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Rebuilding The Legal Legitimacy of The Land Bank

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EXECUTIVE SUMMARY

Although the establishment of the Land Bank Authority has obtained an adequate legal foundation, its legal legitimacy remains relatively weak. This weak legal legitimacy is reflected in the persistence of intensive academic criticism and the filing of several judicial reviews against regulations related to the Land Bank. How can the legal legitimacy of the Land Bank in Indonesia be rebuilt? *First*, by intensifying public dissemination regarding crucial issues, such as land acquisition by statization and the justification of the Land Bank as a *sui generis* institution receiving the delegation of the state's right to control (Hak Menguasai Negara). *Second*, in carrying out its duties, it must focus on the authority attributed to the Land Bank by the Job Creation Law, namely guaranteeing the equitable availability of land for various interests. *Third*, the management transparency should be enhanced, particularly regarding land acquisition and land distribution. It must be comprehensively demonstrated that land acquisition does not occur through the statization of community land and that its utilization serves purposes beyond mere investment. Therefore, there is an immediate need to intensify the dissemination of crucial issues, ensure operational consistency in accordance with the attributed authority, and improve management transparency through periodic publications recorded in digital footprints.

A. Introduction

Despite the strong legal foundation underpinning the establishment of the Land Bank, many still perceive its legal legitimacy as weak. Since the initial stages of regulatory formulation, institutional establishment, and operational implementation, the Land Bank has continuously received critical responses. These responses have taken the form not only of academic criticism, but some have also culminated in the filing of judicial reviews against Law Number 11 of 2020 on Job Creation (a formal review petition dated October 15th, 2020). Several prominent scholars and public commentators have expressed concern regarding the potential implications of the Land Bank. Professor at the Faculty of Law, Universitas Gadjah Mada (UGM), Maria S.W. Sumardjono (2020), Secretary-General of the Agrarian Reform Consortium (KPA), Dewi Kartika (2021), and journalist Lusia Arumingtyas (2021) express concerns that the existence of the Land Bank could lead to: (a) the occurrence of philosophical deviations due to the existence of Law Number 11 of 2020, which is suspected of being solely oriented toward investment interests, (b) the commercialization of land through tariff-based mechanisms aimed at generating profit, thereby risking the marginalization of vulnerable communities, (c) the legalization of grabbing uncertified land to become Land Bank assets, (d) a mere "rubber stamp" condition to appear pro-people by allocating a minimum of 30% of land for agrarian reform, and (e) the emergence of "*new landlordism*" (Arumingtyas, 2021). Judicial reviews against Law Number 11 of 2020 on Job Creation (hereinafter referred to as the Job Creation Law) also serve as a manifestation of resistance against the Land Bank, as Articles 125-135 of the Job Creation Law constitute its regulatory basis. Subsequent resistance was further manifested through a judicial review petition against Government Regulation Number 64 of 2021 on the Land Bank Authority, submitted on February 13th, 2023, as the implementing regulation governing the establishment of the land bank. The recurring critical responses toward the Job Creation Law and the reality of judicial reviews against both the Job Creation Law and Government Regulation Number 64 of 2021 indicate that the legal legitimacy of the Land Bank remains low in the eyes of the public. Unless this legal legitimacy is systematically reconstructed, the institutional existence of the Land Bank will remain open to continuous contestation unless we systematically reconstruct its legal legitimacy. At present, judicial review proceedings are still ongoing before the Constitutional Court of Indonesia under Case No. 213/PUU-XXIII/2025 (Pujianti, 2026).

Previous studies largely focus on the constitutionality, investment orientation, or agrarian implications of the Land Bank, but limited attention has been given to the issue of legal legitimacy as a procedural and institutional problem. While existing critiques have highlighted concerns regarding potential commercialization and agrarian impacts, this specific procedural gap remains underexplored. Without a clear reconstruction of this legal legitimacy, the institutional existence of the Land Bank will remain vulnerable to ongoing social and legal resistance.

B. Objectives and Approach

This article aims to analytically demonstrate that the legally established existence of the *Land Bank* does not automatically entail legal legitimacy. In fact, discussions about establishing a land bank date back to the 1980s (Sumardjono, 2025). However, its regulatory basis, which was inserted into the Job Creation Law, and its establishment through Government Regulation Number 64 of 2021, occurring shortly after the judicial review of the Job Creation Law was decided, render the legal legitimacy of the Land Bank problematic. Such a condition does not diminish the legality of the Land Bank's existence. Nevertheless, legality without strong legal legitimacy opens the opportunity to question the existence of the Land Bank, both through academic perspectives and judicial review petitions. Therefore, rebuilding (reconstructing) the legal legitimacy of the Land Bank is crucial.

Effective efforts to reconstruct legal legitimacy will enhance the performance stability within the Land Bank. Methodologically, this article employs a normative legal research method that utilises statutory and conceptual approaches. The data sources consist of primary legal materials, particularly the legal framework of Law Number 6 of 2023 on Job Creation and Government Regulation Number 64 of 2021 on Land Bank Authority, alongside secondary legal materials comprising academic literature, legal doctrines, and court decisions. The analytical technique relies on qualitative policy analysis. By processing these legal materials through a conceptual approach, the author accommodates the concept of procedural justice put forward by Tyler (2006), which essentially posits that public compliance with the law is driven more by legitimacy than by the fear of sanctions.

Furthermore, it is argued that if individuals perceive the legal process as fair (procedural), this sense of fairness within the process fosters long-term compliance (Tyler, 2006). Within the context of an already "given" legal framework, such as Law Number 6 of 2023 on Job Creation (as an amendment to Law Number 11 of 2020) and Government Regulation Number 64 of 2021 on Land Bank Authority, the reconstruction of the *Land Bank*'s legal legitimacy requires three principal measures: (a) intensifying public dissemination, (b) focusing on executing responsibilities in accordance with its authority, and (c) establishing governance transparency.

C.1. Intensification of Public Dissemination

The intensification of public dissemination as part of reconstructing the legal legitimacy of the Land Bank should encompass at least three principal aspects: (a) the accommodation of the considerations of the Constitutional Court (MK) Decision Number 91/PUU-XVIII/2020 and the Supreme Court (MA) Decision Number 6 P/HUM/2023 in the drafting process of the implementing regulations of the Land Bank, (b) the permissibility of the Land Bank as a sui generis public legal entity that receives a delegated mandate derived from the State's Right to Control (Hak Menguasai Negara) in the provision of land, and (c) the governance transparency of the Land Bank.

Constitutional Court (MK) Decision No. 91/PUU-XVIII/2020 and Supreme Court (MA) Decision Number 6 P/HUM/2023 indicate that there has been resistance toward the existence of the Land Bank since its establishment. A key point of the Constitutional Court (MK) decision number 91/PUU-XVIII/2020 lies in the rationale for declaring the Job Creation Law formally flawed, namely, because the drafting process of the law was proven to be lacking in meaningful participation. In fact, as stated in the legal considerations of the MK, public participation in lawmaking constitutes one of the main pillars of the state (Article 1 paragraph (2) of the 1945 Constitution), which is guaranteed as a constitutional right (Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution). Consequently, the legal considerations of the MK stipulate that for public participation to be meaningful, it must fulfill at least 3 (three) prerequisites, namely, (a) the right to be heard, (b) the right to be considered, and (c) the right to be explained. In accordance with the concept of procedural justice, public participation in the process of drafting legislation simultaneously applies to lower-level legal instruments, including ministerial regulations. Ignoring public participation in the rule-making process will create difficulties in effective implementation (Nonet et al., 2001/2017), generate a crisis of legitimacy (Habermas, 2015), and reduce institutional trust while triggering regulatory resistance (Tyler, 2006). Furthermore, the lesson derived from the Supreme Court (MA) decision number 6 P/HUM/2023 is the importance of transparency in the drafting process of the implementing regulations of the Land Bank. The Supreme Court (MA) Decision Number 6 P/HUM/2023 declared the judicial review petition inadmissible (Niet Ontvankelijk Verklaard) because the petitioner lacked legal standing (Suyadi, 2025). However, the very fact that a judicial review was filed against Government Regulation No. 64 of 2021 provides an important lesson for legal development. In essence, meaningful public participation and transparency in the process of drafting implementing regulations for the Land Bank constitute essential prerequisites that must be fulfilled by the Land Bank.

The special agency (sui generis) or a specialized Indonesian legal entity (Article 125, paragraph (2) of the Job Creation Law, juncto Article 2, paragraph (1) of Government Regulation Number 64 of 2021) is the appropriate legal entity to assist the government in providing land for various national interests in the long term. As a special agency functioning as a land manager over state land, the Land Bank carries out public duties yet maintains operational flexibility (Arnowo, 2021; Pujianti, 2026). As a sui generis entity, it possesses mixed authority. On one hand, it executes administrative law (bestuursrecht) functions, while on the other hand, it acts as a subject of private law (Sunardi & Lina Alfiana, 2023). As a new concept in land provision in Indonesia, rebuilding trust in the Land Bank requires intensive initial attention. As an Indonesian legal entity established by the government, the position of the Land Bank tends to be a semi-public authority to assist government agencies, in this case, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Ministry of ATR/BPN) in guaranteeing the equitable availability of land. The legal entity of the Land Bank is not a Public Service Agency/BLU under the Ministry of ATR/BPN because such status would restrict the Land Bank’s activities in developing land utilization cooperation with third parties. As a special agency, the Land Bank is a semi-public authority, given its establishment by the government; however, in executing its activities such as land acquisition and land utilization agreements, the Land Bank possesses the latitude to perform various legal actions of a private law nature. This semi-public legal entity is, in fact, also an option adopted in certain countries, such as the United States (Alexander, 2015). As a legal entity established by the government, the Land Bank obtains justification as a subject of the right to manage. The Land Bank's ability to receive delegations from HMN needs to be thoroughly communicated to the public.

The delegation of HMN has evolved in line with the development of the welfare state concept. Initially, Article 2, paragraph (4) of the Basic Agrarian Law (UUPA) restricted the delegation of HMN to regional governments and customary law communities. Subsequently, in several Constitutional Court decisions, the delegation of HMN expanded to include State-Owned Enterprises (BUMN), Regionally-Owned Enterprises (BUMD), and Public Legal Entities (Constitutional Court Decisions No. 001-021-022/PUU-I/2003 and No. 002/PUU-I/2003). In its most recent development, the Job Creation Law delegates HMN in land provision to the Land Bank. Delegation to public legal entities has become unavoidable due to the increasing complexity of efforts to realize the welfare state concept. According to Jimly Asshiddiqie, the delegation of HMN to public legal entities does not diminish state sovereignty as long as the highest control function remains with the state (Asshiddiqie, 2010). Furthermore, the delegation of HMN is granted in the form of the Right to Manage (Article 129, paragraph (1) of the Job Creation Law). This conclusion is because Boedi Harsono states that the right to manage is essentially a fragment of the right to be controlled by the state (Harsono, 2003).

The Land Bank guarantees the general availability of land for various interests (general land banking), rather than for specific interests. Both the provisions of the Job Creation Law and the practice of land distribution to date remain consistent in allocating land for various interests. Article 126 of the Job Creation Law states that the various interests for which land availability is guaranteed include (a) public interest, (b) social interest, (c) national development interest, (d) economic equity, (e) land consolidation, and (f) agrarian reform. Specifically for agrarian reform, the Land Bank allocates a minimum of 30% of the designated state land. The Land Bank allocates a minimum of 30% of the designated state land specifically for agrarian reform. Furthermore, the progress of land allocation implemented up to the present encompasses various interests, including national development infrastructure, social housing, and agrarian reform (Nataatmaja, 2024). Therefore, the accusation that the establishment of the Land Bank is solely for investment purposes is groundless.

The Land Bank performs its functions by managing its own assets and, at the same time, bearing responsibility for ensuring land availability for diverse needs, both commercial and non-commercial. Article 126 of the Job Creation Law has not yet regulated the proportional allocation of land availability between non-commercial and commercial purposes. For the Land Bank to sustainably fulfill its responsibility of guaranteeing land availability, a detailed master plan for asset management is required so that the proportion of land allocation for commercial interests (such as national development purposes) and non-commercial interests (such as public interests, social interests, economic equity, land consolidation, and agrarian reform) can be properly determined. Furthermore, clear guidelines for tariff determination are also necessary to ensure that the fulfillment of non-commercial land needs does not impose an excessive burden on beneficiaries. In this way, the minimum allocation of 30% of land for agrarian reform can be realized, while land requirements for commercial purposes can likewise be adequately accommodated.

C.2. Focusing on the Execution of Authority

Article 126 of the Job Creation Law explicitly states that the duty of the Land Bank is to guarantee the availability of land within the framework of an equitable economy for: (a) public interest; (b) social interest; (c) national development interest; (d) economic equity; (e) land consolidation; and (f) agrarian reform. In essence, the authority of the Land Bank is to assist the government in providing land for various purposes. This provision indicates that the authority held by the Land Bank is supportive in nature, namely, assisting the government—particularly the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN)—in the provision of land for multiple purposes (*general land banking*). The Land Bank lacks direct authority to conduct various development activities in (a) the development of public interest, social interest, and national development interest as well as (b) the implementation of economic equity, land consolidation, and agrarian reform. The authority of the Land Bank is limited to the provision of land for the aforementioned various interests. One of the current public concerns relates to the implementation of agrarian reform: does the Land Bank actively implement the agrarian reform activities itself, or is its role limited to the provision of land for agrarian reform?

Agrarian reform is a strategic state programme that has been underway for more than a decade. During the drafting process of the Job Creation Law—which, among other things, regulates the Land Bank—it was acknowledged that the task of land provision for agrarian reform is expected to increase public acceptance of the Land Bank concept. Once again, it is necessary to closely examine whether the role of the land bank is limited to land provision or whether it also implements agrarian reform itself. The Head of the Land Bank, Parman Nataatmadja (2024), stated, " *The responsibility of the Land Bank does not merely stop at providing and distributing land, but also concerns how the land is utilized by the people over the Land Bank's Right to Manage."* In the interpretation within the Land Bank, the implementation of the provision of Article 41 of Government Regulation Number 64 of 2021, namely the granting of a 10-year Right to Use over the Land Bank's Right to Manage, is construed as the Land Bank's version of agrarian reform.

Based on the provisions of Article 126 of the Job Creation Law, the authority of the Land Bank is focused on land provision, including land provision for agrarian reform. Strictly speaking, the law does not attribute the authority to implement the agrarian reform itself. Naturally, the primary characteristic of land provision executed by the Land Bank is the presence of land development within each of these land provision activities. Therefore, the 10-year temporary utilisation period referred to in Article 41 of Government Regulation No. 64 of 2021 is more appropriately understood as preparation for agrarian reform (pre-agrarian reform) rather than constituting genuine agrarian reform. This is because the activity only involves the structuring of control and utilisation relations (tenancy) and has not yet reached the restructuring of tenure and ownership relations (*tenurial*). The implementation of agrarian reform remains within the institutional mandate of the Ministry of ATR/BPN. Furthermore, for this agrarian reform preparation to effectively realise a genuine implementation of agrarian reform, Article 41 of Government Regulation Number 64 of 2021 should be revised such that (a) the phrase 'a minimum of 10 (ten) years' is amended to 'a maximum of 10 (ten) years'; and (b) the phrase 'may be released to the community' is amended to 'is released to the community'. These amendments are expected to increase public acceptance by allowing a preparation period shorter than 10 years, which makes the realisation of ownership rights resulting from the agrarian reform facilitated by the land bank more certain.

The authority of the Land Bank, as a new land manager in the national land law system, should ideally focus solely on the authority attributed by Article 126 of the Job Creation Law. Exercising authority beyond this attributive authority may yield negative impacts on the position of the Land Bank as the manager of state land, such as the emergence of a potential absolutism of authority and the occurrence of resistance against the Land Bank as a new legal institution. This limitation of authority is crucial as a moral reminder, ensuring that the Land Bank does not lose the support of civil society and that the Ministry of ATR/BPN does not suffer the erosion of its institutional authority as the supervisory body of the Land Bank (Dyzenhaus, 2001).

C.3. Establishing Governance Transparency

The effect of transparency on institutional trust can vary depending on the cultural context. In environments with a large power distance, the impact of transparency on institutional trust tends to be less positive (Kaasa & Andriani, 2022). *Conversely, in a democratic Indonesian society, one can argue that transparency will have a positive impact on institutional trust.* The urgency for such transparency becomes increasingly high for the Indonesian public, given that the average year of schooling for the population aged 15 and above stands at 9.41 years, equivalent to junior high school graduates (Badan Pusat Statistik, 2025). Under these educational conditions, transparency is crucial to mitigate the public's sense of vulnerability, as they often have no other choice but to trust decision-making processes in matters beyond their expertise (Estadieu et al., 2025). In the current digital era, permanent transparency within digital footprints will reinforce data integrity to enhance public trust (Tahir et al., 2025).

The management transparency of the Land Bank still requires various improvements. The primary focus for improvement is on the stages of land acquisition and land distribution. There are concerns that the acquisition of land owned by the Land Bank originates from acts of "statization." In this context, land acquisition by statization refers to the process of turning uncertified land into state land without first recognizing the existence of existing legal relations (Basri, 2022). Furthermore, within various discussions, there remains persistent criticism that the utilization of the Land Bank is prioritized to meet investment needs (DA, 2021; Mahfud et al., 2024). In various discussion forums, the Head of the Land Bank continuously explains the latest conditions of land acquisition. The progress of land allocation implemented up to 2024 includes, among others: 621 hectares for the VVIP Airport of the Nusantara Capital City (IKN); 150 hectares for the IKN Toll Road Section 5B; and 4.2 hectares for low-income housing (MBR) in Kendal and Brebes. Furthermore, the allocation progress for agrarian reform that has been realized covers 3,636 hectares out of the 20,423 hectares of the Land Bank's Right to Manage (HPL) (Nataatmadja, 2024). Currently, information from the official Land Bank website indicates that the Land Bank's inventory assets cover 34,767.05 hectares spread across 45 regencies/cities in Indonesia (Badan Bank Tanah, 2026). However, allegations of statization in land acquisition and the prioritization of investment in land distribution demonstrate that management transparency is not yet optimal; consequently, the critical mass of the Land Bank has not been fully established.

D. Conclusion

The legal legitimacy of the Land Bank needs to be rebuilt to sustainably enhance the stability of its existence. There are 3 (three) aspects required for the reconstruction of this legal legitimacy. ***First***, the spirit of legal correction written and implied within the Constitutional Court (MK) Decision Number 91/PUU-XVIII/2020 and the Supreme Court (MA) Decision Number 6 P/HUM/2023 regarding meaningful public participation and transparency in the drafting process of the Land Bank's implementing regulations must be accommodated to rebuild public trust. ***Second***, considering that the concept of the Land Bank is relatively new within the Indonesian legal institution, the Land Bank's activities should focus consistently on the authority attributed by the Job Creation Law, namely guaranteeing the availability of land for various interests, encompassing both non-commercial and commercial purposes. The Land Bank must first focus on its attributed authority and refrain from authority expansion activities that could trigger public resistance. ***Third***, the governance transparency of the Land Bank regarding land acquisition and land distribution needs to be enhanced so that various allegations capable of eroding public trust in the Land Bank can be clarified and its critical mass can be established. These three aspects can also enrich the study of agrarian law in Indonesia.

E. Recommendations

a. The current authority of the Land Bank should consistently comply with that attributed by Article 126 of the Job Creation Law. Authority expansion should only be carried out after a critical mass is established and the tangible benefits of the Land Bank are empirically felt in assisting the Ministry of ATR/BPN to guarantee land availability for an equitable economy. Furthermore, such expansion must be executed following amendments to the legislative regulations.
b. It is deemed necessary for the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Ministry of ATR/BPN) and the Land Bank to initiate an immediate amendment to immediately provide a new meaning to Article 41 of Government Regulation Number 64 of 2021 by amending it such that (a) the utilization period of a minimum of 10 years is amended to a maximum of 10 years; and (b) upon proof of proper utilization, a smooth upgrade from a utilization legal relationship to the strongest ownership legal relationship, namely, the right of ownership, is ensured for the utilizing party.

c. Concerns regarding the land acquisition by statization of land through the Land Bank require: (a) an enhanced, systematic, and comprehensive explanation regarding the characteristics of the Land Bank in Indonesia as a *general land banking* institution; and (b) the intensification of public dissemination of data and information demonstrating that the acquisition of state land becoming Land Bank assets has been conducted in accordance with the allocations determined by the Ministry of ATR/BPN based on statutory provisions.

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