

THE URGENCY OF LAND BANK: MAINTAINING THE EXISTENCE OF LAND ACQUISITION FOR DEVELOPMENT

¹Sigit Sapto NUGROHO

¹Faculty of Law, Merdeka Madiun University, Indonesia

Corresponding author: Sigit Sapto Nugroho

Email: sigit.nugroho26@gmail.com

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Abstrak:

For the country and state, the land is at a strategic point. Land also includes social, economic, and cultural values for the Indonesian people. Land has economic worth since it is the primary component of production. Agribusiness and plantations are two strategies for increasing land value. The cultural significance of land is that it serves as a platform for generations to express their creativity, art background, and taste. This study aims to analyze the urgency of the land bank in maintaining the existence of land acquisition for development. This research uses a normative legal research method with a statutory and conceptual approach. The types and sources of legal materials used are primary, secondary and non-legal materials. The method of collecting legal materials uses the literature study method. Analysis of legal materials using qualitative descriptive analysis. Based on the research results show that the urgency of the Land Bank in Land Procurement activities for development has a function to overcome the problem of the form and value of compensation for land acquisition objects, prevent the growth of an inventory of land needs for development activities for the public interest and reduce land acquisition activities that require large costs and which take rights.

INTRODUCTION

The land has a strategic position for the nation and state. In addition, land for the Indonesian people contains social, economic and cultural values. The economic value of land is that land is the main element in production. Increasing land value can be done through agriculture and plantations. The cultural value of land is that land is a medium for creating creativity, art, and taste by generations.

The constitutional basis for regulating land can be seen in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which stipulates that "earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The implementation of Article 33 paragraph (3) of the 1945 NRI Law was then born Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), which stipulates that: "On the basis of the provisions in Article 33 paragraph (3) of the Constitution and the matters as referred to in Article 1, the earth, water and space, including the natural resources contained therein, are at the highest level controlled by the state as an organization of power for the entire people. (Article 2 paragraph (1) UUPA)." The definition of being controlled in Article 2 paragraph (1) of the UUPA above does not mean to be owned. However, it is interpreted as giving authority to the state as an organization of power from the Indonesian nation (the Right to Control the State). Based on the state's right to control, which gives the authority to regulate, implement



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and determine in Article 2 paragraph (2) of the UUPA, the meaning of the State's Controlling Right as meant by the 1945 Constitution of the Republic of Indonesia is a legal relationship that is solely public.

Based on the Right to Control from the State, it is determined that various types of land rights can be owned by individuals or legal entities. This is regulated in Article 4 paragraph (1) of the UUPA, which stipulates that: Based on the right to control from the state as referred to in Article 2, it is determined that there are various types of rights to land on the surface of the earth, called land, which can be given to and owned by people. -people, either alone or together with other people and legal entities. The Indonesian government is currently actively or aggressively carrying out infrastructure development to improve the community's economy. Development is a human effort to manage and utilize resources to fulfill needs and improve the welfare of life. To carry out development, the government needs many lands. Therefore, the government is obliged to provide the land needed in the development context, namely from state land that the people do not control.

One of the complicated problems in Indonesia's land sector is the lack of availability of land for development and other interests such as social interests, national development interests, economic equity, land consolidation and agrarian reform. Due to the lack of availability of land controlled by the state, the only way to do this is to acquire land owned by the people, whether controlled by customary law or other rights attached to it. One of the ways to acquire land owned by the people is through land acquisition activities as regulated in Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest with appropriate compensation (Sumardjono, 2015).

Based on this, it has yet to overcome the existing problems, especially related to land management for various interests, mainly for development purposes, namely the establishment of a Land Bank Institution called the Land Bank. As regulated in Government Regulation Number 64 of 2021 concerning Land Bank Agency. Based on these problems, the problem can be formulated: how is the urgency of the land bank in maintaining the existence of land acquisition for development?

METHOD

The type of research used is normative legal research or doctrinal legal research. In this type of legal research, the law is often conceptualized as what is written in legislation (law in books), or law is conceptualized as a rule or norm (Nugroho et al., 2020). The normative legal research method is carried out with statutory and conceptual approaches. The types and sources of legal materials used are primary, secondary and non-legal materials. The method of collecting legal materials uses the literature study method. Analysis of legal materials using qualitative descriptive analysis (Saputra, Sara, et al., 2019).

RESULTS AND DISCUSSION

The Urgency of Land Banks in Maintaining the Existence of Land Procurement for Development. The legal basis for the establishment of the Land Bank is Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja). The establishment of a Land Bank is regulated in Articles 125-135 of the Job Creation Law. The implementing regulation of Articles 125-135 of the Job Creation Law related to Land Banks is Government Regulation Number 64 of 2021 concerning Land Banks (PP No. 64/2021). Article 1 paragraph (1) of PP No.64/2021 stipulates that: "The Land Bank Agency, hereinafter referred to as the Land Bank, is a special agency (*sui generis*) which is an



Indonesian legal entity established by the central government which is given special authority to manage land."

According to Nur (2009), the form of Land Bank activities is a land provision, land maturation and land distribution. The Land Bank can provide land by means of land acquisition, buying and selling, and exchanging. In land preparation activities, the Land Bank prepares facilities and infrastructure and supporting facilities. Then at the distribution stage, the land is distributed according to the designation plan (A. A. K. Jayawarsa et al., 2021).

One of the functions of the Land Bank based on Article 3 paragraph (1) letter c of PP No.64/2021 is to carry out Land Procurement. Then Article 9 of PP No. 64/2021 stipulates that Land Procurement as referred to in Article 3 paragraph (1) letter c, is carried out through the mechanism of Land Procurement stages for development in the public interest or direct Land Procurement. Furthermore, Article 1 paragraph (2) of Government Regulation Number 19 of 2021 concerning the Implementation of Land Procurement for Development in the Public Interest (PP No. 19/2021) stipulates that "Land Procurement is an activity to provide land by providing appropriate compensation and fair". Land Procurement is carried out by the government but based on Article 123 paragraph (1) PP No.19/2021. Land Procurement can also be carried out by the Land Bank, with sources of funds originating from internal companies and other sources in accordance with the provisions of the legislation (Jayawarsa et al., 2021).

Based on the theory of the land bank concept, according to F. Alan Shirk (2015), "A land bank is not a "bank", in the traditional sense of the word. There are no drive-up ATMs, no tellers, and no home equity or auto loans."

Although Tanah Bank is not a conventional bank, in principle, the concepts of Tanah Bank and conventional banks are not much different. The similarity lies in the intermediation function of conventional banks and Land Banks. The difference is that conventional banks collect money or funds from the public in the form of demand deposits, deposits, savings and deposits and then return them to people who need funds through the sale of financial services. Meanwhile, the Land Bank collects and develops land from the community, especially abandoned ones and State Land that is not used for distribution or leased back (Lawson, 2012; Saputra, Jayawarsa et al., 2019; Susanto, 2017).

According to Frank S. Alexander (2011): "Land banking is the process or policy by which local governments acquire surplus properties and convert them to productive use or hold them for long-term strategic public purposes. Land banks are public authorities or special purpose not-for-profit corporations specializing in land banking activities. Land banking can be undertaken by other public agencies, and not all communities need to create a separate land bank".

Furthermore, Dan Kildee and Amy Hovey explain that: "Land banks are not financial institutions. They are public or community-owned entities created for a single purpose: to acquire, manage, maintain, and repurpose vacantly, abandoned, and foreclosed properties-the, the worst abandoned houses, forgotten buildings, and empty lots".

The definition and activities of the Land Bank can be in the form of: (1). Land Bank in the context of the public sector as a government strategy to deal with urban renewal, preserving open space and stabilizing land values in specific areas; (2). Technically, Land Bank is the practice of buying/acquisitioning land with the intention of being developed/matured to meet development needs in the future; (3). Land Bank is a concept related to accessing land for the purposes of providing public services for housing, and industry, with land management, directing the land market and preventing land speculation (International Finance Corporation, 2010; Liao et al., 2018; Zameer et al., 2018).



Meanwhile, according to Bernhard Limbong (2013), "The Land Bank is a land management instrument to deal with various issues such as land transfer and more effective land use". Based on the understanding of the Land Bank above, the Land Bank can be termed the words "land bank" (land bank) and "land banking" (land banking). Land bank refers to an institution in land management, while land banking refers to the form of activity of the Land Bank institution.

Land Bank activities consist of General Land Banking (General Land Banking) and Special Land Bank (Special/Project Land Banking). (General Land Banking) is run by government agencies to provide, mature, and distribute land for all types of use, both public and private. Meanwhile, the activities of the Special Land Bank (Special/Project Land Banking) consist of providing land for urban renewal, industrial development, housing development, and construction of various public facilities.

Land Banks can be run by public institutions, private organizations, or a combination of the two. Thus, the types of Land Banks include Public Land Banks, Private Land Banks or a combination of both. Then, according to Frank S. Alexander (2011), "Land banks can exist as independent public legal entities created at the local level according to statewide enabling legislation, as an independent authority authorized by statute, or as a non-profit entity". According to Frank also stated, "to accomplish its task of facilitating the transformation of vacant and abandoned properties, a land bank must have specific legal powers". The special powers are Property Acquisition, Property Management, and Property Disposition.

The stages of the Land Bank's activities in providing land can be divided into three activities, namely: (1) Provision stage, namely the initial activity of the Land Bank is obtaining land, which can be carried out through land acquisition, revocation of rights, buying and selling, exchanging, or acquiring from abandoned lands. Based on the form and activities of the Land Bank, the method of acquiring land can be distinguished for general Land Bank activities and special Land Bank activities. (2). The maturation stage, namely soil maturation activities, is to prepare facilities and infrastructure or supporting facilities, including the construction of roads, sanitation channels and so on. (3) Land distribution stage. That is, the last stage is the distribution of the soil after going through the process of soil maturation. The land is then distributed according to its needs for social (government) or commercial (private) interests. Prior to the distribution, the Land Bank institution had prepared the data, including; the amount/area of land that is the object of the Land Bank; which plots of land are prioritized (general or specific); how long it takes to ripen before being distributed; what percentage of the available land can be distributed and how the land is distributed

In its application, the Land Bank can perform many functions. According to Frank S. Alexander (2011), these functions are: "One important function of a land bank is to recognize the special nature of these properties and create a far greater degree of flexibility in the terms and conditions under which the properties can be conveyed to third parties". Furthermore, "Land bank generally does not serve as a developer for the properties in its inventory. It will instead either hold onto the legal title for the property for which there is no demand at all or will convey the property to an eligible transferee for use in accordance with the land bank's policy priorities".

Himawan Arief Sugoto in Alisa (2021) explains the background of the formation of the Land Bank, namely as follows: (1) Land prices continue to rise sharply in the middle of the city; (2) Urban was sprawling due to land problems in the middle of the city; (3) The low supply and high demand for land that causes GAP, namely the limited availability of land versus the need for large land. Furthermore, it was explained that the existence of State Land was known so far, but de facto, the government could not control the land. Of course, the government only plays the role of

a land administrator, while the role of the executor does not yet exist. Therefore, a solution is needed, so the government has this function as executor by forming a Land Bank Agency.

According to Yagus Suyadi in Alisa (2021), the Land Bank is essentially present to carry out the authority of the state, a manifestation of the implementation of the State's Controlling Rights. On the other hand, there is an interest in optimizing the utilization of land use throughout Indonesia, which in turn will improve the welfare of the community.

The specific purpose of establishing a Land Bank can be seen in Article 126 of the Job Creation Law which stipulates that: The Land Bank Agency guarantees the availability of land in the framework of a just economy for (a) Public interest, (b) Social interest; (c) The interests of national development; (d) Economic equity; (e) Land consolidation; and (f) Agrarian reform. Based on Article 3 of PP No.64/2021 stipulates that the Land Bank has the functions of planning, land acquisition, land management, land use and land distribution. The function of the Land Bank is described in Articles 5 to 15 of PP No.64/2021.

According to Himawan Arief Sugoto in Alisa (2021) explaining that the Land Bank Agency carries out planning, acquisition, and even procurement. After the Land Bank gets its income for its development, the Land Bank can carry out procurements, either according to Law No. 2/2012 or buy directly from the community. Then the Land Bank must also manage where this management task must be managed so that the land is maintained, for example land that initially came from abandoned land must be guarded so that it is not abandoned or prepared to become a ready-to-build area. This includes controlling land prices and also controlling land conversion. Then the land is used and redistributed. Furthermore, the Land Bank may not build it themselves because the Land Bank's job is only to provide land. Land development is carried out by the Land Bank if the land managed by the Land Bank is sloping, damaged, and so on at the time of land acquisition. It is necessary to make improvements such as providing road access and so on.

Article 16 of PP No.64/2021 stipulates that in carrying out the functions and duties as referred to in Article 3, the Land Bank guarantees the availability of land in the framework of a just economy for the public interest, social interest, national development interest, economic equity, land consolidation, and agrarian reform. Based on Article 31 of PP No.64/2021 stipulates that the structure of the Land Bank consists of a Committee, Supervisory Board, and Implementing Body. Himawan Arief Sugoto explained that the Land Bank is not directly under the Ministry of ATR/BPN. The Land Bank is supervised by a Committee, in which Committee chaired by the Minister of ATR/BPN. So, it's like the Land Bank is a cousin of the National Land Agency.

Based on PP No.64/2021 stipulates that the Land Bank is a special entity (*sui generis*) in the form of an Indonesian Legal Entity. *Sui generis* institutions are non-government institutions established by law, and these institutions carry out some of the powers previously the authority of the government but are autonomous or independent. The Job Creation Law and PP No. 64/2021 stipulate that the Land Bank has the function of Land Procurement and has the authority to carry out Land Procurement. This is regulated in Article 129, paragraph (4) of the Job Creation Law. Based on the provisions of Law No. 2/2012 and the provisions of PP No. 19/2021, in Land Procurement activities, the Land Bank is domiciled as an agency that requires land because it has a special assignment from the government center. This means that the Land Bank may not carry out Land Procurement on its initiative and cannot because it has received a special assignment from other agencies.

The position of the Land Bank in Land Procurement activities as an agency that requires land because it has received a special assignment from the central government contains two different meanings, namely as follows: First, if the Land Bank requires land for development for the public



interest, it can be obtained through Land Procurement activities after receiving a special assignment from the central government. Normatively this can be justified because PP No. 64/2021 regulates Land Banks in carrying out land development can take the form of building infrastructure facilities and infrastructure for industrial areas, tourism areas, agriculture, plantations, special economic zones, other economic areas that support Land Bank activities that all of which fall into the category of public interest. However, according to the author, the use of this meaning is inappropriate because it would conflict with the function of the Land Bank as a provider of land, one of which is for development in the public interest.

Second, suppose the Central Government requires land for development in the public interest. In that case, it can be obtained through Land Procurement activities by giving a special assignment to the Land Bank to act on behalf of the central government as an agency that requires land. The author himself agrees more on this meaning in viewing the position of the Land Bank as an agency that requires land because it has a special assignment from the central government. This is because the task of carrying out development for the public interest is the task of the central government and other government agencies while the Land Bank only serves as a provider of land for development in the public interest.

The source of funds for Land Procurement carried out by the Land Bank due to receiving a special assignment from the central government is internally sourced from the Land Bank company. Based on Government Regulation No. 64/2021, internal funds from the Land Bank can be sourced from the state revenue and expenditure budget, own income, state equity participation, Land Bank capital, loans, and other legitimate sources.

CONCLUSIONS

Based on the explanation above with the position of the Land Bank in Land Procurement activities as a Government Agency that requires land because it has received a special assignment from the Central Government, the functions of the Land Bank in land acquisition activities for development include:

(a) Can overcome the problem of the form and value of compensation for land acquisition objects that rarely get the agreement of all parties. (b) It can prevent the growing inventory of the need for land for development activities in the public interest. This is because the concept of the Land Bank is to collect land first and then distribute it. (c). It can reduce land acquisition activities that require significant costs and take the community's rights to their land. This is because the Land Bank can also provide land for development for the public interest through the acquisition of land obtained from the government's determination and other parties' results.

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