

THE EXISTENCE OF LAND BANK IN THE FRAMEWORK OF LAND REGULATION AND PROVISION FOR STATE INTERESTS

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Abstract

This research is motivated by the condition that so far the government has only relied on the role of a land regulator. While other roles are not carried out by the government, namely the role of land availability regulator (land manager). By holding a land bank, at least it can answer various complex problems related to the provision of land for development purposes. This study aims to discuss the essence of the existence of a land bank in the provision of land, the regulation and implementation of land banks in the provision of land, and the construction of land banks for the interests of the state in the future. This research is a type of normative legal research or doctrinal research that is analyzed by argumentum per analogium. The results of this study indicate that the essence of the existence of a land bank in the provision of land for the interests of the state is very important, considering that land is an important commodity for human life. Regulation and implementation of land banks can be a powerful tool in providing land for the interests of the state. So that clear laws and regulations are needed regarding the establishment and operation of land banks. The construction of a Land Bank for the interests of the state in the future requires a comprehensive and planned approach, by conducting a thorough analysis of land needs for the interests of the state in the future. The suggestion that the author can give from this research is that it is hoped that in the future, the existence of a land bank will overcome various problems that arise related to the need for land for the purposes of infrastructure development, housing and development for social interests.

Keywords: Land Bank, Land Provision.

INTRODUCTION

Land acquisition is carried out with the aim of providing land for the implementation of development in order to improve the welfare and prosperity of the nation, state and all people in Indonesia. It is hoped that the availability of land for development purposes can be anticipated earlier by the government with land acquisition for public interests carried out earlier. Therefore, the implementation of the land bank concept is very urgent in Indonesia considering that this instrument can make land policies in the country a success and can support regional development as effectively and efficiently as possible, and can control the procurement, control and utilization of land fairly and fairly in supporting development. By holding a land bank, at least it can answer various complex problems related to the provision of land for development purposes and save the government budget, especially in replacing losses for people who hold land rights.

The Indonesian government has recently passed a controversial law, namely the omnibus law or Law Number 11 of 2020, Concerning Job Creation (hereinafter referred to as the Job Creation Law), this law greatly simplifies regulations from 79 laws to just 1 law. This is none other than to create a quality business and investment climate for business actors, including

Micro, Small and Medium Enterprises (MSMEs). The government's goal in controlling land acquisition to realize a just economy and national interests has been annulled through the Job Creation Law, which then issued derivative regulations, namely Government Regulation Number 64 of 2014. 2021, concerning the Land Bank Agency. Based on this regulation, the Land Bank Agency has the function of distributing land assets owned to realize a just economy.

So far, the government has only relied on its role as a land regulator. Meanwhile, the government has not played another role, namely the role of land availability regulator (land manager). Meanwhile, developers have already carried out large-scale land control for residential areas (real estate) and industrial areas (industrial estate). On this side, the government's role in land regulation is very minimal so that it is always left behind in terms of providing land for development. One of the urgencies for the formation of a land bank as a land manager is the increasingly limited land available for various development needs (Hadi Arnowo, 2021).

The most common problem is when the government wants to start a development, the desired land is not or has not been available. The practical impact is that the government has difficulty in carrying out the land acquisition process, especially related to the execution of land acquisition and it's financing which becomes very expensive. This condition results in a protracted procurement process (Raffli Noor, 2014).

The Land Bank has special authority, namely to guarantee the availability of land in the framework of a just economy in the form of: public interest, social interest, national development interest, economic equality, land consolidation, and/or agrarian reform. planning, land acquisition, land procurement, land utilization, and land distribution.

From the explanation above, the government, with the reason of improving the investment ecosystem of business activities, increasing government investment and accelerating strategic national projects, has many conflicting regulations so that the author is interested in researching the Existence of Land Banks within the Framework of State Control Rights, with the following problem formulations: What is the essence of the existence of land banks in providing land for the benefit of the State; How are the regulations and implementation of land banks in providing land for the benefit of the State; and How is the construction of land banks for the benefit of the state in the future.

RESEARCH METHODS

The type of research used by the compiler is normative research or doctrinal research. Normative legal research is legal research that places law as a building of normative systems. The normative system in question is about the principles, norms, rules of laws, court decisions, agreements and doctrines (teachings) (Mukti Fajar ND and Yulianto Ahmad, 2013).

In this type of legal research, law is often conceptualized as what is written in legislation (Law in book) or law is conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate.

In this case, the author conducted a study of primary data sources, namely data obtained by studying laws and regulations, and also secondary data, namely data obtained by searching and collecting data in print media, electronic media, literature books, and in addition, opinions or other notes related to the research object, using the Legislation approach, Case Approach, Conceptual Approach, Historical Approach, and Philosophical Approach.

The legal materials that have been collected will be analyzed thoroughly normative. The legal materials are analyzed by argumentum per analogium with a systematic and coherent presentation of the conflicting provisions (norm conflicts) contained in the legal issues raised in this study. This study uses a deductive method of drawing conclusions, namely assessing an event that is general in nature towards a specific nature.

DISCUSSION

1. Regulation And the Implementation of Land Banks in Providing Land for State Interests

a. Land Bank Regulation

The regulations or rules for land banks in providing land for state interests are regulated in Law of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 29 of 2016, namely through the land consolidation and land readjustment mechanisms.

1) Land Consolidation

Land consolidation means arranging land use in rural areas related to agricultural or forestry areas that have a divided ownership structure in order to increase agricultural productivity. Land Bank is one of the important resource management tools to increase the productivity of land use. The methods carried out in land banks are market control and local market land stabilization. Land banks guarantee the availability of land for various development needs in the future, efficiency of the APBN APBD, reducing conflicts in the land acquisition process and reducing the negative impacts of land liberalization.

2) Land Readjustment

Land readjustment means the regulation of land use in urban areas, especially in areas with high land use intensity, through the reorganization of built-up land and adjustment of land areas to improve the quality of services and life of urban communities.

Both instruments are regulated through the Regulation of the Head of the Land Agency of the Republic of Indonesia and the Law on Flats, there is no separate regulation regarding this matter. The disadvantage of both instruments is that the arrangement through the release of rights or the sale and purchase of new land is carried out when the development activity will be carried out so that the land acquisition process may not run according to the planned time. In addition to the two instruments, land banks can be used as one way of land acquisition with low conflict. The difference in the concept of a land bank with the two existing instruments is that land banks 'store' land before development activities are carried out.

Land Bank is one of the important resource management tools to increase the productivity of land utilization. The methods carried out in land banks are market control and local market land stabilization. Land banks guarantee the availability of land for various development needs in the future for the benefit of the state, efficiency of the APBN/APBD, reducing conflicts in the land acquisition process and reducing the negative impacts of land liberalization.

Land bank management is related to how to plan, organize, implement activities and supervise land bank activities in realizing land bank goals. Supported by adequate regulations and strong institutions, land bank management can ultimately realize the six functions of land banks, namely land collectors (land keeper); as land warrantees; as land purchase controllers; as land managers (land management); as land appraisers; and as land distributors (land distributors).

Currently, the Government continues to discuss the establishment of a Land Bank in the form of a Public Service Agency (BLU) with the House of Representatives. The establishment of a land bank includes the area of land that can be purchased, the mechanism for taking land (all or part), the method of obtaining the origin of the land (from a sale-purchase mechanism or abandoned land), the funding mechanism (proposed cash in and cash out mechanism) and whether the land that has been purchased will be resold or only rented.

b. Implementation of Land Bank in Land Provision for State Interests

The implementation of land banks in providing land for the benefit of the state is a strategic step to overcome challenges in land acquisition for various purposes, such as infrastructure development, settlements, agriculture, and environmental conservation. Here are some steps that can be taken in the implementation of land banks, namely:

1) Land Identification and Acquisition

The government can identify suitable lands for state interests. After identification, the government can start the process of land acquisition either through purchase, negotiation, or compensation to the landowner.

2) Establishment of Land Bank

The government can establish a land bank that is tasked with managing, storing, and allocating land that has been acquired for the benefit of the state. This land bank will be an entity responsible for regulating the use of land efficiently according to the needs of development and community welfare.

3) Policy Development

The government needs to develop clear and structured policies for land bank management, including land acquisition procedures, pricing, land use, and risk management.

4) Transparency and Accountability

It is important to maintain transparency and accountability in the management of land banks. Information about the land owned by the land bank, its use, and the allocation process should be publicly available.

5) Sustainable Land Use

In allocating land from the land bank, the government needs to ensure that its use takes into account the principles of sustainable development, including environmental protection, economic sustainability, and social justice.

6) Public-Private Partnership

The government can partner with the private sector to optimize the use of land from the land bank. This can involve private investment in infrastructure development or other development projects.

7) Monitoring and Evaluation

An effective monitoring and evaluation system needs to be established to monitor the use of land from the land bank and its impact on development and community welfare.

8) Education and Community Empowerment

It is important to educate and empower communities about the benefits of land banking and the importance of sustainable land management for the benefit of the country. With proper implementation, land banks can be an effective instrument in providing land for the benefit of the state, accelerating development, and improving the welfare of society as a whole.

Thus, the discussion on the regulation and implementation of Land banks in providing land for the benefit of the state, researchers argue that it is in accordance with the theory of legal certainty and the theory of legal protection.

2. The Essence of the Existence of Land Banks in Providing Land for State Interests

Although it has been widely applied in many countries, until now the term land banking/land bank is still defined differently by many experts. For example, in the Netherlands, which utilizes land banking to support the agricultural sector, there are at least 2 (two) public institutions that provide different understandings of land banking.

Dienst Landdelijk Gebied (DLG) states that land banking is "The structural acquisition and temporary management of land in rural areas by an impartial state agency with the purpose to redistribute and/or lease out this land with a view to improving the agricultural structure and/or reallocate the land for other purposes with a general public interest".

Domeinen states that land banking is strategic land management in the form of "holding of land for strategic purposes such as infrastructure and city extension".

While in the United States, Alexander, F (2005) in his writing Land Bank Authorities: A Guide for the Creation and Operation of Land Banks states that a land bank is a government entity that focuses on the conversion of abandoned and tax delinquent properties into productive use".

The Netherlands, as one of the initiators of the land banking concept, differentiates land banking practices as a means of land management into 3 (three) groups, namely:

- a. *Exchange land banking;*
- b. *Financial instruments; And*
- c. *Land bank as developer.*

In terms of organizational and management patterns, land banking differs from country to country. In several countries such as the Netherlands, Sweden, Croatia, Hungary, Denmark, Poland and Slovenia, land banking is established and operates at the state level, while in Germany land banking is established at the regional level. In terms of institutional land banking is implemented by establishing a separate government institution or utilizing existing government institutions which are generally within the Ministry of Finance or the Ministry of Agriculture. In the case of insufficient funding from the public sector, in the Netherlands several financial institutions also play a major role in funding land bank operations, such as ABN AMRO, ASN Bank, ING Group, Rabobank and so on.

Land banking as an instrument for optimizing land/building utilization and revitalizing areas is widely used in the United States, so it is known as an urban land bank. This is in accordance with the definition of a land bank which in America is known as "a government entity that focuses on the conversion of vacant, abandoned and tax delinquent properties into productive use".

Based on research conducted by Cleveland State University, there are at least 8 (eight) things that can support the success of a land bank, namely:

- a. The objectives of a land bank must be focused and specific;
- b. Good coordination between government agencies and stakeholders;
- c. Legal basis that can support the land acquisition process;
- d. The existence of an independent entity to manage the management and distribution of land
- e. Availability of an integrated property technology information management system
- f. The objectives of land banking must be in line with regional spatial development plans;
- g. Efficient land acquisition procedures
- h. An efficient and progressive funding system.

Based on the description above, it can be concluded that the meaning or purpose of the Land Bank in providing land for state interests is as follows.

1. Development

One of the purposes of having a Land Bank in providing land for the benefit of the state is to carry out development for a country.

There are several purposes for the existence of a land bank in providing land for state interests as regulated in Article 11 of Government Regulation of the Republic of Indonesia Number 64 of 2021, namely as follows.

- a. Housing and residential areas
- b. Urban Rejuvenation
- c. Integrated insight development
- d. Land consolidation
- e. Infrastructure development
- f. Development of facilities and infrastructure
- g. Land preparation to prepare the land for the management of the Land Bank business
- h. National strategy projects

With the existence of a Land Bank, a country can use it for the benefit of the state as a basis for developing infrastructure facilities and infrastructure in industrial areas, tourism areas, agriculture, plantations, special economic zones and other economic areas implemented by the Land Bank and/or in collaboration with the government central government, regional government or other parties in accordance with the spatial planning plan.

2. Land Maintenance and Security

In addition to development, one of the important factors that is the essence of the existence of the Land Bank in providing land for the benefit of the state is as a tool for land maintenance and security in order to control land price fluctuations, make land management effective and prevent suboptimal use by irresponsible parties. In line with the development of the nation, land is now an important commodity for human life, land ownership is very important in order to advance the dignity of citizens. The need for land is increasingly important for humans both in its function as a means of seeking a living, namely as a supporter of livelihoods in various fields such as agriculture, regarding the existence of plantation land, livestock, fisheries, industry, tourism, or as a place to live with the establishment of housing as a place to live (M. Edwin Azhari, Ali Murtadho, and Djauhari, 2018).

The demands of economic growth and population pressures cause the need for land. As a result, land is used as a commodity traded by land speculators, resulting in an uncontrolled increase in land prices and an impact on the high-cost economy (Hadi Arnowo, 2022). Secretary General of the Ministry of ATR/BPN Himawan said that high land prices, limited availability of government land, and urban sprawling have resulted in uncontrolled land conversion and inefficient urban development (Yanita Petriella, 2023).

Efforts to overcome the availability of land for the above needs are by forming a land bank. The establishment of a land bank through Law Number 11 of 2020 concerning Job Creation (UUCK) is expected to guarantee the availability of land in the context of a just economy. Land banks come from 2 (two) terms, namely land banking and land banks. Land banking can

generally be translated into Indonesian as "land banking", which is used to describe activities related to land banks. While the term land banks is used to describe the existence of institutions or cooperation between institutions engaged in land acquisition.

Based on the various definitions in the paragraph above, it can be concluded that a land bank is a land policy in which the state, through a government agency or independent agency appointed by the government, has the authority to:

- a. Carrying out acquisitions of abandoned or problematic land, undeveloped land and land deemed to have potential for development.
- b. Manage and organize it temporarily.
- c. Redistribute it for the public interest in accordance with government programs, both short-term and long-term programs (Fatima Al-zahra, 2019).

Based on the description above, the Land Bank plays an important role in developing and increasing the capacity of land or land utilization. The procedure used by the Land Bank is the activity of controlling the market and stabilizing land owned by the local market. Meanwhile, the function of the land bank is contained in Article 3 Paragraph (1) of Government Regulation Number 64 of 2021 concerning the Land Bank, that the function of the land bank is to carry out planning, acquisition, procurement, management, utilization and distribution of land. Based on the concept of the theory of legal certainty, legal certainty is intended to provide certainty of the availability of land in the implementation of the land bank and provide guarantees to entitled parties to obtain their rights correctly. The certainty in question is in the form of certainty that the land bank will be implemented for the purpose of public welfare and public interest based on the methods regulated in the laws and regulations and the certainty of the wording of the rules that regulate it, in the sense that there are no sentences or languages in the rules that can give rise to different interpretations.

3. Land Bank Construction for the Future Interests of the State

a. Land Bank Construction

A number of countries that have implemented the concept of land banks, but in terms of meaning, each country has a different understanding of land banks. The Netherlands, through the Dienst Landdelijk Gebied (DLG) institution, states that land banks are "The structural acquisition and temporary management of land in rural areas by an impartial state agency with the purpose of redistributing and or leasing out this land with a view to improving the agricultural structure and / or reallocating the land for other purposes with a general public interest" (Sungkana, 2015).

Meanwhile, according to American legal expert Frank Alexander in his article entitled "Land Bank Authorities" he stated that the land bank mechanism is "Land banking is the story of the recent development of local government programs designed to break the barriers that create, and are created by, vacant and abandoned properties" (Frank S. Alexander, 2005). So that the land bank entity is not like a conventional bank, the institution focuses on land activities and the nature of the land bank institution is a non-profit institution, so that "land banks are

governmental or nonprofit entities that assemble, temporarily manage, and dispose of vacant land" (Schwarz Laura, 2019).

So what differentiates between conventional banks and land banks is "Focus" exclusively on land banking activities" (Frank S Alexander, 2008). Based on the above explanation, it can be concluded that the land bank is a state institution. Or a regional institution under the authority of the government which operates independently on a non-profit basis and has the authority to control land including acquisition, governance, and regulating all matters relating to land in order to achieve public welfare and interests.

In this case, the author uses a comparison between two countries, namely the Netherlands and the United States, because the two countries have different legal systems where the civil law system is adopted by the Netherlands and the common law system is adopted by the United States. Furthermore, Fatimah Al Zahra in her journal entitled "The Idea of Land Bank Regulation to Realize Equitable State Asset Management" tries to compare the land bank regulations applied in the regulations of the Netherlands and the United States as listed in the following table (Frank S Alexander, 2008).

Table: Comparison of Land Bank Regulations between the Netherlands and the United States of America

Dutch	United States of America
<ol style="list-style-type: none"> 1. Land Consolidation Act, 1954. 2. Constitution Development Area Countryside, 1985. 3. Rural Spatial Planning Law, 2005. 	<p>Central Regulation:</p> <ol style="list-style-type: none"> 1. <i>Housing and Economic Recovery Act / (HERA), 2008.</i> 2. <i>American Recovery and Reinvestment Act (ARRA), 2009,</i> some changes substances regulated in HERA <p>State Regulations:</p> <ol style="list-style-type: none"> 1. <i>The Michigan Land Bank Fast Track Authority Statue;</i> 2. <i>The Ohio Land Banking Legislation.</i>

There is differences in land bank regulations between the two countries. America, which is a federal state consisting of several states, so the American government's policy regarding land bank regulations uses a command system where there is a central land bank regulation as a legal umbrella that regulates the implementation of regulations below it. The Housing and Economic Recovery Act (HERA) is the legal umbrella of the central government, while its implementation is regulated and slightly changed in substance during the Barrack Obama administration in the American Recovery and Reinvestment Act (ARRA) (Fatima Al-zahra, 2019). So in this case the provisions or Each state's land bank policy can be adjusted to the culture and conditions in its region so that its implementation is more effective and can be felt by the wider community.

Meanwhile, the characteristics of land banks in the Netherlands fall within the realm of land consolidation and land readjustment practices in accordance with the regulations on the Land Consolidation Act which was passed.in 1954. This became an instrument of land bank in the implementation of the practice to accelerate and facilitate the process of land acquisition

(especially abandoned land). This certainly requires cooperation between authorized national council institutions or ministries or institutions that have their respective duties in carrying out regional development plans, this institution is non-profit and is not intended to seek profit (Ganindha, 2016).

When viewed from a regulatory perspective, Indonesia has similarities with regulations governing the authority of land banks in the Netherlands, namely a non-profit government entity that collects, temporarily manages and re-empowers empty or abandoned land. Related to regulations in force in Indonesia as a milestone for the establishment of land banks, among others:

- 1) Article 33 Paragraph (3) of the 1945 Constitution.
- 2) UU no. 11 of 2020 concerning Job Creation in article 135.
- 3) Government Regulation No. 64 of 2021 concerning Banking Agencies Land.

When compared, both regulations have the same utility, including land banks as a guarantor of land value stability and land availability in the context of land procurement and equitable economy for the public interest, social interests, national development interests, economic equality, land consolidation. So that this becomes an agrarian renewal in both Indonesia and the Netherlands.

In accordance with the mandate of Article 33 Paragraph (3) of the 1945 Constitution which states that "the land, water and the natural resources contained therein are controlled by the state and used for "the greatest possible prosperity of the people" therefore, the presence of a land bank is expected to be an instrument to support infrastructure development which has been experiencing many problems in terms of land acquisition, compensation processes that do not comply with community justice standards, and do not receive support from the surrounding community.

b. Land Bank Construction for Justice, Legal Certainty, and Legal Benefits in the Future

1) Construction of Justice in Land Banks

Although everyone wants justice to be realized, not everyone understands and comprehends the meaning of justice. A relatively new idea about justice is John Rawls' theory which states that justice is fairness. Fairness, which is interpreted as propriety or fairness in John Rawls' conception of justice, is more intended as an emphasis on mutually beneficial conditions. When associated with the concept of organizing a land bank, justice as fairness requires transparency in the management of a public land bank.

John Rawls is a supporter of formal justice who consistently places the constitution and law as the basis for implementing individual rights and obligations in social interactions. Justice that is based on regulations and even formal administrative remains important because it basically provides a minimum guarantee that everyone in the same case must be treated equally. Justice demands minimum equality for all people (Munir Fuady, 2010). Based on the theory of justice that places law and regulations as the main foundation, regulations related to land banks at the

level of laws that can accommodate land banking practices in Indonesia should be formed immediately.

In relation to John Rawls' principle of justice which consists of fulfilling equal rights to basic freedoms (*equal liberties*) and regulation of economic and social differences to create conducive conditions (*maximum minimum*), then it needs to be adjusted to the legal ideals and foundations Indonesian constitutional. The formation of regulations regarding land banks at the level of laws should not be motivated by the principles of freedom and individual rights as put forward by John Rawls, because this pattern is not in accordance with the conditions of Indonesian society which is characterized by familialism. The formation of regulations regarding land banks at the level of laws must continue to pay attention to the spirit of the Indonesian nation with Pancasila as its legal ideal, and pay attention to the noble values of the 1945 Constitution of the Republic of Indonesia concerning morals, justice, humanity and welfare, all of which must be actualized in conception of future land bank laws.

Furthermore, Aristotle's theory of justice divides justice into justice cumulative and distributive justice. Cumulative justice is to give each one his due equally or to treat everyone equally. The emphasis in cumulative justice is on quantity, namely the equality of the amount that must be given. In relation to land banking practices, cumulative justice lies in the equality of opportunity for all people to own land, especially landless farmers, through land redistribution which is the flagship program of the land bank.

In addition to equal opportunities, in the practice of land banking, an equal position will also be created in the sense of equal rights between the government and the community. For example, in the process of acquiring land right ownership through sale and purchase, the government as the buyer and the community as the owner of land rights are given the same rights to realize their respective desires regarding the value/price of the land to be acquired by the land bank, namely by both agreeing on the price. Land sale and purchase may not occur without an agreement from both parties. The government as the authority in power may not be arbitrary in determining the value/price of land at will at the expense of the community's hopes, or it can be said that the government may not dance on the grief of the community.

2) Construction of Legal Certainty in Land Banks

Legal certainty according to Sudikno Mertokusumo is justifiable protection against arbitrary actions, which means that a person will be able to obtain something expected under certain circumstances. From this understanding, it can be concluded that legal certainty is always identical to the law that questions the legal relationship between citizens and the state. In order to guarantee legal certainty, it is necessary to have regulations that are in accordance with the spirit of the Indonesian nation. According to Jan Michiel Otto, legal certainty can be achieved if the substance of the law is in line with the needs of society. So it can be concluded that regulations that can create legal certainty are regulations that can reflect the culture that develops in society.

If it is associated with the concept of land banking which has not been specifically regulated in national positive law, then regulations governing the practice of land banking in Indonesia need

to be drafted immediately to fill the legal vacuum and ensure the creation of legal certainty, considering that the community's need for the concept of land banking is very urgent. The benefits of land banking for the greatest prosperity of the people cannot be denied, there have been many research results that prove that land banking has a major contribution in improving the welfare of the people in several developed countries, especially in the Netherlands and the United States as has been studied in the previous sub-chapter. Regulations governing the practice of land banking in Indonesia must be able to accommodate various aspects in the implementation of land banking, this aims to prevent arbitrary actions that have the potential to give rise to injustice in the implementation of land banking. The most appropriate form of regulation to accommodate the regulation of land banking in Indonesia is law. Important aspects that must be included in the draft law on land banking are at least aspects of regulation, institutions, and implementation mechanisms.

3) Construction of Legal Benefits in Land Banks

In addition to justice and legal certainty, the third purpose of law is utility. According to Jeremy Bentham, the utility of law means that the existence of the state and law is solely for the sake of true utility, namely the happiness of the majority of the people. This happiness should be felt by every individual in a nation. If this theory of legal utility is associated with the application of the concept of a land bank in Indonesia, then the need for the community to create a land bank is very urgent considering the complexity of the land problems currently occurring in Indonesia, especially the problem of the land availability crisis and land liberalization which has caused land prices to soar very high and has implications for the inability of low-income people to own land. In fact, many Indonesian farmers have been in a cycle of poverty for decades because they are unable to own their own agricultural land, so they are only workers who work on land owned by landlords.

With the support of legal instruments in the form of laws that specifically regulate land banks, the practice of land banks in Indonesia will run according to their functions effectively and have great utility. This condition will automatically increase the welfare of each individual and carry out the constitutional mandate to realize the greatest prosperity of the Indonesian people.

a. Legal Construction of Land Bank Regulation in the Future

From several previous explanations, it is clear how land banks have a strategic role as an instrument of national land management, especially related to land control and management so that it can realize the greatest prosperity of the people. This is also reinforced by factual evidence of land bank practices that have been successfully implemented in various developed countries to systematically handle various land problems, for example the use of undeveloped land, abandoned land, or land that has been left empty and is considered to have the potential for development to become more productive. Land banks refer to the process of acquiring community land that has not been developed or is unproductive to then be managed with the aim of future development.

b. Land Bank Regulatory Container

To achieve the goals and obtain maximum benefits from land bank activities, facilities are needed in the form of the availability of regulations or legal regulations in the near future. The regulations to be made must be able to describe the various legal aspects needed to achieve the goals of establishing a land bank institution. The formulation of the land bank policy is a policy that regulates and controls various aspects of the activities of the land bank institution. With adequate regulatory support and strong management, the land bank will certainly be able to carry out its functions properly.

The most appropriate land bank regulations should be accommodated in the form of a law. There are 2 (two) alternatives that can be taken to accommodate the regulation. First, the regulation regarding public land banks is regulated separately in a special law which will later be called the Land Bank Law. Second, the regulation regarding public land banks is included in the Draft Land Law which is currently being prepared and discussed. The basic reason why land bank regulations in Indonesia must be in the form of a law is because the issue of land rights is something that is fundamental and is part of human rights.

The legal considerations as arguments for why the establishment of land bank regulations in Indonesia must be at the level of law include:

(1) Philosophical considerations that:

One of the main objectives of the state, as stated in Pancasila, namely the second principle (just and civilized humanity) and the fifth principle (social justice for all Indonesian people), is to realize a just society and realize social justice for all Indonesian people. Social justice for all people can only be achieved by increasing social welfare. Meanwhile, social welfare itself can be achieved if this country has a legal institution that fulfills the elements of legal ideals in the form of justice, legal certainty and legal benefits.

(2) Constitutional considerations that:

The 1945 Constitution of the Republic of Indonesia as stated in Article 33 Paragraph (3) states that "The land, water, and the wealth contained therein are controlled by the state and used for the greatest prosperity of the people." Based on the wording of the article, it can be concluded that the Indonesian constitution requires the state to be able to control, in the sense of regulating matters relating to land solely for its use to realize the prosperity of all Indonesian people. The legal instruments that currently regulate the availability of land for development in the public interest are less effective as a result of the development of capitalist economic ideology.

(3) Sociological considerations that:

Issues concerning land rights are fundamental and part of human rights. Land concerns the livelihood of many people and is the socio-economic capital of the people and the state that must be respected. Regulations in the form of laws are expected to secure a person's land rights from forced acquisition without considering the wishes of the owner of the land rights in question.

c. Harmonization of Land Bank Institutions with Land Rights Procurement Regulations for Development in the Interests of the State in the Future

Arrangement regarding the procurement of Land Rights for development for the benefit of the state in the future has been regulated by the government with several changes because the government tries to respect, protect, ownership of individual land rights so that there is a balance between government interests and individual interests. Some of these regulations include Law No. 20 of 1961 concerning the Revocation of Land Rights and Objects on It. Then several regulations were issued under the Law related to "land rights acquisition for development in the public interest", namely: Regulation of the Minister of Home Affairs (Permendagri) No. 15 of 1975 concerning Provisions Concerning Land Acquisition Procedures, Presidential Instruction No. 9 of 1973 concerning Implementation of Revocation of Land Rights and Objects on it, Presidential Decree 55 of 1993 concerning Land Rights Acquisition for Development in the Public Interest, Presidential Regulation No. 36 of 2005 and Presidential Regulation No. 65 of 2006 concerning Land Acquisition for Implementation of Development in the Public Interest and the last was issued Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest which is still in effect until now along with PP 71 of 2012 which has been revised several times for Development in the Public Interest.

In the news, "Antara News stated that residents of three villages, namely Gunung Sugih Village, Gunung Sari Village and Seputih Jaya Village in Central Lampung Regency affected by the construction of the Trans Sumatra Toll Road (JTTS) in Lampung Province rejected the compensation value determined by the Appraiser, because it was considered inappropriate and unfair and did not comply with the procedures stipulated in the applicable laws and regulations (Fatima Al-zahra, 2019)." In addition, problems such as those that occurred in Lampung also occurred in Malang City, which was reported in the Kompas daily, namely, that as many as 63 families affected by the land acquisition for the construction of the Malang - Pandaan toll road in Madyopuro Village, Kedung Kandang District, Malang City rejected the compensation value of 3.9 million per square meter. This case resulted in as many as 63 families having filed a lawsuit against 87 affected plots of land, which is currently in court and has reached the appeal level.

These problems indicate the need for a new policy related to the procurement of land rights for development in the public interest. The Land Bank is a solution for the government by including it in several articles in the Job Creation Law No. 11 of 2020.

Some differences between Law No. 12 of 2012 and the Job Creation Bill are related to the addition of land categorized for public interest, the procedure for providing compensation and the provision of land for slum settlements for those affected by eviction due to development. As for changes in the procedure for providing compensation which is often referred to as compensation, between Article 36 of Law No. 2 of 12 and the Job Creation Law there are differences related to the number of articles and of course their regulations, namely from 3 articles to 5 articles. The addition to five articles in principle includes appraisers or appraisers to participate in deliberations with parties entitled to compensation.

PP 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest is a new regulation that simultaneously revokes Presidential Regulation No. 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest (State Gazette of the Republic of Indonesia 2012 No. 156). The change was caused by the omnibus law Law No. 11 of 2020 concerning Job Creation which amended Law No. 12 of 2012. The intent and purpose are to simplify regulations, create jobs, empower communities, improve the investment ecosystem and accelerate National Strategic Projects, including improving worker protection and welfare.

The consideration for issuing PP 19 of 21 concerning the Implementation of Land Acquisition for development for the Public Interest is in order to implement the provisions of Article 123, Article 173, and Article 185 letter b of Law No. 11 of 2020 concerning Job Creation. Article 123 of the Job Creation Law states that the compensation value is final and binding and the assessment team accompanies the deliberation.

Regarding how to construct a land bank for the interests of the state in the future, as the researcher has described above, the construction of a land bank for the interests of the state in the future is in accordance with the theory of legal effectiveness put forward by Soerjono Soekanto.

CONCLUSIONS AND SUGGESTIONS

1. Conclusions

- a. Regulation and implementation of land banks can be a powerful tool in providing land for the benefit of the state. Therefore, clear laws and regulations are needed regarding the establishment and operation of land banks. Such as the establishment of institutions or bodies that regulate land banks, as well as regulations regarding the acquisition, management, and use of land. In addition, the government must also set clear goals and priorities related to the use of land for the benefit of the state, such as infrastructure development, settlements, agriculture, or environmental conservation. Thus, the Land Bank can be directed according to needs by implementing appropriate regulations and implementing land banks effectively, the government can ensure optimal use of land for the benefit of the state, while paying attention to social, environmental, and economic justice.
- b. The essence of the existence of a land bank in providing land for the interests of the state is very important, considering that Land is an important commodity for human life, land ownership is very important to advance the dignity of citizens. Efforts to overcome the availability of land for the above needs are by forming a land bank. The establishment of a land bank through Law Number 11 of 2020 concerning Job Creation (UUCK) is expected to guarantee the availability of land in the context of a just economy. Land banks come from 2 (two) terms, namely land banking and land banks. Land banking can generally be translated into Indonesian as "land banking", which is used to describe activities related to land banks. While the term land banks is used to describe the existence of institutions or cooperation between institutions engaged in land acquisition.

- c. Construction of Land Bank for the benefit of the country in the future requires an approach which comprehensive and planned, by conducting a thorough analysis of land needs for the interests of the country in the future, including identifying sectors that require land, such as infrastructure, housing, agriculture, and environmental conservation. Land banks also need to procure sufficient land to meet the country's future needs involving direct purchases, land transfers from the private sector, or procurement through other schemes such as granting land use rights or long-term lease rights and conducting mapping and inventory of the land they own to ensure effective management.

2. Suggestions

We hope that in the future, the existence of a land bank can be a solution or alternative to fulfilling the country's land needs for the greatest possible welfare of the people. In addition, we hope that the land bank can overcome various problems that arise related to the need for land for the interests of infrastructure development, housing and development for social interests programmed by the government, in the future so that the community, private sector and government agencies will no longer have difficulty in obtaining land and can obtain land at a stable and reasonable price without any speculators' games in the land sector.

References

- 1) Fatimah Al Zahra, "Gagasan Pengaturan Bank Tanah Untuk Mewujudkan Pengelolaan Aset Tanah Negara Yang Berkeadilan," *Jurnal Ilmiah Administrasi Publik* 3, no. 2 (2017): 94.
- 2) Frank S. Alexander, "Land Bank Authorities," Local Initiatives Support Corporation, 2005
- 3) Frank S Alexander, "Land Banking as Metropolitan Policy," *Blueprint for American Prosperity*, 2008
- 4) Hadi Arnowo, "Pengelolaan Aset Bank Tanah Untuk Mewujudkan Ekonomi Berkeadilan" *Jurnal Pertanahan*, (2021). Vol. II. No.1.
- 5) Kamus Besar Bahasa Indonesia Pusat Bahasa, Edisi Keempat, (Jakarta: Gramedia Pustaka Utama., 2008),
- 6) Maria SW Sumardjono. *Kebijakan Pertanahan Antara Regulasi dan Implementasi*. Buku Kompas. Jakarta. 2005.
- 7) Mukti Fajar ND dan Yulianto Ahmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, 2013,
- 8) Munir Fuady, *Dinamika Teori Hukum*, Ghalia Indonesia, Bogor, 2010
- 9) Fatimah Al Zahra, "Gagasan Pengaturan Bank Tanah untuk Mewujudkan Pengelolaan Aset Tanah Negara yang Berkeadilan," *Jurnal Ilmiah Administrasi Publik*, 3, 2 (2017),
- 10) Hadi Arnowo, "Pengelolaan Aset Bank Tanah Untuk Mewujudkan Ekonomi Berkeadilan", (2021), , *Jurnal pertanahan Kementerian ATR/BPN*.
- 11) M. Edwin Azhari, Ali Murtadho, Djauhari, *Tanggung Jawab Notaris Dalam Pembuatan Akta Perjanjian Nominee Dalam Kaitannya Dengan Kepemilikan Tanah Oleh Warga Negara Asing Di Lombok*, *Jurnal Akta* (2018), Vol 5 No 1
- 12) Raffli Noor, "Manajemen Bank Tanah. *Jurnal Direktorat dan Tata Ruang BAPPENAS*." (2014)Vol. I
- 13) Ganindha, R. (2016). Urgensi pembentukan kelembagaan bank tanah sebagai alternatif penyediaan tanah bagi masyarakat untuk kepentingan umum. *Arena Hukum*, 9(3), 442-462.

- 14) Schwarz Laura, "The Neighborhood Stabilization Program: Land Banking and Rental Housing as Opportunities for Innovation," *Journal of Affordable Housing & Community Development Law* 19, no. 1 (2019): 59.
- 15) Sungkana, "Mengenal Bank Tanah/Land Banking Sebagai Alternatif Manajemen Pertanahan," *Kementerian Keuangan Republik Indonesia* (Jakarta, 2015).
- 16) Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- 17) Indonesia, Undang-undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-pokok Agraria (Lembaran Negara Tahun 1960 Nomor 104- Tambahan Lembaran Negara Nomor 2043);
- 18) Indonesia, Undang-undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah Bagi Pembangunan untuk Kepentingan Umum. (Lembaran Negara Tahun 2012, Nomor 22, Tambahan Lembaran Negara Nomor 5280);
- 19) Indonesia, Undang Undang Nomo 5 Tahun 1960, (Lembaran Negara Tahun 1960 Nomor 104; Tambahan Lembaran Negara Nomor 2043);
- 20) Indonesia, Peraturan Pemerintah Nomor 64 Tahun 2021 tentang Badan Bank Tanah, (Lembaran Negara Tahun 2021 Nomor 109, Tambahan Lembaran Negara Nomor 6683).
- 21) Peraturan Pemerintah Republik Indonesia Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun Dan Pendaftaran Tanah.
- 22) <https://kbbi.web.id/> diakses tanggal 05 Januari 2022
- 23) Media Indonesia, "LMAN Ditugasi Mengatasi Pembebasan Tanah", tanggal 5 Januari 2022.
- 24) <https://ekonomi.bisnis.com/read/20211231/47/1483860/resmi-dibentuk-ini-struktur-dan-fungsi-bank-tanah>, diakses tanggal 25 April 2023. 58
- 25) <https://ejournal.unuja.ac.id/index.php>