in Indonesia, which can be a recommendation guide for the government in making policies aimed at protecting society from land grabbing.

In order to have a thorough grasp of the regulation and implementation of land banks, this research conducted a review of the literature on an extensive variety of related studies. *First*, research by

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6 *See* Article 7 Government Regulation Number 64 of 2021 Concerning Land Bank Authority.

7 KPA, "Gerakan Reforma Agraria Sulteng Tolak Operasi Bank Tanah Di Poso," https://www.kpa.or.id/2023/07/30/gerakan-reforma-agraria-sulteng-tolak-operasi-bank-tanah-di-poso/, July 30, 2023.

8 Supeno and Herma Yanti, "Regulations Concerning International Arbitral Awards in Indonesia An Approach to the Theory of Legal Values by Gustav Radbruch," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 12, no. 2 (2022): 298–325.

Roestamy, [9] the research suggestion for land bank authority has been established with the express purpose of addressing land-related concerns in territory Jakarta and not study various entities in Indonesia, especially indigenous communities. *Second*, Suyanto and Umi Kulsum's research examining land tenure rights and their relationship to the stance of land banks through the viewpoint of agrarian reform: that there is potential for the state to revive *domain verklaring.*[10]

*Third*, Bukido's research on land bank operations mechanisms in the Job Creation Law, which will give precautionary measures for minimizing the wide authority of land banks. The distinction with this study is, in terms of solutions, that land bank regulation should remove articles on regulation that possess the capacity to inflict harm onto the community. *Fourth*, Danendra's research,[11] has same recommendation as this research: that a more specific study needs to be carried out regarding the process of transferring land rights. *Fifth*, Sumanto's research is entitled Perspectives on Land Banking Regulations in Indonesia. This research discusses several issues related to the potential for high 'transaction costs' in obtaining land bank information.[12]

This normative legal research, which is studied through library research, begins with identifying and classifying data in both hardcopy and softcopy related to land banks. The main legal resources include legislation and court decisions, followed by secondary legal sources that are pertinent to this research, including books, journals, and other study findings. Third, Legal tertiary materials refer to resources that offer guidance and elucidation on main and supplementary legal records. The method utilised combines both a regulatory and a theoretical approach.

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[9] Martin Roestamy et al., "A Review of the Reliability of Land Bank Institution in Indonesia for Effective Land Management of Public Interest," *Land Use Policy* 120 (2022): 106275.

[10] Suryanto and Umi Khulsum, "The Principle of the State's Right to Control Land on the Establishment of a Land Bank in Indonesia's Perspective of Agrarian Reform," *Jurnal Dinamika Hukum* 22, no. 3 (2022): 536–539.

[11] Maulana Rafi Danendra and Dian Arif Mujiburohman, "Pembentukan Bank Tanah: Merencanakan Ketersediaan Tanah Untuk Percepatan Pembangunan Di Indonesia," *Jurnal Widya Bhumi* 2, no. 2 (2022): 1-20.

[12] Listyowati Sumanto, "Perspective of Land Banking Regulation in Indonesia and Its Issues," in *Proceedings of the 3rd Borobudur International Symposium on Humanities and Social Science 2021 (BIS-HSS 2021)* (Paris: Atlantis Press SARL, 2023), 1005–1010.

The statutory method requires a reference in reference to legislation number 5 of 1960 and The Job Creation Act encompasses in Articles 125 to 135, and the limitations derived from it. The conceptual approach refers to the theory of Jeremy Bentham's legal utilitarianism and the state's entitlement to regulate land. The results of the statutory approach and a conceptual approach will then be studied more specifically through the approach to principles of the law, synchronization law, legal history research, and the law of comparative research,[13] Comparative research is the comparisons of legal products and legal characters in each country. This approach is needed to collect data on the system practiced in another country. Moreover, the data is then analyzed by the qualitative method[14]using deductive logic and then describing in a descriptive manner to obtain answers to this research problem.

## Critical Assessment of the Regulatory Framework Implemented by the Indonesian Land Bank Authority

Land Bank concept has been implemented since the 1980s to facilitate the growth of the Jakarta-Surabaya industrial area. It has gained attention since the 1990s due to the necessity for a comprehensive evaluation of both its practical implementation and regulatory aspects. The land bank entity in Indonesia was first introduced in the Draught Land Law of 2018-2019. Indonesian land banks need to be regulated promptly to encourage growth and boost the country's economy, increasing employment opportunities for nation's people.[15] To further elaborate, the Job Creation Law establishes of a land bank authority to

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[13] Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (2016): 201–207.

[14] Ervina Dwi Indriati, Sary Ana, and Nunung Nugroho, "Philosophy Of Law And The Development Of Law As A Normative Legal Science," *International Journal of Educational Research & Social Sciences* 3, no. 1 (2022): 425–432.

[15] Nabiyla Risfa Izzati, "Deregulation in Job Creation Law: The Future of Indonesian Labor Law," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 9, no. 2 (2022): 191–209.

foster a favorable business and investment environment for various business entities, such as micro, small, and medium enterprises (UMKM) and foreign investors. In several cities in other countries, such as Ohio, since 2009, land banks have been established to acquire low-value properties. Right now, in Ohio, new land bank authorities allow local governments to set up land reuse companies as special-purpose nonprofit entities.[16]

The formulation of a land bank authority regulation in Indonesia appeared for the first time in the Draft Land Law in 2018–2019. However, the draft land law has been criticized because it contradicts to agrarian reform. The land bank was proposed again and passed through the Job Creation Law (omnibus law), which revised around 79 previously existing laws and continues to experience pros and cons until 2023.

**TABLE 1.** Job Creation Law Legislation Status History

| Stipulation Date | Regulation | Status |
|---|---|---|
| November 02, 2020 | Law Number 11 of 2020 regarding Job Creation | Conditionally unconstitutional based on Constitutional Court Decision Number: 91/PUU-XVIII/2020[17] |
| December 30, 2022 | Government Regulation in Lieu of Law Number 2 of 2022 regarding Job Creation[18] | Apply (need stipulation) |
| March 31, 2023 | Law Number 6 of 2023 regarding the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 | Apply |

[16] Kermit J. Lind, "*The Land Bank Revolution: How Ohio's Communities Fought Back against the Foreclosure Crisis* , by Jim Rokakis and Gus Frangos," *Journal of Urban Affairs* 43, no. 8 (2021): 1200–1201,

[17] Republic of Indonesia, *Constitutional Court Decision Number:* 91/PUU-XVIII/2020.

[18] Republic of Indonesia, Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation (State Gazette No. 238 of 2022).

| Stipulation Date | Regulation | Status |
|---|---|---|
| | concerning Job Creation into Law19 | |

*Source: Authors' Analysis*

The actualization of the Job Creation Act elicited apprehension across society and triggered a legal action seeking a comprehensive examination by the Constitutional Court. On November 3, 2021, the judge declared the findings of the official Job Creation Law. According to judicial ruling number: 91/PUU-XVII/2020, the court decide to declare the Job Creation Law to be Constitutionally unconstitutional under certain conditions. Articles 125 through 135 comprise the fourth land section, containing the land bank regulations. The government kept creating new rules for the land bank even after the Job Creation Law was declared unlawful on certain grounds. Regarding the case for the establishing land banks in the Constitutional Court, this derivative rule is still subject to discussion.

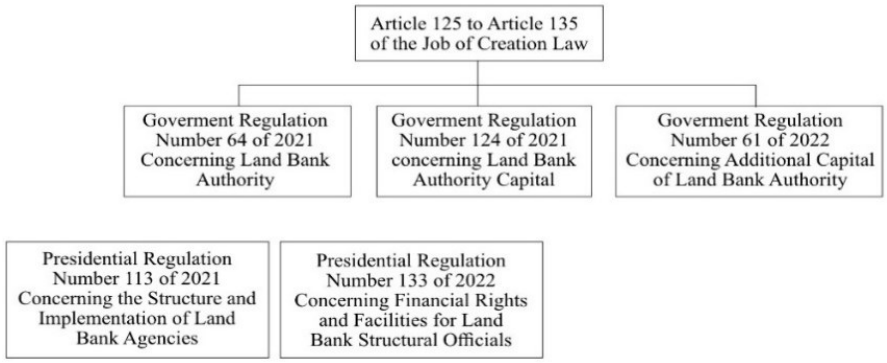


**FIGURE 1.** Hierarchy of Regulation of Land Bank Authorities
*Source: Authors' Analysis*

The Central Government of Indonesia established the Land Bank Authority as a Specialized organization, a legal body with the exclusive power to administer state land. The Land Bank Authority is governed

[19] Republic of Indonesia, Law Number 6 of 2023 Concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 Concerning Job Creation into Law (State Gazette No. 41 of 2023).

by Regulation by governments Number 64 of 2021,[20] about the establishment of a land bank, a type of Indonesian legal entity with its headquarters located in the capital and the ability to operate representative offices across the country. Government Regulation No. 124 of 2021 pertaining to Capital of the Land Bank Authority[21] controls the lending of money to Land Bank Authority. The capital offered is distinct state wealth with a cash worth of IDR 1,000,000,000,000.00 (One trillion Indonesian rupiah). The Republic of Indonesia may contribute capital to the Land Bank Authority pursuant to Government Regulation Number 61 of 2022 regarding the Supplementary Capital of the Land Bank Authority. The state values the new capital at IDR 500,000,000,000.00 (five hundred billion Indonesian rupiah) in cash and considers it a distinct asset.

The government and several stakeholders participate in the Land Bank Authority's selection of the land type. Land ownership, deserted areas and land, the release of land from areas of forest, emerging land, land that has been reclaimed, former mining land, land on insignificant islands, land impacted by changes in planning area policies, and land over which there is no control are all included in the government's determination, as per the provisions outlined in Article 7 of Government Regulation Number 64 of 2.

Meanwhile, other parties referred to are land originating from the The entities involved in this context include the government at the central level, the regional governments, state-owned companies, regional-owned companies corporations, legal parties, and members of the community. The method of Acquiring can occur by the act of making purchases, receiving grants or funding, or participating in exchange, relinquishment of, or other legitimate forms of acquisition.

The notion of a land bank is derived based on specific locution, namely land bank and land banking. A land bank can be defined as an entity or collaboration of entities that have the common goal of acquiring land for the aim of facilitating national development. In Europe, the primary function of a land bank is to tackle matters on land

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[20] Republic of Indonesia, Government Regulation Number 64 of 2021 Concerning Land Bank Authority (State Gazzete No. 109 of 2021).

[21] Republic of Indonesia, Government Regulation Number 124 of 2021 Concerning Land Bank Authority Capital (State Gazzete No. 289 of 2021).

effectively. Even in several Eastern European and Asian nations that are now developing a combination land banking system, some countries implement active land banking policies, combine land banking with land consolidation, and facilitate of leases.

In addition, France and Portugal simultaneously implemented these three systems[22] Apart from Europe, Asian countries have also matured in Land Bank applications, such as the Land Bank of Taiwan which was founded in 1945[23], and the Land Bank of the Philippines which was established in 1963[24] both of which currently have well-established systems. Based on the ideal conception above and its success in various countries, can it also be implemented in Indonesia? The author's subjective opinion, at the conceptual level, is that land banks are an ideal solution for various land problems.

However, at the implementation level it still requires more in-depth study, more thorough research is still needed before the actualisation of land bank, which the Job Creation Law mandates, is implemented in Indonesia to ensure that its operations are not in contradiction with the cognizance of the Ministry of Agrarian Affairs. This aligns with numerous findings from research that the goal of the lands bank, as described in Article 125, 4th paragraph of The Job Creation legislation, is to participate in the processes of arrangement, purchasing, obtaining, handling, utilizing, and redistributing land. Regulation by the President Number 47 of 2020, which pertains to the Ministry of Agrarian Affairs, specifies in Article 5 that the Ministry is responsible for acquiring and developing the land[25]. Apart from that, there is also the potential for overlapping competency. Since 2018, an Agrarian Reform Team has been formed according to Presidential Regulation Number 86 of 2018,

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[22] Morten Hartvigsen, Tomas Versinskas, and Maxim Gorgan, "European Good Practices On Land Banking And Its Application In Eastern Europe And Central Asia," in *FIG e-Working Week 2021: Smart Surveyors for Land and Water Management—Challenges in a New Reality,* June 21-25, 2021.

[23] Land Bank of Taiwan, "Estabilishment," https://www.landbank.com.tw/En/Category/Items/Es tablishment, 2022.

[24] The Land Bank of the Philippines, "Milestone In Corporate Existence," ", https://www. landbank. com/about-us/about-landbank/history, 2020.

[25] Wahyu Bening and Ilham Dwi Rafiqi, "Permasalahan Hukum Pengaturan Bank Tanah Pasca UndangUndang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Jurnal Suara Hukum* 4, no. 2 (2022): 265-298.

which pertains to the Agrarian Reform.[26] Under these circumstances the Land Bank also has the authority to implement agrarian reform. Apart from formal flaws in the process of forming a Legislative foundation for land banks and overlapping authority, the substance of the regulations is considered to have the potential to harm society. That is why various parties are challenging bank regulation rules.

Efforts to dispute the enactment of the land bank in Indonesia began on January 25, 2023, with 13 (thirteen) labor unions filing a lawsuit to carry out a formal test against the government regulations in lieu of Law Number 2 of 2022, which addresses explicitly job creation. In fact, land banks run the risk of acquiring and controlling millions of hectares of public land to satisfy the land needs of investors and other significant business entities.

**TABLE 2.** Land Bank Implementation Lawsuit

| Plaintiff | Substance of The Lawsuit | Status |
|---|---|---|
| 13 (thirteen) Federation of Labor Unions | Potential losses for workers | Rejected (Constitutional Court Decision Number 14/PUU-XXI/2023)[27] |
| 11 (eleven) Civil Society Organisations | Potential to harm farmers and encourage land liberalism | Rejected (Supreme Court Decision Number 6 P/HUM/2023)[28] |
| 10 (ten) Civil Society Movement organisations | Additional land bank capital has the potential to harm farmers. | Rejected (Supreme Court Decision Number 7 P/HUM/2023)[29] |

*Source: Authors' Analysis*

The judges on the Constitutional Court said that the petitioners' request could not be accepted because the formal test request was for a Government Regulation in Lieu of Law Number 2 of 2022 pertaining Job Creation, which does not exist anymore because it has been changed

[26] Republic of Indonesia, Presidential Regulation Number 86 of 2018 Concerning Agrarian Reform (State Gazzete 172 of 2018).

[27] Republic of Indonesia, Constitutional Court Decision Number 14/PUU-XXI/2023.

[28] Republic of Indonesia, Supreme Court Decision Number 6 P/HUM/2023.

[29] Republic of Indonesia, Supreme Court Decision Number 7 P/HUM/2023.

to the legislation referred to as Law Number 6 of 2023 relate to the establishment of Government Regulations as a substitute for Law Number 2 of 2022. This ratification has legal consequences for all the articles contained therein, making them lawfully valid and generally applicable. The act of land bank matters contained in Articles 125 to 135 are also legally valid and generally applicable.

Regarding the rejection of all land bank lawsuits, it should be noted that the legal structure backing land bank implementation has become more solid and will affect more extensive range of small communities, especially those that are reliant on agriculture and the coast, such as farmers, Indigenous peoples, farm workers, and deprived rural and urban areas. Furthermore, considering that the assets of the Land Bank Authority are separate from governmental assets, there are opportunities for large-scale corruption to occur. As is known, corruption is the main component of land grabbing. It occurs in Africa as a result of corruption and significant acquisitions of land by foreign investors.[30]

## Review of the National Agrarian Legal Policy & Possibility of Violating the Principle of the State's Right to Manage Land

The land law that has been implemented in Indonesia since the very beginning is customary land law. This law is not written, but its existence is recognized by indigenous Indonesian communities. During colonialism, the Dutch East Indies government created legal instruments regarding land and enforced them in Indonesia. The law relating to land and natural resources, known as *Agrarische Wet 1870*, intended to open up opportunities and provide legal guarantees to Dutch entrepreneurs to develop business by controlling the broadest possible land and undoubtedly, it has resulted in disparities in land ownership.[31] The implementation of customary and western land law

[30] Antonio Tulone et al., "Main Intrinsic Factors Driving Land Grabbing in the African Countries' Agro-Food Industry," *Land Use Policy* 120 (2022): 106225.

[31] Muh. Mahfud and Suteki Suteki, "Agrarian Injustice and the Absence of a Maximum Limit of Land Ownership for Legal Entities," in *Proceedings of the 1st International Workshop on Law, Economics and Governance, IWLEG 2022, 27 July*

through *Agrarische Wet 1870* led to dualism in land law, which lasted for quite a long time, up to fifteen years after Indonesian independence. Law Number 5 of 1960 abolished the dualism of land law in Indonesia regarding the Basic Regulation on Agrarian Principle, which established agrarian legal policy. Agrarian law is essentially interpreted in two ways: a narrow meaning and a broad meaning. In a broad sense, Law No. 5 of 1960 defines "*agrarian*" as encompassing the natural resources found on Earth, in Water, and in Space. In a narrow sense, agrarian law includes regulating the surface of the earth (land). The law fundamentally changed land regulation in Indonesia's constitutional structure, conception, and content. Prior to the Act's enactment of Law No. 5 of 1960, various land law instruments were applied, including customary land law with a communalistic religious conception, western civil land law with a liberal individualistic concept, and self-government land law with a feudal conception.

The communalistic religious conception of customary land law became one of the main foundations for forming of Law No. 5 of 1960. The significance of Article 5 of Law No. 5 of 1960 lies in its alignment with national legislation and the state's objectives, which are grounded in the principle of national unity, agrarian law that governs that customary law encompasses the domains of land, water, and space. This synchronizes with Indonesia's constitutional foundation, which places customary law as a legal system. Article 18B paragraph (2) of the 1945 Constitution states that as long as the customary law community and its traditional rights continue to exist and are consistent with societal advancement and the nation's value, The nation will acknowledge and respect them. So customary law as a law that is born, lives, and develops in society is recognized as a legal system that applies other than the state legal system.[32] Therefore, the spirit of agrarian reform in 1960, after land regulations in the colonial era, was an effort to ensure all citizens of protection and legal stability in the agrarian sector, including customary law communities.

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*2022, Semarang, Indonesia* (EAI, 2023), https://doi.org/10.4108/eai.27-7-2022.2326292.

[32] Anak Agung Mas Iswari Trisnawathi and I Dewa Gede Dana Sugama, "Persidangan Perkara Pidana Secara Elektronik di Masa Pandemi Covid-19," *Kertha Semaya : Journal Ilmu Hukum* 10, no. 7 (2022): 1550-1559.

Through the agrarian reform program, the government has been capable of modify the agrarian reform agenda to accommodate the requirements of society over time more effectively. Agrarian reform, defined as a more equal restructuring of land ownership, use, and control by implementing managing assets as well as access structure mechanisms for the development of the people of Indonesia, has been regulated by Presidential Regulation Number 86 of 2018 pertaining to agrarian reform, Furthermore, the concept of agrarian reform is specified in Law no. 5 of 1960, which pertains to establishing and advancing of national agrarian law.[33] Therefore, it is possible to determine the assessment of the efficacy of agrarian reform in the establishment of national agrarian law can be determined by examining the level of certainty regarding the community's land ownership rights, the mechanism for issuing land rights, and whether or not there are still regulations in the agrarian sector that overlap.[34] In this case is whether the implementation of land bank regulations can immediately become a solution to The actualization of agrarian reform and reflect of new national agrarian legal policies that reach all levels of society.

Regulation No. 5 of 1960, Article 2, establishes the political framework for state land control, drawing its authority from The Constitution, specifically Article 33, paragraph 3. This article asserts that the state holds supreme authority over the earth, water, and natural resources, with the responsibility of ensuring the welfare of all individuals within its jurisdiction. The primary objective of this state authority is to promote the prosperity and well-being of society, facilitating happiness, freedom, and justice within a legal system that upholds independence, fairness, and prosperity. In practice, customary law governs local areas and communities, granting them a degree of autonomy in managing state affairs, provided their actions do not conflict with national interests.[35]

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[33] Subhan Zein, "Reformasi Agraria dari Dulu Hingga Sekarang di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (2019): 121–135.

[34] Rahayu Subekti et al., "The Urgency of the Legal Strategy of Abandoned-Land Use through the Formation of Land Bank in Indonesia," *Cogent Social Sciences* 9, no. 1 (2023), https://doi.org/10.1080/23311886.2023.2239050.

[35] Artaji Artaji, et al. "Resolution of Agrarian Conflicts on Plantation Land through Restorative Justice in Indonesia." *Lex Scientia Law Review* 8, no. 1 (2024): 109-138. *See also* Taufiq, Fida Nabilah, Mohammad Hamidi Masykur, and Supriyadi

Within customary landownership theory, the government is not considered the land owner, but rather the governing body with the authority to administer and control the property. This theory is commonly known as the Right to Manage the State in national agrarian law. It's different from the *domeinverklaring* system adopted in the previous colonial era; at that time, basically all land was "*owned*" by the government except for the land on which a person could prove ownership.[36] However, the land tenure arrangements stipulated in the land bank regulations show indications of similarities to the colonial-era domain system, which should never be re-applied.

**TABLE 3.** Comparison of Land Tenure Regulations in Indonesia

| Indicator | State Control Rights Over Land | *Domeinverklaring* | Land Bank Authority |
|---|---|---|---|
| Source | Law No. 5 of 1960 | Agrarische Besluit (Agrarische Wet) | Government Regulation Number 64 of 2021 |
| Implications | State authority to regulate and administer the allocation, use, supply, and maintenance of land | The state owns all land whose ownership rights cannot be proven | One of the land acquisitions comes from land that has no ownership |
| Status | Apply | Not Applicable | Apply |

Source: Authors' Analysis

According to the provided table, there is a big difference between the principles governing the state's control over land rights and state

Supriyadi. "Challenges Arising from Article 22 (2) of Ministerial Regulation ATR/BPN No. 6/2018 on Complete Systematic Land Registration (PTSL) Pertaining to Insufficient or Missing Evidence of Community Land Ownership." *Unnes Law Journal* 9, no. 2 (2023): 419-440; Handayani, I. Gusti Ayu Ketut Rachmi, et al. "The Politics Settlement of Land Tenure Conflicts During Jokowi's Presidency." *Journal of Indonesian Legal Studies* 7, no. 2 (2022): 487-524.

[36] Marulak Pardede, "Hak Menguasai Negara Dalam Jaminan Kepastian Hukum Kepemilikan Hak Atas Tanah Dan Peruntukannya," *Jurnal Penelitian Hukum De Jure* 19, no. 4 (2019): 405-420, https://doi.org/10.30641/dejure.2019.V19.405-420.

ownership rights over land. In this case, after being free from colonialism, the state could no longer own land but was only limited to holding the mandate of the Indonesian people to have the right to regulate land control. During colonialism, the implementation of the *domeinverklaring* principle significantly harmed the Indonesian people whose land was forcibly taken because they were unable to prove ownership rights to the land. This certainly harms the values of customary law, which does not recognize written proof of land ownership. In fact, the editorial use of the words 'land without ownership' in land bank regulations is hazardous and can have many meanings. One of the meanings is the similarity of the word to the essence of the *domeinverklaring* principle, which states that the state possesses land that lack verifiable ownership.

This land bank concept was assessed by many parties to have potentially adopting the principle of *domainverklaring* and misused the meaning of the state's right to manage. As land banks currently determine the acquisition of land that is not developed or unproductive, management will be carried out aimed at development. It is feared that land bank authority will become part of the process of liberalizing the land market in Indonesia. Ultimately, the stance of land banks in Indonesia is prominent in upholding the legal principles of fairness, legal certainty, and utility for the entire Indonesian population. Based on the existing facts regarding the development of land bank regulations, which continue to give rise to conflict and differences of opinion, questions will arise regarding whether or not the implementation of land banks is relevant when compared to the progress of law in Indonesia.

## Examine the Relationship Between the Land Bank's Implementation & the Theory of Legal Utilitarianism

Liberal utilitarianism is typically portrayed as an ideology of thought that originated in Western Europe, mainly with Jeremy Bentham, and

later spread to other world region.[37] Curzon wrote that a moral theory known as utilitarianism describes the 'rightness' Considering an act in terms of how it contributes to overall satisfaction and view the highest good as 'the greatest happiness of the greatest number'. According to Jeremy Bentham, the primary purpose of the state and its legislation is to promote the well-being of the majority of people. In this context, the state must implement equality by ensuring happiness for all individuals without causing harm or disadvantaging others. [38] Legal utilitarianism is appealing for practical application because it outlines a specific course for statutory regulation and legal policy (focusing on the utility principle in decision-making). With certain limitations, it can be applied to enhance people's lives.[39] However, this theory received criticism from John Rawls, who claimed that, utilitarianism may fail to defend individuals' fundamental rights and freedoms in its pursuit of enhancing overall social welfare.[40]

The 1945 Constitution embodies the spirit of utilitarianism when contrasted with the notion of a welfare state. Clause 3 of Article 33 of the Constitution of 1945 states that "it is used as much as possible'. The prosperity of the people is the keyword that any valuable natural resource wealth in economics should be used for all Indonesian. This includes government policies regarding the regulation of land control. Jeremy Bentham put forth the idea that "*happiness is pleasure, and pleasure is good*" and "*Unhappiness is pain; and pain is bad*". He then placed 7 (seven) quantitative variables to carry out the calculation process, namely: 1). the frequently of the pleasure; 2). the length of the pleasure; 3). how definite is the fulfilment of that pleasure; 4), accuracy to fulfil these pleasures; 5), how consistently will the resulting pleasure be followed by a similar pleasure; 6. There is no possibility that the

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[37] Alessandro Stanziani, "Utilitarianism and the Question of Free Labor in Russia and India, in the Eighteenth and Nineteenth Centuries," *International Journal of Asian Studies* 18, no. 2 (2021): 153–171.

[38] Hend Hanafy, "Bentham: Punishment and the Utilitarian Use of Persons as Means," *Journal of Bentham Studies* 19, no. 1 (2021).

[39] Igor V. Kolosov and Konstantin E. Sigalov, "Was J. Bentham the First Legal Utilitarian?," *RUDN Journal of Law* 24, no. 2 (2020): 438–471.

[40] Hun Chung, "Rawls's Self-Defeat: A Formal Analysis," *Erkenntnis* 85, no. 5 (October 7, 2020): 1169–1197.

opposite sensation will follow the pleasure given; and 7). How many people does this sense of pleasure haven impact on?[41]

The authors subjectively determines the numbers to calculate the value of *'pleasure'* and *'pain'* to entities related to land bank based on an analysis of land bank regulations. These entities consist of the authorities, corporations, peasant and indigenous communities. The value range consists of three types: value 2 means '*pleasure*', value 1 means there is a potential combination of '*pleasure and pain*', and value 0 means '*pain*'. The final value of all indicators will determine which entity gets the highest pleasure value, showing the meaning of the greatest beneficiary of land bank regulations and its conformity with the theory of utilitarianism, where a policy should provide the maximum benefit for all entities.

**TABLE 4.** Calculation of '*Pleasure*' and '*Pain*' for Entities Related to Land Bank Regulations

| Indicator | Government | Corporation | Farmers and Indigenous Communities | Other Society |
|---|---|---|---|---|
| Frequently of pleasure | 2 | 1 | 0 | 1 |
| Length of pleasure | 2 | 1 | 0 | 1 |
| Definite of the fulfilment of pleasure | 1 | 1 | 0 | 1 |
| Accuracy of pleasure | 1 | 1 | 0 | 1 |
| Consistency of pleasure | 2 | 1 | 0 | 1 |
| Possibly the opposite of pleasure | 1 | 1 | 0 | 1 |
| Number of Affected Parties | 2 | 2 | 0 | 1 |
| **TOTAL** | **11** | **8** | **0** | **7** |

*Source: Authors' Analysis*

[41] Endang Pandamdari, "Tinjauan Yuridis Klaster Pertanahan Pada Undang-Undang Cipta Kerja Pasca Berlakunya Putusan Mahkamah Konstitusi 91/PUU-XVIII/2020," *Jurnal Hukum Pidana Dan Pembangunan Hukum* 4, no. 2 (2022): 17–25.

1. *The Frequently of the Pleasure*
   For the government, the presence of a land bank undoubtedly offers pleasure (2), in that land banks serve as a vehicle through which the government ensures that land will be available for a range of uses, including economic equality, social welfare, public interests, consolidation of land and agrarian reform (*The Land Bank is allocated a least 30% of the nation's land*). For corporations and other communities, there is the potential for a combination of pleasure and pain (1) providing avenues for cooperation with the entities involved in this context including the government at the central level, the Regional Government, State Organizations, State-Owned Companies, State-Owned Legal entities, Business Entities, Private Field, Community, Cooperatives, and/or Other Legal Entities. Farmers and Indigenous communities are not mentioned at all in the land bank regulations, so they are irrelevant to benefits of the regulations, and they are categorized as 'pain' (0).
2. *The Length of Pleasure*
   This is related to the period of time the pleasure is enjoyed. For the government, as long as the regulations on land banks exist, during that time the benefits will be obtained (2), as well as opportunities for corporations and other communities (1). For farmers and indigenous communities, assessment becomes irrelevant because no pleasure (0) is obtained.
3. *The Definite of the Fulfilment of Pleasure*
   Regarding the certainty of fulfilling pleasure, the government, corporations, and other communities have the potential to obtain certainty of receiving pleasure from land bank regulations (1). Concretely, the implementation of regulations certainly depends on other legal systems, namely structure and legal culture. For farmers and indigenous communities, an assessment cannot be carried out because they are not included as beneficiaries of the regulations (0).
4. *Accuracy of Pleasure*
   The assessment point of accuracy can be measured through the accuracy of the land bank as a government program in carrying out its functions. Starting from the planning stages land procurement and land administration, land utilization to the land distribution

stage. The measure of accuracy is the same as the certainty of the fulfilment of pleasure indicator, through three things: substance, structure, and legal culture, all of which apply to governments, corporations, and other communities (1). For farmers and indigenous communities is considered irrelevant because they do not benefit from this regulation (0).

5. *Consistency of Pleasure*
   In this case, the government will consistently gain pleasure from this regulation (2), while corporations and other society depend on government decisions (1), both relating to cooperation (the mechanisms used are Transactions including the purchase and sale of goods, rental agreements, commercial collaborations, grants, exchanges, and other mutually agreed-upon types of cooperation with other entities) , as well as other government decisions, such as the Minister's determination regarding the availability of land for agrarian reform. For farmers and indigenous communities, assessment is not relevant (0).
6. *Possibly the Opposite of Pleasure*
   There is a possibility that enjoyment will be followed by opposite sensations; this will happen if conflicts related to the implementation of land banking continue to occur in various regions. In fact, land bank regulations have been challenged by many parties, which will cause 'pain' for the government, corporations, and other communities (1). Farmers and Indigenous communities not affected (0).
7. *Number of Affected Parties*
   Land bank regulations apply to all Indonesian people and all entities, both government, corporations, and other communities, with their pleasures and pains (2). However, farmers and indigenous communities, the potential for 'pain' lies with them (0). Their land is easily claimed for all the pleasures other entities receive. Land bank regulations regulate agrarian reform, land redistribution, and settlements for low-income people. However, the designation does not clearly mention farmers or indigenous communities.

Finally, based on the analysis using the legal utilitarianism theory described above, it can be seen that the government gets the highest 'pleasure' with a score of 11, followed by corporations with a score of 8,

the general public with a score of 7, In contrast, farmers and indigenous communities do not get a score at all (0). This means that the government is the entity that benefits most from land bank regulation. So, to justify conformity with the theory of the optimal level of happiness for the largest possible population is considered irrelevant. If only the government and corporations have the potential to enjoy the impact of land bank regulations, and some parties have the potential to be harmed, especially farmers and indigenous communities, who are essential entities whose rights must not be ignored by the state, The author concludes that the existence of farmers and indigenous peoples who do not get 'pleasure' from land bank regulation shows that the '*greatest number*' in this theory is not fulfilled.

## Potential Impact of Implementing a Land Bank for Farming Communities & Customary Law Communities

According to Borras, Jr., land grabbing is an attempt to gain control over land on a large scale and involves significant capital.[42] Case studies of land grabbing have increased significantly since 2012. Based on Bin Yang's research, these cases mainly occur in developing countries in Africa and Asia, where Indonesia is one of the objects of study. He further stated that the occurrence of land grabbing in Indonesia has resulted in the phenomenon that pertains to the deprivation of land access, control, and customary rights, alongside the alteration of traditional livelihoods among local communities. Palm oil and pulp plantations are supplanting the traditional practice of gathering forest products in Indonesia, resulting in indigenous peoples being relegated to hard labor on these farms.[43]

In Indonesia, there is a stigma among environmental activists, that the occupation of land bank authorities possesses the capacity to

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[42] Matias E. Margulis, Nora McKeon, and Saturnino M. Borras, "Land Grabbing and Global Governance: Critical Perspectives," *Globalizations* 10, no. 1 (2013): 1–23.

[43] Bin Yang and Jun He, "Global Land Grabbing: A Critical Review of Case Studies across the World," *Land* 10, no. 3 (2021): 324, https://doi.org/10.3390/land10030324.

rejuvenate the principle of *domeinverklaring*.[44] The Land Bank Authority's procurement of land is potentially used as transactional goods that can be freely claimed by state authorities through a management rights scheme. Although, the land bank should primarly function as a public institution that focuses on transforming distressed properties into productive uses aligned with the public intereset.[45]

Large-scale land control is carried out in many ways, either by literal confiscation or eviction or through more modern mechanisms, namely government policy. Several articles in the land bank regulations do not essentially lead to land confiscation. However, it has the potential to cause land grabbing. As is known, land grabbing is always related to commercialization. In this case, The Land Bank has the ability to collaborate on land use with third parties for commercial activities. Apart from Indonesia, several studies in various countries have also found a relationship between large-scale land control by the government and the private sector, which has the potential to have negative impacts.

Research has shown that land inequality in Denmark increased during the agrarian reform due to the increasing concentration of people who have little or no land.[46] Previous research has indicated that the state or government has a role in preventing land grabbing. The occurrence of land grabbing in some areas of Columbia State. was influenced by the participation of the government and law procedures.[47]

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[44] Citra Referandum et al., *UU Cipta Kerja & Aturan Pelaksanaannya: Upaya Perampasan Hak-Hak Rakyat Atas Tanah Dan Hak-Hak Pekerja*, ed. Siti Rakhma Mary Herwati (Jakarta: Lembaga Bantuan Hukum Jakarta, 2022).

[45] Gregory Bushman et al., "Associations between Land Bank Ownership and Stewardship of Vacant Properties and Crime, Violence, and Youth Victimization in Flint, MI," *American Journal of Community Psychology* 72, no. 3–4 (2023): 428–42, https://doi.org/10.1002/ajcp.12706.

[46] Nina Boberg-Fazlić et al., "Winners and Losers from Agrarian Reform: Evidence from Danish Land Inequality 1682–1895," *Journal of Development Economics* 155 (2022): 102813, https://doi.org/10.1016/j.jdeveco.2021.102813.

[47] Carolina Hurtado-Hurtado, Dionisio Ortiz-Miranda, and Eladio Arnalte-Alegre, "Disentangling the Paths of Land Grabbing in Colombia: The Role of the State and Legal Mechanisms," *Land Use Policy* 137 (2024): 106998, https://doi.org/10.1016/j.landusepol.2023.106998.

Land grabbing, commonly known as large-scale land transactions (LSLTs) or large-scale land acquisitions.[48]

Land grabbing cannot be interpreted as a problem of the past that only happened in the past. Currently, the digitalization era is one of the triggers for land grabbing. According to Bludnik's study, land grabbing can be understood as a manifestation of financialization, which can result in various adverse consequences such as human rights infringements, poverty, coerced displacement, consolidation of land ownership among private individuals, fraudulent activities and corruption within the land administration domain, as well as inadequate safeguarding of property rights.[49]

Collectively, there exists an approximate population of 475 million Indigenous Peoples throughout 90 nations, including around 25% of Earth's landmass and accounting for 80% of its biodiversity.[50] Nevertheless, many of tribes and states lack official jurisdiction over their natural resources and territories, with specific instances when states fail to acknowledge these natural resources formally. One of them is that in Indonesia, which consists of various tribes and nations, until now there are still many customary communities that have not received state recognition. After the approval of the Legislation on Job Creation and its associated restrictions, namely land banking regulations, the projected protection of Indigenous communities and their customary rights will become increasingly difficult. This is because the purpose of the Job Creation Law is for economic acceleration, thereby overlooking social and environmental aspect. This proves that, in specific sectors, the Indonesian government still adopts regulations as during Dutch colonialism. As stated by Fahmi in his research, The Dutch colonial legal systems, particularly the land and forest laws, which discriminated

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48 Chuan Liao and Arun Agrawal, "Towards a Science of 'Land Grabbing,'" *Land Use Policy* 137 (2024): 107002.

49 Izabela Bludnik, "Digitalisation as a Driving Force for Land Grabbing in the Global South," *Procedia Computer Science* 207 (2022): 265–271.

50 Melody E Morton Ninomiya et al., "Indigenous Communities and the Mental Health Impacts of Land Dispossession Related to Industrial Resource Development: A Systematic Review," *The Lancet Planetary Health* 7, no. 6 (2023): e501–517, https://doi.org/10.1016/S2542-5196(23)00079-7.

against the rights of the native (indigenous) peoples, including the right to communal land property, were adopted by the Indonesian ruler.[51]

The land procurement by Land Bank Agencies from land that has no control over it has sparked controversy. The editorial meaning of the word 'control' needs to be clarified for the criteria for particular land objects, such as physical control of land and land control carried out by Indigenous peoples over their customary rights. Until now, there are still several individuals who control land by physical means for various reasons. Physical possession means that a legal subject occupies a land object without written proof.[52] The government's absolute seizure of land through government stipulations over land without written proof may be contrary to the concepts of justice for communities of customary law.[53] This is in line with what Maria Soemardjono stated that Land bank regulations grant land banks the authority to exercise control over customary land. This is due to the fact that Indigenous communities possess certain uninhabited territories that hold significance as communal dwelling spaces. Proof of physical possession becomes the next benchmark in assessing the party that has land rights. The indicators as governed by Government Regulation Number 24 of 1997's Article 26 on land registration are that it has been in place for 20 consecutive years, is in good faith, and has witnesses. The potential impact of losses that can be analysed in this case is that it is feared that in the future, people who exercise physical control, especially farming communities, are trying to obtain written evidence as mandated by statutory regulations, where their land, which is still without status, is classified as land without control.

Based on data from the Customary Area Registration Agency (BRWA) as of March 17, 2024, there are 1653 customary areas in Indonesia with a new registered classification of 3 areas, 1327 areas

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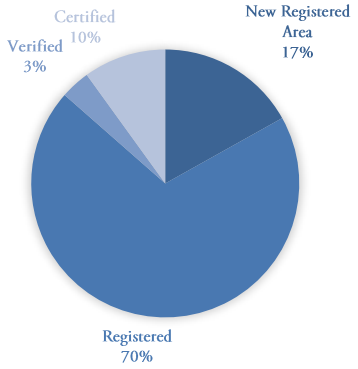
[51] Chairul Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 1019-1064.

[52] Audry Zefanya and Fransiscus Xaverius Arsin Lukman, "Tolak Ukur Pemenuhan Penguasaan Fisik Atas Tanah Melalui Surat Pernyataan Penguasaan Fisik Bidang Tanah," *Jurnal USM Law Review* 5, no. 2 (2022): 441-454.

[53] Muhamad Rafly and Abdul Halim, "Perlindungan Hukum Masyarakat Adat Terhadap Asas Domain Verklaring Dalam Peraturan Perundang-Undangan Tentang Bank Tanah," *Jurnal USM Law Review* 6, no. 3 (2023): 1136-1149.

registered, 190 areas verified, and 68 areas certified. The recognition statistics for these customary areas are 1402 areas with an area of 22,333,293.05 hectares.[54]

**FIGURE 2.** Presentation of Indigenous Community Land in Indonesia

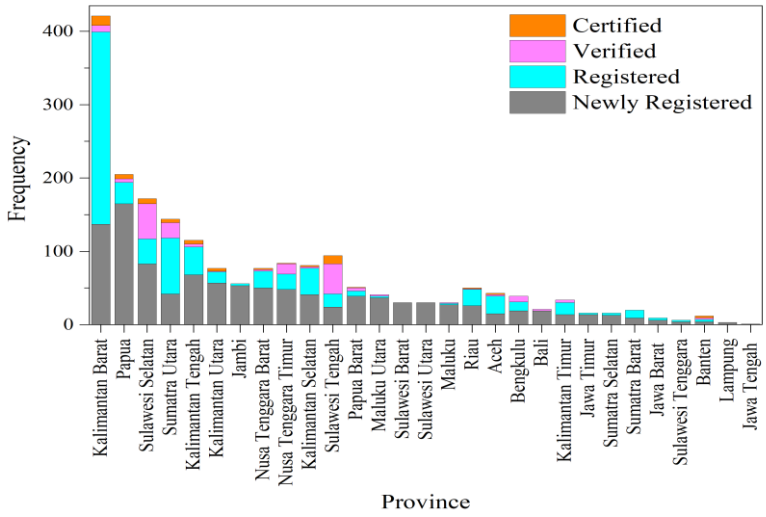



*Source: brwa.or.id*

Based on this data, out of a total of 26,925,567.30 hectares of customary territory, only 4.11% of the certified and verified customary areas are 11.49%, which means there are 84.4% of areas that have the potential to be claimed by other parties because they do not yet have official proof of ownership in the context of regional regulations. Data on the distribution of recognition of indigenous communities is displayed in the table provided below.

**FIGURE 3**. Overview of Recognition of Indigenous Community Areas Per Province

[54] BRWA, "Statistik Pengakuan," https://brwa.or.id/stats_pengakuan, 2024.




*Source: brwa.or.id*

According to this data, it is evident that West Kalimantan is the most registered area, with 381 areas. As for those newly registered, most are in Papua; the largest number of those who have been verified are in the provinces of South Sulawesi, North Sumatra, and Central Sulawesi. So, of the 38 provinces in Indonesia, only 29 have and are currently processing indigenous people's land. In this regard, indigenous peoples and their customary rights are a group that must be prioritized in obtaining legal certainty and protection. Considering the historical presence of customary law groups before the attaining of Indonesian independence, before introducing of various sets of regulations in the agrarian sector.

In order to prioritize the rights of customary law communities, it is imperative that customary law serves as the foundation for national agrarian laws, the legal product should not result in the potential for Indigenous peoples' land to be difficult to recognize, or worse, if the land is taken unilaterally under the pretext of land over which there is no control. This is undoubtedly a setback in the agrarian sector, where the legal products produced only accommodate interests in spesific fields, in this case the business and investment sectors, but on the other hand, they provide potential losses for indigenous peoples who should be guaranteed legal protection based on the constitution.

Potential losses will not only occur to traditional law communities; the public and farming communities will also be affected. In this case, even though the community does not yet hold a title to the land certificate or is currently amid of conflict and dispute with other parties, it does not necessarily mean that the land can be taken over immediately without going through a proper legal process involving active community participation. According to the data acquired from the Agrarian Reform Organization (KPA), the work of the Land Bank Authority in land acquisition operations through the installation of stakes or signs is carried out unilaterally without consultation with the community that claims to own the land.

**FIGURE 4.** The area of conflict between the Land Bank Agency and the Community


*Source: Authors' Analysis*

As happened in Batulawang Village, Cianjur, West Java,[55] the 91-hectare area of land designated as a village and horticulturally productive agricultural land has been cultivated by 320 farming families for decades and has become a priority location for agrarian reform.[56] A similar thing happened in Watutau Village, Poso, Central Sulawesi, where a Land Bank Authority sign suddenly stood on their residential and agricultural land. This also happened in Siabu Village, Salo District, Kampar Regency, and Riau. The conflict between the palm oil business and

[55] Jihan Ristiyanti, "Ancaman Konflik Bank Tanah," https://koran.tempo.co/read/berita-utama/479520/kehadiran-bank-tanah-dalam-perpu-cipta-kerja-bakal-pertajam-konflik-agraria, January 10, 2023.

[56] KPA, "Hentikan Pencucian HGU Dan Sabotase Reforma Agraria Melalui Bank Tanah," https://www.kpa.or.id/2023/07/25/hentikan-pencucian-hgu-dan-sabotase-reforma-agraria-melalui-bank-tanah/, June 25, 2023.

community could potentially harm 6,158 people or 1,700 families.[57] Land Bank Authority signs are also installed in the sub-districts of Pantai Lango, Gersik, and Jenebora, North Penajam Paser District, East Kalimantan.[58]

Even though the government later promised relocation for the community, especially in Penajem Paser Utara, this processtook work. Compensation for losses is not only limited to the location of the land, but the government must considernon-physical losses such as socio-economic conditions[59] so that in the future, the community does not experience degradation in the social and economic fields. Additionally, it is illegal for Statute number 21 of 1999, wich pertains to the ratification of ILO Convention No. 111, focusing on the problem of employment and occupation, related discrimination against Indigenous people traditional employment by uprooting them from their sources of income in order to make investments.[60]

Following the previous description, policy developments in agrarian law were quite significant after Indonesian independence. The government's efforts to eliminate traces of land regulation during the colonial era are reflected in various legal products. However, for implementing the Land Bank itself, the author's subjective opinion is not relevant to developing national agrarian law policy, which should provide a spirit of renewal following current developments but still prioritize protection and a guarantee of legal certainty for all Indonesians. Legal products in the agrarian sector should accommodate the interests of all parties, be made through a proper legislative process, and not give rise to pros and cons at the implementation level, such as

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[57] Kolipatul Muhdi, "Tinjauan Hukum Islam Praktek Sewa Menyewa Laha Pertaniandi Desa Getasrejo Kec. Grobogan" *Thesis.* (Semarang: Institut Agama Islam Negeri Walisongo Semarang, 2013).

[58] Media Indonesia, "Bank Tanah Beraksi Di IKN, Warga Bergerak," https://epaper.mediaindonesia.com/detail/bank-tanah-beraksi-di-ikn-warga-bergerak, June 20, 2023.

[59] Rachman Maulana Kafrawi, "Kajian Yuridis Badan Bank Tanah dalam Hukum Agraria Indonesia," *Perspektif Hukum* 22, no. 1 (2022): 109–138, https://doi.org/10.30649/ph.v22i1.119.

[60] Ria Maya Sari, "Potensi Perampasan Wilayah Masyarakat Hukum Adat Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Mulawarman Law Review* 6, no. 1 (2021): 1–14, https://doi.org/10.30872/mulrev.v6i1.506.

overlapping authority and the potential to harm certain groups, especially farming communities and customary law communities.

The Job Creation Law's mandated implementation of the Land Bank in Indonesia still needs more in-depth research. Apart from formal flaws in the process of creating a legal framework for land banks and addressing the issue of conflicting authority, the substance of the law concerning land bank is considered to have the potential to harm certain groups, especially farming communities and indigenous communities, regarding their rights to their customary land. So the author's own subjective application of land bank is not relevant to the development of national agrarian law policy, which should provide a spirit of reform without harming certain groups. As is known, indigenous peoples and their customary rights are a group that must be prioritized in obtaining legal certainty and protection. Considering that the existence of customary law communities existed even before Indonesian independence and was the basis for the formation of national agrarian law as mandated in Law No. 5 of 1960, specifically Article 5.

The implementation of land bank should adhere to principles of fairness, this requires careful planning, robust legal frameworks, and proactive engagement with stakeholders to ensure that land banking contributes positively to the nation's development goals while safeguarding the rights and well-being of its people. Therefore, the government should prioritize establishing clear and comprehensive legal frameworks for land banking initiatives.

This includes defining the roles, responsibilities, and procedures involved in land acquisition, transfer, and compensation. Clarity in regulations helps prevent disputes, ensures fair treatment for all stakeholders, as well as provides protection for marginalized groups. To address the issue of inadequate protection for marginalized communities, especially farming communities and customary law communities before acquiring land for land banking projects, requires prior informed consent from affected communities, particularly customary law communities and farming communities. On the other hand, the non-state actor can provide legal aid and support services to marginalized communities to help them understand their rights, navigate legal processes, and defend their land rights in case of disputes

or conflicts arising from land banking activities. This includes access to legal assistance, mediation services, and capacity-building programs.

## Conclusion

The Job Creation Law in Indonesia aimed to simplify regulations and streamline investment processes to boost economic growth. Establishing land bank regulations presents both opportunities and challenges for Indonesia's agrarian sector. While it aims to facilitate land acquisition processes and stimulate economic development, there are concerns about potential conflicts, injustices, and environmental degradation. To address these challenges, it is essential to prioritize transparency, legal certainty, and stakeholder participation in land banking initiatives. By ensuring inclusive decision-making processes, protecting the rights of landowners and communities, encourage sustainable land use practices, and establishing effective conflict resolution mechanisms, Indonesia can harness the potential of land banking to promote equitable development while ensuring the preservation of the interests of all stakeholders. Overall, the actualization of the land bank should adhere to principles of fairness, transparency, and sustainability while also addressing the diverse needs and concerns of Indonesian society.

Therefore, to prevent the land bank authority from becoming a tool for land grabbing, its regulations must align with the principles of the Basic Agrarian Law, which prioritizes social justice and land use for the people's welfare. Additionally, technical rules governing the land bank must be transparent ad designed to prevent opportunities for land speculation or monopolization by corporation. Thus, the land bank can serve as a tool for implementing agrarian reform, helping to reduce land ownership inequality in Indonesia.

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