



Perspective of Land Banking Regulation in Indonesia and Its Issues

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ABSTRACT

Due to development in Indonesia, the requirement of land is increasing while the availability of land is limited. The solution is to establish a Land Banking to ensure the availability of land that can be allocated for future use. This research aims to analyze the establishment of a Land Banking and its regulation according to Law Number 11 of 2020 concerning Job Creation, as well as the concept of implementing a Land Banking in Indonesia and its issues. This research used normative legal research methods and the data were analyzed qualitatively. The results of the study indicate that the state is obliged to create prosperity for the people of Indonesia. Land Banking is not only for the public interest, but also for the purpose of supporting non-profit social interest and agrarian reform programs. The Land Banking is placed as an agency that can implement agrarian reform framework in a just economy to ensure the creation of jobs and a decent life. This is done through the land regulation for the purpose of public interest, economic equity, and national development.

Keywords: *Perspective; Land Bank, Regulation*

1. INTRODUCTION

Indonesia is a massive country, due to development, the need for land is increasing but the available land is limited. One issue that often occurs is when the government is about to start a development, the necessary land is not available. As a result, the government experience difficulties in land acquisition process and the financing becomes very expensive [1]. The solution is to establish a Land Banking to ensure the availability of land that can be allocated for future use. Land banks can overcome various pressing problems that often hinder infrastructure development, such as limited land available for development, saving state revenue and expenditure budgets and regional budgets, reducing land conflicts and reducing the negative impact of land price speculation practices that are often carried out by the land 'mafia' [2]. The government immediately fixes the agrarian sector and responds quickly and accurately by ratifying Law Number 11 of 2020 regarding Job Creation, as one of Indonesia's efforts to improve land and improve land governance, which is expected to be able to answer challenges and resolve a series of problems, as well as providing a legal basis for land banking institutions. Land Banking is one of the institutions established by the government in an effort to

manage land [3]. According to Sofyan Djalil as Minister of Agrarian Affairs and Spatial Planning, land will be reused and redistributed under strict regulations. This allows the state to provide land for urban settlements at low prices or even for free [4].

Research on public land banking has not been widely carried out in Indonesia, especially related to the concept of its application which is adapted to the existing context. The research question arises what is the perspective of land banking regulations in Indonesia and its issues? The results of this study indicate that the state has an obligation to create prosperity for all Indonesian people. Land Banking is not only for the public interest, but also for the purpose of supporting non-profit social interests and agrarian reform programs. However, there are still other issues that need to be considered.

2. METHOD

This research method uses normative juridical research or doctrinal research with legal and conceptual approaches and collects secondary legal materials in existing regulations [5]. Data collection techniques through literature study. In qualitative research, the research journal is considered a valuable means for learning about the experience of engaging in research and

equally valuable for collecting data [6]. Doctrinal research is underpinned by positivism and a view of the world where the law is objective, neutral and fixed [7]. This legal research in the sense of finding and ensuring the currency of the law which is relevant to the facts and research issues. The data is analyzed qualitatively and conclusions are made using deductive logic.

3. RESULT AND DISCUSSION

Each country that establishes a Land Banking institution has a different historical background. In European and American countries that adopted Land Banking, they treated the country as equal subjects of citizens related to land based on individualistic values. Therefore, the state and its citizens have the same status as land owners [8]. Land Banking in the United States, was first formed in 1971 in St. Louis, Missouri, United States of America, followed shortly after by Cleveland, Ohio. More than a decade later, Louisville and Atlanta also created land banking [9]. Land Banking is an agency established by the Government or a non-profit organization to assist in the management and regulation of abandoned land or property confiscated due to tax arrears so that it can be redeveloped for more productive use [10]. In the United States, the regulation of land banking as a means of land management is regulated by each State (State Act) to re-manage vacant lands in order to attract more investors which are expected to help increase regional income [11].

Land Banking in the Netherlands, founded in 1841 and started operations in 1896 in the city of Amsterdam to keep up with the city's rapid growth [12]. To provide land for agricultural activities in the context of providing food, the government established a Land Banking through 3 laws, consist of Land Consolidation Act 1954, The Rural Area Development Act 1985, Act on Spatial Structuring of the Rural Areas 2005. The Land Banking is responsible for the provision and distribution of public land and private land with predetermined use. In 1971, about 83% of those offered for urban development were obtained from the Land Bank. About 31% is rented out for private use [13].

Land Banking in China, in the mid-1990s the concept and practice of Land Banking was applied in several cities in China as a country that does not recognize individual ownership [14]. During the planned economy period (about 1949–1978), a dual system of public land ownership was formed in China with the urban land owned by the state and rural land owned by collective economy communities in rural areas [15]. Public land banking was established by the municipal government and has the authority to acquire land for comprehensive urban development and supply land uses publicly at competitive market rates. The Guangzhou Land Development Center was established in 1992 to facilitate the development of a new city center through a land

banking mechanism. However, the establishment of the Shanghai Land Banking Center in 1996 was recognized as the first municipal Land Banking authority in China which represents the city government's actual ownership and control over state-owned land in the process of land development. Land speculation in the eastern region is also more pronounced than that in central and western regions [16].

The idea of the need to establish a Land Banking in Indonesia has been mentioned since the 1990s. In 2020 along with the Law Number 11 of 2020 concerning Job Creation, the Government and the People's Representative Institution realize the idea of a Land Banking by including it in Article 125 - 135 of Law No. 11 of 2020 and described in Government Regulation Number 64 of 2021 concerning the Land Banking Agency. Sociologically, the establishment of the Land Banking was motivated by land issues consisting of very limited availability of land for development, there was a lot of abandoned land that had not been optimized, land became the object of speculation, so that land prices were not under control and there was an imbalance in land ownership between demand and supply. The occurrence of various land problems shows the lack of success of the state in carrying out planning and monitoring tasks on subjects who have been granted land rights. Meanwhile, land needs are very large for (1) National Strategic Projects such as infrastructure development, energy and other development programs; (2) Development of new cities and the 1 million houses program for low-income communities; (3) Provision of land to facilitate investment in increasing economic growth; (4) Construction of 35,000 MW (Mega Watt) electric power.

Land Banking is a one-of-a-kind (*sui generis*) Indonesian legal organization created by the central government and granted specific authority to manage land. Land banking ensures future land availability for diverse development reasons, increases the effectiveness of the State Revenue and Expenditure Budget or Regional Revenue and Expenditure Budget, reduces land acquisition conflicts, and mitigates the negative effects of land liberalization [17]. It is envisaged that the establishment of the Land Banking Agency will provide a solution to the state's land shortage. The Land Banking Agency is a specialized agency that manages land and performs tasks such as land planning, acquisition, procurement, management, utilization, and distribution. The Land Banking function, according to Maria SW Sumardjono, is to provide, ripen, and distribute land [18].

The establishment of this Land Banking Agency aims to ensure the availability of land in the context of public interest, social interest, national development interest, economic equity, land consolidation and agrarian reform as follows: (a) Based on Article 17 of the Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning the Land Banking Agency, there is

support in ensuring the availability of land for 25 types of public interests. Meanwhile, according to Article 10 of the Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest states there are only 18 types of Public Interest. So, it is expected that the regulation regarding the Land Banking will be able to support the state's needs to meet land requirements, such as for the construction of national strategic projects in the form of toll roads, reservoirs, dams or for the development of other infrastructure that concerns the public interest. (b) Support in guaranteeing the availability of land for social purposes consists of guaranteeing the availability of land for the purposes of education, worship, sports, culture, reforestation, conservation, and other social interests of the community. (c) Support in guaranteeing the availability of land for the benefit of national development is carried out by the Federal Government and Regional Governments in order to support economic improvement and investment. (d) Support in guaranteeing the availability of land for economic equity is a guarantee of providing land for pioneer programs, opening isolated areas, building people's markets, developing houses for low-income people, and other economic equity programs. (e) Support in guaranteeing the availability of land for land consolidation in the context of structuring the area to improve environmental quality as well as for efficiency and optimization of development. (f) Support in guaranteeing the availability of land for agrarian reform is a guarantee for the availability of land in the context of land redistribution. The allocation of land for agrarian reform is at least 30% (thirty percent) of the state land designated for the Land Banking.

Land managed by the Land Banking Agency is granted with the status of Management Rights, henceforth on top of this Management Rights, the status of land rights can be given in the form of Cultivation Rights, Building Rights and Use Rights in accordance with the designation of the land. In line with the purpose of the establishment of the Land Banking, Management Rights owned by the Land Banking Agency may be granted to central government agencies, regional governments, the land banking agency itself, state-owned enterprises, or regional-owned enterprises, state-owned legal entities, legal entities regional owned and legal entities appointed by the central government. Judging from the characteristics of the parties that can be granted this development management right by the Land Banking, it is not solely intended to seek profit, but rather to prioritize public interest, social interest or national interest. Land Banking's land rights consist of (1) Land being managed by Land Banking will be granted Right of Management; (2) Land Banking can transfer to and/or use parts of land with Right of Management for other parties based on a Cooperation Agreement; (3) Building Right, Cultivation Right and Use Rights attached on Land

Banking's Right of Management can be encumbered by a mortgage.

I argue that the land use function has the potential to become a 'core businesses' for the Land Banking Agency, through cooperation in the use of land with Management Rights on behalf of the Land Banking Agency with all its privileges, because Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 64 of 2021 concerning the Land Banking Agency does not contain the evaluation of the Land Banking function. Activity reports are also not regulated in Government Regulation Number 64 of 2021 concerning the Land Banking Agency.

Roles of Land Banking is to monitor urban development patterns, regulate land prices, receive capital gain from public investments and regulate land usage and its' development. Land Banking has several functions such as:

- a. Land Keeper: As a land collector, the Land Banking institution conducts an inventory of lands that are the object of land bank management. In addition to land collection activities, Land Banking is to collect and provide complete, accurate, integrated and actual land records;
- b. Land Warranty: Land Banking in carrying out its activities refers to the spatial plan to ensure the availability, designation, and utilization of land that has been determined based on the spatial plan which is an inseparable part of the existing spatial plan.
- c. Land Purchaser: Through activities that refer to Land Banking in the spatial planning system that has been determined, the implementation starts from planning, utilization and control.
- d. Land Appraiser: Through Land Banking, it is expected that land prices and values can be regulated and controlled in accordance with the applicable legislation;
- e. Land Distributor: Land Banking includes activities that include land acquisition, ripening of land, then distribution of land according to its allotment and utilization.
- f. Land Manager: Land Banking conceptual land management activities must contain policies and strategies for optimizing land use and utilization, so that the existence of Land Banking can direct the development of land use[19].

Therefore, I argue that, the Land Banking requires coordination between ministries such as the Ministry of Agrarian Affairs and Spatial Planning and the Ministry of Public Works and the Ministry of Public Housing and other ministries. This institution will purchase land before the infrastructure development project begins, so that it can reduce "land brokers" who intend to buy land and sell it with a high and profitable land price when there is a development project.

The Land Banking is tasked with planning long-term, medium-term, and annual activities; carrying out the acquisition of land that can be sourced from the government and other parties; carrying out land acquisition for development in the public interest or direct land use; carrying out land management from development, maintenance and security activities, land control; also carrying out the utilization of land through utilization cooperation with other parties.

Lands acquired by Land Banking comes from: (1) land resulting from government stipulation; and/or (2) land from the other side. Land as a result of government stipulation consists of state land obtained from (a) Land with previous right attached, (b) Abandoned land and areas, (c) Land released from forest area, (d) Emerging land, (e) Land resulting from reclamation, (f) Ex-mining land, (g) Small islands, (h) Land subject to a policy of spatial change, (i) Land without tenure rights. In addition, lands from other parties comes from the Central Government, Regional Governments; state-owned enterprises; regional owned enterprises; business entity; legal entity; and society. Land acquisition from other parties is carried out through the process of purchasing, receiving grants/donations or the like, exchanging, relinquishing rights and obtaining other legal forms. The sources of land that will be used as deposits in the Land Banking are lands that have been classified and inventoried by the authorized land agency (Ministry of Agrarian and Spatial Planning/National Land Agency) and attached to land rights therein. The sources of these lands include abandoned land, government asset land, *erfpacht* land (former Dutch East Indies plantation land), *absentee* land (agricultural land owned by individuals domiciled outside the sub-district the land is located), land for social facilities or public facilities, land assets of State-Owned Enterprises or Regional-Owned Enterprises, and confiscated lands.

Land procurement is carried out through steps of land acquisition for development in the public interest or through direct land acquisition. Land development activities are carried out based on the suitability of the spatial plan. In the event that the planning of land development activities is strategic in nature and has not been included in the spatial plan, the activities shall be carried out based on the recommendation for the suitability of space utilization activities issued by the Minister and become the basis for the implementation of space utilization activities. Land maintenance and security consists of legal aspects, and physical aspects. Legal aspects include legal certainty of land rights and active in legal efforts to maintain legal certainty of land rights both outside and inside the court. The physical aspect is the activity of maintaining and securing the physical land. Land control consists of the following activities: controlling land tenure; controlling land use; and controlling land values. Utilization of land is carried out through utilization cooperation with other parties,

which can take the form of: buying and selling; rent; business cooperation; grant; exchange; and other forms agreed with other parties. In carrying out land use, the Land Banking continues to pay attention to the principle of benefit and the principle of priority. Land distribution is in the form of providing and distributing land. Land distribution is intended for ministries or agencies; regional government; social and religious organizations; and/or the public as determined by the Central Government. The Land Banking has the authority to carry out the preparation of a master plan, help provide ease of doing business/approval, carry out land acquisition and determine service rates. The preparation of the master plan is a Land Banking area planning. The Land Banking helps facilitate business licensing and provides assistance in the land sector and spatial planning. Service rates are land use rates in the form of rent, lease purchase, sale and purchase, and other forms. Sources of assets of the Land Banking may come from State Revenue and Expenditure Budget, own income, state capital participation, and/or other legitimate sources.

Land acquisition, procurement, ownership, control, and/or utilization of land by the Land Banking are exempt from the obligation to pay Land and Building Tax and/or Land and Building Rights Acquisition Tax as long as it is not carried out for profit. However, in the event that the Land Banking distributes land to other parties, the acquisition, procurement, ownership, control, and/or utilization of land by the other party will be subject to Land and Building Tax and/or Land and Building Rights Acquisition Tax in accordance with the legislation. However, in the event that the distribution of land is intended for low-income people and/or for social or public facilities, the following provisions apply: upon the transfer of land rights, Income Tax facilities and the acquisition of land rights by low-income people is not subject to the Acquisition of Land and Building Rights Tax. Income itself is income obtained from business cooperation, land use cooperation, and other legitimate income. Own income from Land Banking in the form of (a) result of asset utilization; (b) proceeds from rental, lease purchase and other services; (c) proceeds from the sale of assets; (d) the result of business development cooperation with other parties; (e) proceeds from the acquisition of grants and exchange; (f) results of management; (g) proceeds from the disposal of assets; (h) proceeds from yields on securities issued by the Republic of Indonesia; (i) proceeds of interest and/or bank fees; (j) company results; and/or (k) other valid results. The income itself is used directly for the continuity of the operation and development of the Land Banking. The structure of the Land Banking consists of committees, supervisory board and the implementing body.

I argue that although laws have been enacted, but the effectiveness of the implementation of the Land Banking concept is highly dependent on the regulations governing

the objectives, institutional forms, and implementation mechanisms. Regulatory clarity will have significant implications for the effectiveness of the application of the Land Banking concept, which will automatically determine the success of the Land Banking concept implementation in Indonesia. In law enforcement, there are three things that must be considered, consist of legal certainty, expediency and justice. Furthermore, the values of justice, legal certainty, and expediency in the implementation of a Land Banking must be included in the legal and normative basis in the content of the law [20]. However, there are still critical issues that need to be addressed which consist of:

- a. There is no explanation of "land" in Government Regulation Number 64 of 2021 concerning Land Banking Agency.
- b. Are there potentially high "transaction costs" of obtaining information and making decisions under poor governance conditions?
- c. Are there potential conflicts and contestation of interests when allocating management rights and land use to various parties?
- d. Is there public information disclosure when the government decides for agrarian reform to provide 30% of the land controlled by the land bank?
- e. Is there accommodation to legitimize local government interests? because land use is based on the principle of benefits and priorities, but there is no principle of decentralization, except for forms of cooperation.
- f. The assets of the Land Banking Agency (based on Article 7 of Government Regulation Number 64 of 2021) partially overlap with Agrarian Reform Land Object (based on Article 7 of Presidential Regulation Number 86 of 2018).
- g. Agrarian Reform is expected not only to be a "sticker" for the purposes of the Land Banking Agency, the alternatives are:
 - 1) In the context of Agrarian Reform, the determination of Agrarian Reform Land Object that overlap with the assets of the Land Banking Agency must be accelerated by the Ministry of Agrarian Affairs and Spatial Planning and submitted to the Agrarian Reform Task Unit to be distributed to individuals and groups. The land subject to the Agrarian Reform for redistribution is handed over to state land.
 - 2) The percentage of 30% of land for Land Banking Agency for Agrarian Reform is taken from other Land Banking Agency land sources (Article 8 of Government Regulation Number 64 of 2021 concerning Land Banking Agency) [21].

4. CONCLUSION

One of the success factors of the Land Banking is the support of a strong legal basis. Therefore, Government Regulation Number 64 of 2021 needs to be strengthened

and clarified. Land Banking is not only for the public interest, but also for the purpose of supporting non-profit social interests and agrarian reform programs. In addition, there are still some problems that need to be considered. Land Banking protects and benefits all parties, both the public and investors, because (a) Land Banking guarantees public interest, social interest, national development interest, economic equity, land consolidation and agrarian reform. (b) At least 30% of land owned by the Land Banking is used for agrarian reform. Land Banking provides certainty to all parties, both the public and investors, because a) Land Banking provides legal certainty for every investment, because no more land is abandoned or misused by speculators and harms other parties. b) Land Banking will take over unused land, including land that is not managed by the owner because it is waiting for investors who are ready to buy more expensive. Land Banking improves efficiency in land management, because Land Banking allows the government to manage and optimize abandoned lands and land with Cultivation Rights that have expired or have not been extended.

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