

LAND BANK AGENCY IN THE IMPLEMENTATION OF LAND ACQUISITION FOR THE PUBLIC INTEREST IN INDONESIA

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Abstract (Indonesia)

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Latar Belakang: Pembebasan lahan adalah cara untuk memperoleh tanah untuk pembangunan bagi kepentingan umum. Pasal 18 Undang-Undang Dasar Agraria angka 5 tahun 1960 menyatakan bahwa: "untuk kepentingan umum, termasuk juga untuk kepentingan bangsa dan negara serta kepentingan bersama rakyat, hak atas tanah dapat dicabut, dengan memberikan ganti rugi yang layak dan sesuai dengan cara yang diatur oleh Undang-Undang. Kemudian dilihat dari asas hak atas tanah yang telah tertuang dalam Pasal 6 yaitu tanah memiliki fungsi sosial.

Tujuan: Pemerintah menginisiasi konsep Land Banking yang bertujuan untuk mencatat, mengumpulkan, dan mendistribusikan tanah yang sesuai dengan keadaan dan sifatnya dapat dimasukkan dalam Land Bank.

Metode: Metode penelitian menggunakan metode penelitian hukum normatif. Pembentukan Bank Tanah tidak terlepas dari upaya pemerintah yang berupaya menyediakan lahan untuk pembangunan dan kepentingan umum agar tanah tersebut tidak dikuasai oleh mafia tanah yang menimpa rakyat.

Hasil: Perangkat hukum yang mendukung yang dapat berupa undang-undang yang secara khusus mengatur mengenai bank tanah, maka penyelenggaraan bank tanah di Indonesia akan berjalan sesuai fungsinya dengan tepat dan efektif dengan tujuan memperoleh hasil yang besar. Kondisi ini akan meningkatkan kesejahteraan tiap individu dan masyarakat umumnya dan sesuai amanat dari konstitusi yang bertujuan mewujudkan sebesar-besarnya kemakmuran rakyat Indonesia.

Kesimpulan: Pengelolaan secara penuh terhadap aset tanah yang telah dikuasai yang ditujukan untuk mewujudkan ekonomi berkeadilan merupakan kewenangan dari bank

tanah. Tanah aset pemerintah berbeda dengan tanah negara, tanah aset pemerintah adalah merupakan tanah-tanah yang dikuasai oleh instansi Pemerintah baik pemerintah pusat maupun pemerintah daerah. Saat ini terdapat lahan seluas 25.000 ha lahan yang telah ditetapkan menjadi modal awal Bank Tanah telah disiapkan oleh Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional (ATR/BPN).

Kata Kunci: bank tanah, pengadaan tanah, kepentingan umum.

Abstract (English)

Background: Land acquisition is a way to acquire land for development for the public good. Article 18 of the Agrarian Constitution number 5 of 1960 states that: "for the public interest, including also for the benefit of the nation and the state as well as the common interests of the people, the right to land can be revoked, by providing appropriate compensation and by the manner regulated by the Law, then judging from the principle of land rights that has been stated in Article 6, namely land has a social function.

Objective: The government initiated the concept of Land Banking which aims to record, collect, and distribute land that is appropriate to its circumstances and nature and can be included in the Land Bank.

Methods: Research methods use normative legal research methods. The establishment of the Land Bank is inseparable from the efforts of the government which seeks to provide land for development and the public interest so that the land is not controlled by the land mafia that afflicts the people.

Result: A supporting legal tool that can be in the form of a law that specifically regulates land banks, then the implementation of land banks in Indonesia will run according to their functions appropriately and effectively to obtain large results. This condition will improve the welfare of each individual and society in general and by the mandate of the constitution which aims to realize the greatest prosperity of the Indonesian people.

Conclusion: Full management of land assets that have been controlled and aimed at realizing an equitable economy is the authority of the land bank. Government asset land is different from state land, government asset land is land controlled by Government agencies, both central and local governments. Currently, there is an area of 25,000 ha of land that has been determined to be the initial capital of the Land Bank and has been prepared by the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN).

Keywords: *land bank, land acquisition, public interest.*

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INTRODUCTION

Along with the times, human needs for land are increasing but not accompanied by adequate soil availability. The existence of the UUPA, which only contains the main points of land administration, is considered necessary to be followed by the formation of regulations in other land fields to complement and perfect the UUPA considering the community's need for legal certainty and justice to overcome and solve various problems in the land sector is getting higher. One of the land problems in Indonesia is related to the provision of land, especially for development for the public interest. Often the implementation of national development programs is constrained by land acquisition or acquisition.

Land acquisition is a way to acquire land for development for the public interest. Article 18 of the Basic Agrarian Law number 5 of 1960 states that: "for the public interest, including also for the benefit of the nation and the state and the common interests of the people, the right to land can be revoked, by providing appropriate compensation and by the manner regulated by the Law, then judging from the principle of rights over land that has been stated in article 6, namely land has a social function. To avoid difficulties in acquiring land for the public interest, the government initiated the concept of Land Banking which aims to record, collect, and distribute lands that according to their circumstances and nature can be included in the Land Bank. The regulation of Land Banks is juridically initiated in Law Number 11 of 2020 concerning Job Creation which is regulated in Chapter VIII on Land Acquisition, Part Four on Land, Paragraph 1 (One) on Land Banks, Articles 125-135.

From the description above, this research will refer to the regulation of the existence of the Land Bank on the development of land law, especially in the context of implementing land acquisition for the public interest in Indonesia.

RESEARCH METHODS

The method used in this research is a normative legal research method or doctrinal legal research, namely legal research that puts the law as a building norm system (Soekanto & Mamudji, 2014). The norm system in question is about the principles, norms, rules of laws and regulations, court decisions, treaties, and doctrines (teachings) (Fajar & Achmad, 2010). This study was carried out with a conceptual approach and a statute approach by examining all interrelated laws and regulations as well as legal principles and doctrines or views of experts in legal science. Data collection in this study through literature studies using secondary data with primary, secondary, and tertiary legal materials (Marzuki, 2019).

RESULTS AND DISCUSSION

The availability of land for the administration of government can be considered a necessity. The need for land over time is increasing in connection with the intensification of development activities. Development activities, especially construction in the physical field, both in cities and villages, of course, require land as a shelter for these activities. Development is a human effort in processing and utilizing resources used to meet needs and improve the welfare of life. Including development activities for the public, social, economic, and so on, which must continue to be pursued in line with the increasing population. The population that is increasing with a better level of prosperity, of course, requires various public facilities such as roads, bridges, transportation, educational facilities, worship, sports facilities, health facilities, social facilities, and so on. Development certainly requires land as the main means. On the other hand, residents also need land as a place of settlement and a place of livelihood (Abdurrahman, 1991).

The complexity of the land issue that occurs repeatedly and prolongedly certainly harms the rights of landowners. The government is trying to find solutions and solutions to the land problem, one of which is through the establishment and procurement of a Land Bank. In addition to overcoming protracted land conflicts, the establishment of a Land Bank was also motivated by the mandate of the 1945 Constitution, especially Article 33 and Article 2 of the UUPA that land must be used optimally for the greatest prosperity of the people. The state must regulate ownership and lead the use of land by its designation. However, it is often encountered that lands are abandoned and the designation is not clear and gives rise to land brokers who make land the object of speculation and profit from any government development projects that make national development difficult to carry out.

So far, the government has acquired land through the land acquisition mechanism regulated in Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest and its implementing regulations. This law is expected to guarantee the fulfillment of rights for the parties in the land acquisition process, namely the government and the community. Land acquisition is an activity of providing land to agencies in need, by providing appropriate and fair compensation to parties whose land is the object of land acquisition. The real manifestation of Article 33 Paragraph (3) of the 1945 Constitution is Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA). 25 In Article 2 Paragraph (1) of the UUPA it is stated that: "Earth, water, and space including the natural wealth in them are at the highest level controlled by the state as the organization of the power of the whole people", which article is the forerunner of the birth of the Right to Control the State. The Right to State Control does not give the state the authority to physically control the land and use it like any other land right in general because it is solely a public authority. The definition of "controlled" in the context of the Right to Control the State has limitations, which are used for the prosperity of the Indonesian people (Bakri, 2011). It is this Right to Control the State that is the constitutional basis for the regulation of land bank bodies.

In the aspect of spatial planning, the condition of the discrepancy between spatial planning and development has become a problem that has been often studied. Development initially always starts with spatial planning and spatial planning should be realized with a detailed map of the desired spatial planning concept. It often happens that the development process does not begin with infrastructure mapping or detailed checks so it often results in environmental disasters, or not optimal utilization of infrastructure that has already been built. The conditions of differences in spatial plans with conditions in the field are different due to differences in regulations and spatial data that overlap each other in the policy implementation process and result in discrepancies in space utilization. Government Regulation Number 21 concerning the Implementation of Spatial Planning

states that the plan for Space Utilization activities on Land Bank land mentioned in Article 138 paragraph (2) letter a requires continuity between spatial planning and land banks, it is hoped that it will make land use suitable. The Land Bank, which is a land supply institution for the acceleration of future development in its implementation, will experience obstacles and problems if the current spatial planning rules do not improve. Land Bank in Indonesia has challenges in the future, including:

1. priority interests that will take precedence between investment interests or equitable economic interests in the provision and distribution of land;
2. factors of many interests and authorities between the land bank and the Minister of Agrarian and Spatial Planning / BPN or the Head of the Land Office / Head of the Land Area Office;
3. the hope of reducing the litigation in court due to consignment (objection to compensation) of land acquisition for the public interest should be maximal

The Theory of Legal Expediency in the School of Utilitarianism provides an assessment that states the purpose of the law is to be able to provide benefits (expediency) to as many people as possible. Betham in her opinion explains and puts forward the most objective basis by looking at whether a policy or action that has already been made brings benefits or results that can be useful or vice versa those results can result in harm to the people concerned. Land Bank has many benefits, one of the goals of land banks is to the greatest prosperity for the people, many of the results of successful studies show that land banks have a large role in improving the welfare of people in several developed countries, such as the Netherlands and the United States. Supporting legal tools that can be in the form of laws that specifically regulate land banks, then the implementation of land banks in Indonesia will run according to their functions appropriately and effectively to obtain large results. This condition will improve the welfare of each individual and society in general and by the mandate of the constitution which aims to realize the greatest prosperity of the Indonesian people.

The existence of a Land Bank is regulated in articles 125 to 135 of the Job Creation Law (Tampi, 2022). The Land Bank is a specialized agency that manages the land, and functions to carry out the planning, acquisition, procurement, management, utilization, and distribution of land. In article 125 paragraph (4) of the Job Creation Law, it is written that the function of the Land Bank is to carry out the planning, acquisition, procurement, management, utilization, and distribution of land. Meanwhile, in Presidential Regulation Number 47 of 2020 concerning the Ministry of Agrarian and Spatial Planning, article 5 states that one of the functions of the Ministry of ATR is land acquisition and land development. Furthermore, the birth of Government Regulation Number 64 of 2021 concerning the Land Bank Agency, a land bank was formed as a special agency or special institution which is expected to be one of the means to meet land needs effectively and efficiently. The Land Bank is specialized as a form of the bank that functions as a price controller on the land market share and guarantees the efficiency and rationality of land prices, streamlines and guarantees that land values have prices that can be reached and can be owned by all groups, and has a function to combine and collaborate between policies, strategies, implementation, and evaluation in the land sector (Winati et al., 2022).

The issuance of government regulation Number 64 of 2021 concerning the Land Bank Agency states that the Land Bank is a *Sui Generis* institution that has special authority. The institutional structure of the Land Bank is regulated by the enactment of Presidential Regulation Number 113 concerning the Structure and Implementation of Land Banks in Indonesia. This regulation states that the structure of the Land Bank consists of the Land Bank Committee, the Supervisory Board, and the Implementing Agency. The Land Bank Committee consists of the Minister of Agrarian Affairs and Spatial Planning/BPN, the Minister of Finance, and the Minister of Public Works and Public Housing. The Supervisory Board consists of the Director General of Land Acquisition and Land Development, and the Head of the Implementing Agency consists of Experts from

the Minister of Agrarian Affairs and Spatial Planning/Head of BPN for Agrarian Reform Entrepreneurship Development Parman Nataadmaja. Deputy for Asset Management and Land Acquisition is the former Director of Land Appraisal and Land Economics, Perdananato Aribowo, and Deputy of Business Development and Finance Hakiki Sudrajat.

The establishment of the Land Bank is inseparable from the efforts of the government that seeks to provide land for development and in the public interest so that the land is not controlled by the land mafia who afflict the people. The Land Bank is indeed not known in several regulations that were in force before the Job Creation Law. The concept of a Land Bank is implemented by the Land Bank Agency by holding land as a location for government development projects long before the implementation of development in preparation for future development plans. Land needs have been available long before development so that the land acquisition process does not experience obstacles and the price that must be charged in the state budget does not become very expensive due to the game of buying and selling land carried out by land speculators/mafia after the development plan has been determined the location of the project. When viewed from the function of the land bank to provide land for the public interest, previously a Government Regulation Number 19 of 2021 concerning Land Acquisition for Development for Public Interest has also been established. The Government Regulation gives the state the authority to take rights to citizens' land through a compensation/compensation mechanism intended for development in the public interest based on the Regional Spatial Plan and development priorities listed in the Medium-Term Development Plan, Strategic Plan, Work Plan of the Government/Agency concerned. The establishment of a Land Bank as a legal entity representing the state carries out land reserves for state purposes.

According to Article 1 of Government Regulation Number 64 of 2021 concerning the Land Bank Agency, it will establish a land bank that functions as a special agency (*sui generis*) to manage land in Indonesia. Full management of land assets that have been controlled and aimed at realizing an equitable economy is the authority of the land bank. Government asset land is different from state land, government asset land is land controlled by Government agencies, both central and local governments. The initial capital of the Land Bank in the form of an area of 25,000 ha of land that has been determined to be the initial capital of the Land Bank has been prepared by the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN). The land will be reviewed for the condition in the field. Data on land prepared for land bank capital is currently owned by the Ministry of ATR / BPN. Site review is carried out to ensure the condition of the soil and its utilization. Land managed by the Land Bank is used for public and social interests with a minimum allocation of 30% for the agrarian reform program. Currently, there is 2,014 ha of land that has been controlled by the Land Bank (Winati et al., 2022).

The acquisition of Land Bank assets from the results of government determinations is the acquisition at the time of carrying out functions in acquiring land. The activity will obtain 2 (two) results, in the form of land determined by the government and land from other parties. Government Regulation Number 64 of 2021 concerning the Land Bank Agency in Article 7 (seven) explains that the land determined by the government consists of:

- a. land former rights;
- b. abandoned areas and lands;
- c. land release of forest areas;
- d. embossed soil;
- e. reclaimed land; Reclaimed land is reclaimed land that cannot be proposed by the reclamation executor based on the provisions of laws and regulations.
- f. ex-mine lands; What is meant by ex-mining land is post-mining land that is not renewed under the provisions of laws and regulations.

- g. land of small islands; land affected by spatial change policies; The land affected by the change of government policy is land derived from the allocation of changes in the designation of spatial areas. land for which there is no mastery on it.

CONCLUSION

The issuance of government regulation Number 64 of 2021 concerning the Land Bank Agency states that the Land Bank is a Sui Generis institution that has special authority. The institutional structure of the Land Bank is regulated by the enactment of Presidential Regulation Number 113 concerning the Structure and Implementation of Land Banks in Indonesia. Full management of land assets that have been controlled and aimed at realizing an equitable economy is the authority of the land bank. Government asset land is different from state land, government asset land is land controlled by Government agencies, both central and local governments. Currently, there is an area of 25,000 ha of land that has been determined to be the initial capital of the Land Bank and has been prepared by the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN). The land will be reviewed for the condition in the field. Data on land prepared for land bank capital is currently owned by the Ministry of ATR / BPN. Site review is carried out to ensure the condition of the soil and its utilization. Land managed by the Land Bank is used for public and social interests with a minimum allocation of 30% for the agrarian reform program. The suggestion in this study is that the Government needs to socialize the existence of the Land Bank and the position of the Land Bank Agency to the community to generate awareness, compliance, and acceptance of the people so that it is hoped that the practices of land brokers/speculators and the availability of land for the public interest can be fulfilled to realize national development for the welfare of the people. And in the implementation of land acquisition for the public interest, it should be easier by adding human resources to the Land Bank Agency, so that the procedures for both compensation and inventory regarding land acquisition are easier.

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