

THE AGRO-FINANCE GOVERNANCE OF LAND PAWNING INSTITUTIONALISM IN AN ASIAN EMERGING ECONOMY

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Abstract

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This study investigates the role of land pawn institutionalism in Indonesia in the context of regulation and governance. The theoretical framework referred to in this study is the institutionalization of land pawning from Demachi (2021), which explicitly observes the relationship of the land pawn governance framework to the economy. Furthermore, in the context of agro finance, another theory used is legal infrastructure (Pellandini-Simányi & Vargha, 2021), which analyzes the foundational role of law and regulation to function as social infrastructure to trigger expected economic conditions. The research was conducted using the normative and juridical approach with qualitative design. The findings of this study highlight that governance and regulation in the land system is a major tool in the social system. The land pawning is expected to accommodate the needs and interests of stakeholders and provide equitable services for the community to create legal certainty and social order. The findings highlight the importance of governance of land pawning to advance the role of law as economic and social infrastructure, especially in the agro-economic field.

Keywords: Governance, Institutionalism, Land Pawning, Agro-Finance, Land Regulations

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1. INTRODUCTION

The distribution of natural resources in society, both in the Indonesian Constitution and in the laws and derivative regulations, should be based on the conception of justice (Subekti, Sulistiyono, & Handayani, 2017). The values referred to in the context of Indonesian society are Pancasila which is contained in the Constitution as a guideline for regulating natural resource management. The land is an important need for humans to cultivate crops and garden. The land is also a right for every

Indonesian people, as Article 28 of the Constitution states that "everyone has private property rights and these rights cannot be taken over by anyone". In carrying out agricultural development, farmers have a central role and make a major contribution. The main actors in agricultural development are farmers, who generally operate on a small scale, i.e., the average area of farming is less than 0.5 hectares, even though some farmers do not own their farming land (McCulloch, 2008; Subekti, Raharjo, & Waluyo, 2021).

The risk in farming is crop failure which can be caused by several factors such as poor irrigation systems, pests, and drought (Waddington, Li, Dixon, Hyman, & de Vicente, 2010; Obour, Arthur, & Owusu, 2022; Liliame & Charles, 2020; Sivakumar, 2021). The development of social beings needs an increase in the economy. In ancient times, one alternative solution to meet farmers' large and urgent need for money was to pawn their agricultural land. It is until now still exists in several areas in Indonesia (Nurdin & Tegnan, 2019). The birth of pawning agricultural land comes from customary law, which has the principle of mutual cooperation with each other, so the implementation of pawning agricultural land tends to be more about helping fellow citizens in need rather than making profits. The pawning of agricultural land is a legal relationship between a person and land belonging to another person who has received the pledged money from him (Nurdin & Tegnan, 2019). As long as the pawned money has not been returned, the "pawn holder" controls the land. During that time, the land's proceeds became the pawn holder's rights. The return of the pawn money, or what is commonly called "redemption", depends on the willingness and ability of the land owner who pawned it (Faridy, 2018). A lien is the transfer of a plot of land belonging to one person to another temporarily, followed by the payment of a sum of money by another party in cash, as a lien with the stipulation that the land owner only gets his land back if he redeems it with the same amount of money.

However, the legislators think that pawning agricultural land based on customary law is contrary to the values of justice because there is an element of extortion in it (Nurdin & Tegnan, 2019). In the mechanism, although the lien holder has the right to work on agricultural land and take all of the harvests, it does not reduce the amount of ransom that must be paid to redeem the agricultural land, which is then considered an element of extortion which does not create a mutualistic relationship with each other, even the results can exceed the amount of the mortgage given. Therefore, there is a need for a regulation on pawning agricultural land that favors the landowner to reduce extortion and provide more justice to the landowner.

The arrangement in this research paper is compiled with a literature review that finds that agricultural land pawning institutions in the community tend to use unwritten or oral agreements with the principle of trust. This kind of thing is formed because of hereditary habits that have been carried out in society since ancient times. Land pawning institutions should prioritize written agreements over unwritten agreements, considering the value of the object of the agreement is large (Demachi, 2021; Hassenforder & Barone, 2019). Because the risk is great if the land pawn agreement is only made orally, this written agreement provides more legal certainty for both parties, namely the pawner and the pawn holder. Thus, the purpose of this study was to determine the role of land pawn institutions in Indonesia in the context of regulation and governance with a theoretical framework of land pawning institutions that explicitly observes the relationship of the land pawn governance framework to the economy. Therefore, the method used in this study was carried out using a normative and juridical approach with a qualitative design. And from this research, findings show that theoretically,

these findings underlie the theorizing of legal infrastructure in the land economy in Indonesia, and practically, these findings highlight the need for clearer institutionalized governance and regulations related to land pawning in Indonesia.

This paper is structured as follows. Section 2 provides a review of the relevant literature pertaining to the topic. Section 3 discusses the methodology that has been employed to conduct this research and achieves the study goals. Section 4 details the findings of the study. Section 5 presents the findings, discussions, and implications of the study, and Section 6 provides the concluding remarks and limitations of the study and proposes future research agenda on the topic.

2. LITERATURE REVIEW

Institutionalism refers to engagement as a legal relationship between several legal subjects in connection with it, one or several people thereof bind themselves to do or not do something to another party (Blyth, Helgadottir, & Kring, 2016; Veitch, Christodoulidis, & Goldoni, 2018). According to the Indonesian Civil Code, an engagement can be established for two reasons; firstly, it occurs because of the law that regulates, for example, the relationship between parents and children, and secondly, there is an agreement made by two or more people who bind themselves to each other by making certain agreements. The agreement itself can be made in writing or orally depending on the agreement of both parties by referring to the provisions of Article 1320 of the Civil Code, namely 1) agree on those who bind themselves; 2) the ability to make an engagement; 3) certain thing; and, 4) lawful cause. Oral agreements are generally made with objects that have a small nominal value, while objects that have a large nominal value are made in writing.

The land has a large commercial value, so it is common for land to be used as an object of agreement in civil relations (Kharitonov, Ershova, & Vikin, 2019; Silviana, Utama, & Ismail, 2020; Yubaidi, Mohamad, & Abd Aziz, 2022), one of which is a pawn agreement. Land pawning institutionalism is often found in rural areas or among indigenous peoples with large agricultural lands. Point 9 in the explanation of Law No. 56 of 1960 concerning the Determination of Agricultural Land Areas that pawning agricultural land is a person's relationship with land belonging to another person who owes money to him. If the debt has not been paid in full, the ownership of the land remains with the person who lent the pawn money.

Agricultural land pawning institutionalism in the community tends to use unwritten or verbal agreements with the principle of trust. This kind of thing is formed because of the hereditary habits that have been carried out in the community from ancient times. Along with the development of the era and the shift in function from pawning agricultural land, which was originally supported for the community's economy, to become a business among investors, of course, the risk of this verbal agreement is getting higher considering that the evidence in such an agreement is very minimal because the basis is only based on trust. Land pawning institutionalism should prioritize written agreements over unwritten agreements, considering the value of the object of the agreement is large

(Demachi, 2021; Hassenforder & Barone, 2019). As the risk is great if the land pawning agreement is only made orally, this written agreement provides more legal certainty for both parties, namely the pawner and the holder of the lien. Normative legal certainty means that regulations are made and promulgated in real terms and contain clear and logical provisions (Nurdin & Tegnan, 2019). It is clear that it should not be multi-interpretative and is logical in that it becomes a series in the legal norm system so that it does not clash with other regulations and cause norm conflicts. This written agreement contains a detailed agreement clause regarding the subject and object of the land pawning, including the pawnbroker, lien holder, land area, location, a nominal amount of money, and so on; with this clause, the content of the agreement becomes clear and does not have multiple interpretations. If both parties have agreed to the contents of the agreement, then the agreement will be signed by both parties; thus, the principle of *pacta sunt servanda* will apply as stated in Article 1338, paragraph 1 of the Civil Code, which states all agreements made legally valid as law for those who make them (Gaffar, Karsona, Pujiwati, & Perwira, 2021).

With the making of this written agreement, there is concrete evidence that there has been a binding agreement between the pawnbroker and the holder of the lien, as evidenced by written evidence which was witnessed by several witnesses who signed the agreement (Steinebach, 2017; Asif, 2021). So, with a mechanism like this, there is no need to doubt the strength of the written agreement as long as the parties do not deny the signing of the agreement. This written proof is easier to do because the evidence can be presented in real terms in written form, so if it is a case, the party who can prove it will be able to prove it according to the land pawning agreement. Moreover, making land pawning involving the village head will add to the evidentiary power of the written agreement. This study investigates the role of land pawn institutionalism in Indonesia in the context of regulation and governance.

Table 1. Agricultural land use area in Indonesia, 2013–2017 (ha)

<i>Land type</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>Growth (2017 over 2016) (%)</i>
Wetland	8,128,499	8,111,593	8,092,907	8,187,734	8,162,608	-0.31
Irrigated wetland	4,817,170	4,763,341	4,755,054	4,782,642	4,745,027	-0.79
Non-irrigated wetland	3,311,329	3,348,252	3,337,853	3,405,092	3,417,581	0.37
Dry field/garden	11,838,770	12,033,776	11,861,676	11,539,826	11,730,930	1.66
Shifting cultivation	5,123,625	5,036,409	5,190,378	5,074,223	5,222,066	2.91
Temporarily unused land	14,162,875	11,713,317	12,340,270	11,941,741	12,016,778	0.63
<i>Total</i>	<i>39,253,769</i>	<i>36,895,095</i>	<i>37,485,231</i>	<i>36,743,524</i>	<i>37,132,382</i>	<i>1.06</i>

Source: Ministry of Agriculture Republic of Indonesia (2018).

Furthermore, irrigation that irrigates agricultural land determines whether the land is fertile; when irrigation is smooth, the potential for harvesting will be even greater regardless of the pests that attack. Unlike agricultural land with no irrigation/lack of water, additional capital is needed for irrigation, so crop yields cannot be maximized because production costs for rain-fed agricultural land reduce it. Rainfed agricultural land requires additional costs for irrigation, so it is

3. RESEARCH METHODOLOGY

This study aims to analyze the governance relationship between agro-finance of land pawning institutionalism in Indonesia. The research was conducted using a qualitative design supported by empirical data to conclude. This research is empirical juridical research, namely legal research regarding the actual enforcement or implementation of normative legal provisions in every particular legal event that occurs in society and is supported by primary data and secondary data with descriptive nature and using a qualitative approach.

The rules referred to in this study are Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, hereinafter referred to as Basic Agrarian Law, and Law No. 56 of 1960 concerning Determination of Agricultural Land Areas as the legal umbrella. The theoretical framework referred to in this study is the institutionalization of land pawning from Demachi (2021), which specifically observes the relationship of the land pawn governance framework to the economy. For the implementation of agricultural land mortgages by the justice value, the law must be able to integrate all the interests and resources that exist in society so that there can be order, security, and peace in the social order. It is based on the notion of legal infrastructure in explaining the foundational role of law and regulation in providing infrastructure to trigger expected economic and social conditions (Pellandini-Simányi & Vargha, 2021).

4. RESULTS

In general, each region has various regional characteristics; some areas have abundant water sources, but some lack water. Agricultural land is spread almost throughout Indonesia, where each region has its commodity. As a source of life, water is very important in agriculture. Table 1 shows the number of agricultural lands in Indonesia compared to other use.

necessary to distinguish between technically irrigated agricultural land and rainfed agricultural land in the context of the factors that influence making governances. The price was calculated by farmers considering the potential for harvest in the two areas is different due to irrigation factors. When agricultural land is not irrigated, additional production factors for irrigation will automatically cut the profits from agricultural land cultivation. Table 2 shows irrigation areas in Indonesia.

Table 2. Irrigation areas in Indonesia

Province	Area equipped for irrigation (ha)
Bali	107,566
Banten	231,215
Bengkulu	143,381
DI Yogyakarta	74,403
DKI Jakarta	8,412
Gorontalo	19,664
Irian Jaya Barat	0
Jambi	116,188
Jawa Barat	1,096,022
Jawa Tengah	909,920
Jawa Timur	802,349
Kalimantan Barat	86,541
Kalimantan Selatan	162,902
Kalimantan Tengah	11,696
Kalimantan Timur	19,669
Kepulauan Bangka Belitung	22,619
Kepulauan Riau	0
Lampung	418,739
Maluku	27,618
Maluku Utara	2,250
Nangroe Aceh Darussalam	329,315
Nusa Tenggara Barat	212,937
Nusa Tenggara Timur	69,785
Papua	5,040
Riau	69,220
Sulawesi Barat	0
Sulawesi Selatan	280,489
Sulawesi Tengah	150,360
Sulawesi Tenggara	107,862
Sulawesi Utara	52,376
Sumatera Barat	374,388
Sumatera Selatan	436,252
Sumatera Utara	373,121
Indonesia total	6,722,299
<i>with groundwater</i>	67,220
<i>with surface water</i>	6,655,079

Source: FAO (2012).

In the case of pawning agricultural land, it is necessary to consider the land's condition in determining the pawn's nominal amount. However, indigenous peoples mean to help, so the nominal mortgage is determined only based on the needs of the land owner, the fertility of agricultural land is not a problem for them even though sometimes the mortgage is greater than the value of the land when sold (Firmansa, Anggraeny, & Pramithasari, 2020). Based on Article 1(a) of Indonesian Law No. 6/2014, the village is a village, and customary village or what is called by another name, hereinafter referred to as a village, is a legal community unit with territorial boundaries authorized to regulate and manage government affairs. The local community's interests based on community initiatives, origin rights, and/or traditional rights are recognized and respected in the government system. The village is the smallest unit of the government system, led by a village head who is directly elected by the community. Villages are formed because of community initiatives by taking into account the village's origins and the local community's socio-cultural conditions, so each village has different management characteristics according to the potential of each region. The village head serves for 6 years and can serve a maximum of 3 consecutive or not consecutive terms.

The village head is a central and important unit tasked with administering village government, implementing village development, developing village communities, and empowering village communities. The involvement of the village head in

pawning agricultural land is very important as a form of guidance to the community. In practice in the field, many residents still pawn agricultural land that is not by applicable regulations, so there is an element of extortion and harm to one party. It is necessary to clarify the contents of the agricultural land pawning agreement; the village administrator/village head can guide how to make a land pawning agreement by Law No. 56/1960. The making of the land pawning agreement deed can be described as follows. The agricultural land pawning agreement can be made by the parties themselves and can also be made by village officials. The deed of the agreement under the hand must contain the land area by the land certificate (Syarief, 2021). It also determines the price that has been agreed between the lien and the lien holder, determines the time limit and duration of the pledge, and needs the ratification of the village head.

5. DISCUSSION

There are two forms of ransom, the first with a gold benchmark and the second using cash directly. The use of the gold benchmark is contained in the Supreme Court Decree No.11 K/Sip/1957 regarding the payment of the agricultural land pawning system using the gold price benchmark, which stated that ransom money is determined by assessing the price of money at the time of giving a pawn with the price of gold as a measure and sharing the risk of changes in the price of money fifty-fifty between the two parties. The business of small-scale farmers is heavily dependent on microcredit such as pawns. Table 3 shows microcredit disbursement in some banks in Indonesia.

Table 3. People's business credit (*Kredit Usaha Rakyat/KUR*) disbursement in 2015 (in trillion IDR)

Bank	Micro KUR	Retail KUR	KUR for Migrant Worker	Total
BRI	13.4	2.79	0.595	16.2
Bank Mandiri	0.675	2.8	0.635	3.5
BNI	0.015	3.02	1.5	3.04
Bank Sinarmas	-	-	0.01	0.01
<i>Total</i>				22.75

Source: GBG Indonesia (2016).

The payment system using the gold price benchmark was used in ancient times, this is because the price of gold was relatively stable compared to the price of other goods. Although it can be said to be stable, along with the ups and downs of the world economy, the price of gold experiences price fluctuations; it is arranged that if there is a change in the price of gold, both parties will be borne equally. The pawn payment is based on the gold price benchmark. At the time of giving the mortgage price for agricultural land, the return is the same as the gold price at that time; for example, a 50 million pawn, if converted to the price of gold, will get how many grams of gold, then the return time is adjusted to the gold price prevailing at the time of redemption. Next, the ransom uses cash directly, thus guaranteeing the amount of the nominal value without any price fluctuations, as in the use of gold. The ransom money is determined in the same amount at

the beginning of the pawning of this land without reducing or increasing the nominal amount of money.

Referring to Law No. 5/1960 concerning Basic Agrarian Regulations and Law No. 56/1960, there is not a single article that explicitly regulates the amount of pledged money. Based on Article 7 paragraph 1 of Law No. 56/1960 that whoever controls agricultural land with liens which at the time of the entry into force of this regulation has lasted seven years or more is obliged to return the land to its owner within a month after the existing crops have been harvested, with no right to demand a ransom payment.

Based on the provisions of the article, it is known that the land must be returned to the owner after seven years without ransom; this provision, without regard to the nominal value of the pledged money, will be detrimental to the holder of the pawn of agricultural land if the nominal value of the pawn is very high, for example, the implementation of pawning agricultural land. With agricultural land covering an area of 2500 m² which was pawned with a nominal value of IDR 150 million, if the ransom was released after seven years, it could be detrimental to the pawnbroker because the yield could not reach 150 million. Therefore, it is necessary to regulate the size of the nominal amount of the pawn, which affects governance.

There is no definite governance regarding the minimum period of the agricultural land pawning agreement. Law No. 56/1960 concerning the determination of land area only stipulates the maximum limit of the agricultural land pawning agreement for seven years. The essence of an agreement is an agreement between two parties because there are no definite rules in the law that regulate the minimum limit of a land lien agreement; the minimum limit is determined based on an agreement between the giver and the holder of the lien. This minimum limit can also be determined based on the habits or customs of the surrounding community. A custom which is the same as habit here or the notion of habit in the sense of custom is a normative habit that has taken the form of rules of behavior that apply in society and are maintained by society (Syaufi, Zahra, & Mursidah, 2021; Asteria, Alvernia, Kholila, Husein, & Asrofani, 2022).

Pawn institutionalism for agricultural land appears based on customary law in the community due to urgent economic conditions such as medical treatment, marriage ceremonies, financing children's schooling, and so on (Pratomo, Samsura, & van der Krabben, 2020). Usually, pawn institutionalism was made by people who still have blood ties, so agreements tend to be made orally. In the agricultural land lien agreement, the area of agricultural land is not the biggest factor for the lien holder to enter into the agreement. This relates to the concept of pawning agricultural land as a form of help from indigenous peoples towards each other due to the urgent condition of the pawnbroker. Consequently, there is a need for a regulation on pawning agricultural land that is more in favor of the landowner to reduce extortion and provide more justice to the landowner. Law No. 5/1960 concerning Basic Agrarian Law and Law No. 56 of 1960 concerning Determination of Agricultural Land Areas are the legal umbrella to implement justice in

agricultural land mortgages. Article 7 of Law No. 56/1960 concerning the Determination of Agricultural Land Areas stipulates that the maximum term of the agricultural land pawning agreement is 7 years; if it exceeds that time, there is no obligation for the pawnbroker to give a ransom. Unfortunately, this governance is general in nature. It does not consider other conditions such as whether agricultural land is technically irrigated or not, the nominal amount of the pledged money, and the shift in the use of manure and chemical fertilizers so that the financing is getting bigger, which causes the mortgage holder to suffer losses. As this condition will cause injustice to the pawnbroker, there is a need for reformulation of the existing governances to achieve justice for the parties. The findings of this study highlight how law, as one of the working tools of the social system, should be able to accommodate the needs and interests of interest parties and be able to provide equitable services for the community to create security and peace in the social order (Pellandini-Simányi & Vargha, 2021). This highlights the importance of governance of land pawning to advance the role of law as economic and social infrastructure, especially in the agro-economic field, as revealed by previous studies (Intriago, Gortaire Amézcuca, Bravo, & O'Connell, 2017; Ajates Gonzalez, Thomas, & Chang, 2018; Van Emon, 2020; Singh, 2019).

6. CONCLUSION

The results show that no specific regulation regarding the institutionalization and governance of land pawning has been applied so far in Indonesia regarding agricultural land pawning. In general, the existing governance is part of the regulation regarding the determination of agricultural land area, which only stipulates a maximum limit of 7 years. This does not guarantee legal certainty regarding the land pawn system that can encourage sustainable agro-finance. In addition, this finding also suggests that this policy has not explicitly made land regulations a legal infrastructure to trigger the growth of agricultural economic conditions and social progress.

Theoretically, these findings underlie the theorizing of legal infrastructure in the land economy in Indonesia. Thus, the implementation of land pawning is expected to accommodate the needs and interests of stakeholders and provide equitable services to the community to create legal certainty and public order. Practically speaking, these findings highlight the need for institutionalization of land pawn management to advance the role of law as economic and social infrastructure, especially in the agro-economy sector.

As an implication, the government needs to legislate a special regulation on pawning agricultural land that specifically regulates factors related to the type of agricultural land, the nominal amount of the mortgage, the form of the pledge agreement, and the cost of production. Lastly, as this study focuses only on the legal system and regulations of land pawning in Indonesia, the findings in this study are limited in examining the important role of community governance. Future studies are expected to examine the important role of governance and the pawn system at the field level with empirical testing.

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