



Legal Aspects of Implementing The Concept of Land Bank Agency on Sustainable Agricultural Land in Indonesia

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Abstract. Conceptually, the Land Bank is an entity that provides land to be used productively in the future, among others for agricultural land. The Land Bank can function to ensure food sovereignty and rural development. This obligation includes the obligation to ensure the availability, affordability and fulfillment of adequate, safe, quality and nutritionally balanced food consumption. In connection with food sovereignty, the Land Bank agency for the provision of agricultural land and land use management can ensure food self-sufficiency by controlling the conversion of agricultural land to non-agricultural land. The purpose of this study This study is to examine how the application of the concept of land banks on sustainable agricultural land, in the form of land provision and management activities on sustainable agricultural land for the welfare of farmers. The research method used is the method of normative legal research by collecting legal materials in the form of primary, secondary and tertiary legal materials. To then be analyzed qualitatively and presented in descriptive form. The results are conclusive, that the concept of a land bank agency in the provision of land for agriculture is to reserve land for agriculture in accordance with the land use plan, the physical condition of the land, and prevent the conversion of agricultural land to non-agricultural land. As for the management of agricultural land use, supervision and control of the social, economic, and natural environmental impacts that result on agricultural land in supporting food security are carried out.

Keywords: Agricultural Land, Land Bank, Sustainable Development

1. Introduction

Land serves as the single greatest source of light for Tuhan Yang Maha Esa. Land is the most essential human need as a source of information about Earth's surface, and it is also impossible to distinguish between human beings and land from the moment of human birth until after the world has been inhabited for some time. Every person has a connection to the land because they live in harmony with it, engage in activities there, and are able to do so. According to Patrick McAuslan, who wrote the book Sri Susyanti Nur, "land" can be interpreted as an investment or a measure of economic

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benefit that can be understood in the context of an abstract theory, i.e., as a component of human health along with any relevant consequences of the way people live in a given environment. Land is classified as a scarce resource with a finite total physical supply that cannot be broken or destroyed, making it an exclusive right to own. As a result, it has been recognized that land is a component of the economy whose value is steadily rising.[1]

Land tends to be fixed in terms of availability, but on the other hand, as the population increases, land becomes an increasingly significant resource that must be properly managed in order to serve the society and ensure justice. Increased demand for construction as well as conditions that make it more difficult to use the available land for multiple purposes at once make it more difficult to maximise the use of the land, particularly for projects designed to address general issues that prevent the occurrence of disputes between governments over similar-looking land.[2]

The reduction of agricultural land due to the widespread conversion of productive agricultural land to non-agricultural uses poses a severe danger to the viability of the agriculture-food crop sector. Instead of being cultivated with food crops, rice fields are increasingly more profitable when used as real estate, factories, or infrastructure for other industrial activity. This affects the debate over food sovereignty. To do this, the local government must take the proactive role called for in the Regional Regulation (Perda), particularly in the provision of protective laws for agricultural land.[3]

In order to anticipate the liberalisation of the economy that led to skyrocketing land prices brought on by the game of speculators, one solution to the issue is the creation of a land bank.[4] According to Mochtar, a land bank is an organisation entrusted with gathering vacant state land and abandoned land so that it can be developed and distributed in accordance with land use plans.[5] The availability of land to facilitate a smooth development can be realised if an institution or activity of a land bank (land banking) exists.[1] The idea of a land bank is based on the need to guarantee the availability of land for development projects that serve the public good. From a legal perspective, it is necessary to realise a sense of fairness, certainty, and legal efficiency.[6]

Law Number 11 of 2020 Concerning Job Creation (hereinafter referred to as UUCK) and later repealed by Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation (hereinafter referred to as Perpu Job Creation) set out the requirements for the establishment of land bank agencies in Indonesia. Additionally, Law Number 6 of 2023 about the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation was once more promulgated by the government. This indicates that the Law Number 2 of 2022 on Job Creation (hence referred to as UUCK) has been passed from Perpu Number 2 of 2022 on Job Creation.

The UUCK, specifically Articles 125 to 135 of the UUCK, regulates the land bank agency itself. Concerning the Land Bank Agency, Government Regulation Number 64 of 2021 (hereafter referred to as PP Number 64 of 2021) contains

derivative regulations that govern how the provisions in Articles 125 to 135 of the UUCK are to be implemented. According to Government Regulation Number 64 of 2021, which is based on Article 1 paragraph (1), the land bank is a special institution (*sui generis*) established by the central government with exclusive authority to administer land. The regulations in PP No. 64 of 2021 govern the creation of a legal body in Indonesia in the form of a land bank, which can have representative offices all over the country and a seat in the national capital. The UUCK's Article 125, Paragraph 4 controls the land bank agency's role in carrying out land planning, acquisition, procurement, management, utilisation, and distribution. The central and regional governments can purchase and gather land through the land bank agency for both immediate and long-term strategic goals.[7]

In addition, it is stated in Article 127 of the Job Creation Law and Article 4 of the PP on the Land Bank Agency that the Land Bank Agency's mission is to be transparent, accountable, and non-profit in all of its endeavors. The consideration of the legal status of the Land Bank Agency is crucial to ensure that legal compliance and good governance are upheld throughout the process of constructing the tah, preventing the emergence of overlapping authorities, assets, and wealth of nations that could endanger the populace.[8] Land Bank management relates to how to organize, implement activities, and supervise Land Bank activities in realizing the objectives of the Land Bank. Supported by adequate regulations and strong institutions, land bank management can eventually realize the six functions of a land bank, namely as a land keeper; as a land warrantee; as a land purchase controller; as a land management; as a land appraisal; and as a land distributor.[9]

2. Problems

One of the roles of the Land Bank is that of a body that manages land (land management), i.e., how to use land in accordance with the physical conditions of the land. For instance, if the land is first-class agricultural land (the most fertile), then in its management it is prevented from damaging the land, plus its fertility, and cannot be converted to non-agricultural functions. For this reason, the concept of an Agricultural Land Bank is required in its legal application.

3. Method

The method used in this research is normative legal research method. Normative legal research is research conducted by studying or examining library materials or secondary data.[10] This research method is carried out by collecting legal materials in the form of primary, secondary, and tertiary legal materials. The approaches used are statutory approach and conceptual approach. Furthermore, each legal material that has been collected will then be analyzed qualitatively and presented in descriptive form.

4. Discussion

It might be argued that since land and development are two interdependent things, there cannot be development without land. The speed at which the nation has developed over the past 20 (twenty) years has had an impact on the need for land availability as one of the essential tools for carrying out development projects for the benefit of the government and the community, making land an increasingly important component of development from both a socioeconomic and political standpoint.[1] The idea that food is a basic necessity and that it should be provided for as a human right is strongly tied to the issue of food sustainability (Office of the Minister of Food, 1997). Given that food is a component of human rights, it follows that the State is obligated to provide for the needs of its citizens at all times and at a cost that is reasonable given their purchasing power. Sustainability here refers to both production and consumption, not just consumption alone.[11]

Urban land issues are mostly brought on by the fact that demand for land is rising but supply is not. This leads to conflicts over the usage and ownership of land, which are frequently settled by violence. Urban land conflicts are characterised by issues including poverty, a lack of available land, high land prices, slums, evictions, and inadequate land compensation. Rice fields, open fields, spacious yards, as well as a focus on family-based social interaction, characterise the usage of land in rural communities.

According to Article 6 of Law No. 5/1960 on the Basic Regulation of Agrarian Principles (hereinafter referred to as Basic Agrarian Law, abbreviated as UUPA), land has a social function rather than serving as a means of speculating for financial gain. As a result, a fair land policy is implemented through a combination of market and non-market institutions, including laws that promote the interests of the general public. In Indonesia, the following provisions govern Land Bank regulations:[12]

- a. Article 33 paragraph (3) of the 1945 Constitution;
- b. Articles 125 to 135 of Law Number 11 of 2020 on Job Creation; and
- c. The Land Bank Agency Government Regulation Number 64 of 2021.

Government Regulation Number 64 of 2021 Concerning the Land Bank Agency regulates the land bank agency, as mentioned above. According to Article 1 Point 1, a land bank is a special entity (*sui generis*), which is a legally recognised organisation in Indonesia established by the central government and granted specific competence to administer land. Two words—land bank and land banking—are the origin of the concept of a land bank. A land bank is described as an organisation or a collaboration of organisations with goals connected to land purchase for national development. In addition, an explanation tool for land bank-related operations is specified as land banking.[13] According to Rusdianto (2014), there are four (four) foundations for the creation of land banks, including government efforts to provide land to support community welfare; better management of land use, procurement, and exploitation; improving the function of land utilisation by reviewing the interests of related parties without forgetting the social value of land; and still involving the community as landowners.[1]

Moreover, the UUCK's Article 126 mandates that the land bank ensures the availability of land within the context of a just economy for the public benefit, social interest, national development interest, economic equality, land consolidation, and agricultural reform. Transparency, accountability, and nonprofit status are requirements for the land bank agency when performing its obligations and activities. In the future, while implementing land policy, a land bank will be used as a framework for large-scale, systematic land purchase activities, according to Van Dijk. Then, Limbong (2013) states that a land bank is a technique for managing land in the context of utilising and exploiting land in a proper and productive manner.[1]

According to Flechner (1974), land banks can be split into two groups based on their type: public land banks and private land banks. A land bank that is operated by public entities is known as a public land bank. It may be managed by a single public institution or by a number of separate public legal organisations, all of which are autonomous organisations with strictly public service obligations, and for which the government bears full responsibility. The private sector is in charge of private land banks. The private legal entity will be either a lender or a shareholder in the land bank. Private businesses or individuals may manage this land bank. In fact, Indonesia has already implemented this private land bank. Although this private land bank organisation isn't particularly well-known in Indonesia conceptually, it actually operates, whether it be a local, national, or even an international private company.[14] The Land Bank has been given permission to prepare master plans, facilitate business licencing and approval, acquire land, and establish service fees. Cultivation, building, and use rights are categories of rights to land that the Land Bank manages. Parts of the land subject to Management Rights may be transferred and used by third parties with the permission of the Land Bank. The State Budget (APBN), the Land Bank's own income, state equity participation, and other sources that are legitimate and in accordance with the requirements of the laws and regulations are the sources of the Land Bank's wealth.[15]

The geographical plan of the Land Bank carrying out its functions as a supplier, utilisation, and allotment of land that has been decided upon is referred to as the Land Bank as Land Warrantee. Through prior spatial planning, Land Bank controls land tenure to prevent it from concentrating in particular social groups.[16] Land Bank also acts as land manager, containing policies and strategies for maximising the utilisation and use of land that can result in the development of land use.[16] The land bank goes through three stages of activity when purchasing land: the provision, maturation, and distribution stages of land. The following are the steps from above:[17]

a. Provision of land

In general, the Land Bank can offer land through methods for land acquisition, sale, and exchange. Planning, a physical inspection of the property, confirming the condition of the property, and creating an allocation plan for the costs of land acquisition are some of the crucial tasks included in this provision stage. Knowing the history of the property is another crucial action that should be

undertaken in order to prevent future disputes over land management or ownership.

b. Land development

The land bank is now preparing facilities, infrastructure, or supporting infrastructure, such as infrastructure development, sewage systems, public facilities, and so on. This land maturation process results in the construction of core and supporting infrastructure based on economic calculations and strict governance, especially for private land banks, to prevent losses in land investment. The regional spatial plan established by the government must be considered and referred to during this activity. Because it impacts the value of the property and how desirable it is to buyers or investors as a place to invest, the land maturation stage is essential. In the process of land maturation, the economic value of the land is crucial. The economic worth of land is greatly influenced by its convenience, utility, ownership status, facilities, and institutions.

c. Land distribution

Of course, distribution must be preceded by the readiness of the data, which includes how much land is the land bank's target, which land parcels are given priority (generic or special), and how long it takes for maturation before distribution. The next step is to decide what or for whom the land is distributed, what portion of the available land can be distributed, and how the land is distributed.

One of the government's victories in its attempts to provide land for the public interest and the interests of persons who require land is the formation of the Land Bank.[18] The process of providing land is known as land provision. Land provision may take the form of releasing or giving up land rights, as well as by sale, exchange, or other mutually agreed-upon procedures between the parties. Ordinary land is equated with land in the allotment sense, hence the availability of ordinary land is also referred to as land.[1] Land for non-agricultural uses will be provided in a totally different way than land for agricultural growth. A fairly vast area is used for agriculture on a proportional basis. Three (three) measures are used to protect and manage agricultural land as a whole: 1) reducing chances for conversion; 2) regulating land conversion activities; and 3) creating tools to manage land conversion. The National Land Agency (BPN) has completed an inventory and zoning of irrigated paddy fields in the context of food security in accordance with Presidential Decree No. 34 of 2003 on National Policy in Land.[1]

Legislation, namely Law No. 41/2009 on the Protection of Sustainable Food Agricultural Land (hence referred to as LP2B Law), now governs rules pertaining to the protection of sustainable food agricultural land. Agribusiness land is defined as agricultural land under Article 1 Point 1 of the LP2B Law. Then, Article 1 Point 3 defines sustainable food agricultural land as an area of agricultural land that is determined to be conserved and developed regularly in order to generate staple foods for national food independence, security, and sovereignty.

Based on this, agricultural land is also only utilised for agricultural purposes, yet it happens occasionally for agricultural property to be turned into non-agricultural land. According to the definition given in Article 1 Section 15 of the LP2B Law, the conversion of sustainable food agricultural land to non-agricultural land may be permanent or temporary. With the expansion of economic growth, land utilisation will also expand. Land conversion from agricultural to non-agricultural uses is facilitated by the rising demand for land.[19]

The danger to food security is generally the effect of converting agricultural land to non-agricultural land that will have direct effects and be felt by the larger society. This is owing to the fact that less agricultural land is being used for production, which has resulted to a drop in the amount of food that local agriculture could formerly supply. The reduction in national rice output is another loss brought on by the conversion of paddy fields from their original purpose as paddy fields designed to produce rice. One of the major dangers to the sustainability of food self-sufficiency is the diversion of rice fields to other uses.[19]

Utomo (1992) explained that in general, the problem of land use conversion occurs, among other reasons, because the pattern of land use is still sectoral, the delineation between areas is not clear, the criteria for areas are not clear, the coordination of space utilisation is still weak, and law enforcement, such as UUPA (Basic Agrarian Law), is still weak.[19] Furthermore, according to Fauziah (2005), land conversion in Indonesia is not only a result of ineffective legislation, both in terms of the substance of the provisions that are unclear and ambiguous as well as the enforcement that is not supported by the government itself as an official authorised to grant permission to change the function of a piece of land. However, the "unattractiveness of the agricultural sector itself" does not support it either. The population's interest (or even just maintaining its function) in the agricultural sector has decreased as a result of the scarcity and high cost of fertilisers, alternative methods of production, a decline in agricultural labour, and reinforced by the fluctuating prices of agricultural products, which even tend to continue to decline drastically.[20]

The implementation of the LP2B Law is anticipated to slow the rate of conversion of paddy fields, particularly those that are technically irrigated, in order to maintain national food security and give Indonesia access to indefinite amounts of agricultural land.[21] Regrettably, this has not been able to operate properly, and it is evident that oversight of the conversion of agricultural land itself and law enforcement are still quite poor. Because of the numerous challenges local governments have encountered in carrying out the law's requirements, it can be claimed that the implementation of LP2B has not been going well. Only 2 (two) components, namely planning and establishing LP2B in the district RTRW, and research, have been actually carried out based on all the issues that have been investigated. Due to the fact that numerous districts place LP2B and P2B Reserve Land in the RTRW, the planning and establishment aspects are still in the incorrect corridor. These areas should be included in the Detailed Spatial Plan (RDTR). In the future, land bank provisions for agrarian reform are typically at least 30% in the

development of land in the omnibus law or Job development Law, land can also be used for agricultural purposes, housing, creation of parks to other community requirements, while 70% is used for social purposes.[22]

5. Conclusion

The concept of a land bank agency in the provision of land for agriculture is to reserve land for agriculture in accordance with the land use plan, the physical condition of the land, and prevent the conversion of agricultural land to non-agricultural land. As for the management of agricultural land use, supervision and control of the social, economic, and natural environmental impacts that result on agricultural land in supporting food security are carried out.

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