



The Role of Land Banks in Land Redistribution for Agrarian Reform

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Abstract. Land Bank is a special agency established by the government to manage land. In this case, the land bank guarantees the availability of land in the framework of a fair economy. Land banks are authorized to provide land for public interests, social interests, national development interests, economic equity, land consolidation and agrarian reform. This paper aims to describe the pros and cons of establishing a land bank and describe the role of land bank in land redistribution for agrarian reform. The method used is a normative juridical approach with emphasis on secondary data which is analyzed qualitatively. The result of the study shows the pros and cons of establishing a land bank, partly because the goal of the land bank is to provide land for the economy and investment, while the goal of agrarian reform is to reorganize the structure of tenure, ownership, utilization, and more equitable use of land through asset management and accompanied by arrangement of access to the prosperity of Indonesian people. The role of land bank in land redistribution for agrarian reform is to provide land availability for agrarian reform of at least 30% of the state land allocated to the land bank.

Keywords: land bank, land redistribution, agrarian reform

1. Introduction

Land has a very strategic function in Indonesia, considering that the population reaches 273 million people and requires land for various purposes. Unfortunately, not all of the land is used productively, and there are even abandoned lands whose utilization is not clear. Abandoned lands tend to be used as objects of speculation, which is inconsistent with the meaning of land tenure in Indonesia, namely for the greatest prosperity of the people. Related to this, the Central Government feels the need to make improvements in the agrarian sector, especially for public interests, social interests, national development interests, economic equity, land consolidation, and agrarian reform. One of the ways taken is to provide a legal basis for institutional land banks as one of the efforts to improve land governance. Thus was born the land bank institution as stated in Articles 125 to Article 135 of Law Number 11 of 2020 concerning Job Creation. This Law, known as the Omnibus Law, aims to make adjustments to various regulatory aspects related to

improving the investment ecosystem, facilitating and accelerating national strategic projects that are oriented to national interests. In 2023, Law number 11 of 2020 has been revoked and replaced with Law number 6 of 2023 which regulates the same thing. In this regard, it is emphasized that a land bank is a special agency that manages land, and has the function of carrying out planning, acquisition, procurement, management, utilization and distribution of land. The land bank agency guarantees the availability of land in the framework of a fair economy for public interests, social interests, national development interests, economic equity, land consolidation and agrarian reform. After the land bank regulation was enacted recently, opinions emerged that the existence of a land bank is ineffective, inefficient, and only consumes the state budget, because the duties and functions of a land bank can actually be carried out by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.[1] There are also different opinions which argue that the role of land bank is very crucial in gathering land availability, especially in the framework of realizing the construction of livable houses for the less fortunate. This happens because land prices are getting higher, so that low-income people cannot afford to buy houses.[2] There are also those who explain that the land bank plays a role in generating benefits in the form of stabilizing land market prices, generating government reserve land in the context of infrastructure development, and increasing efficiency in land acquisition activities for the public interest.[3] In a number of countries, the function of land bank is to systematically and strictly monitor movements in land prices, especially those caused by the actions of speculators.[4] In the Netherlands, the land bank activities carried out are of a general nature, such as activities carried out by government agencies to organize the provision, preparation and distribution of land for all types of land use, with the aim of overseeing urban development patterns and/or regulating land prices and/or regulating capital gain of surplus value as a result of public investment.[5]

Considering land banks in Indonesia guarantee the availability of land not only for public interests, social interests, national development interests, economic equality and land consolidation, but also the availability of land for agrarian reform, so the purpose of this paper is to describe the pros and cons of establishing a land bank and examine the role of the bank land in land redistribution for agrarian reform.

2. Problems

Why are there pros and cons of establishing a land bank and what is the role of land bank in land redistribution for agrarian reform?

3. Method

The method used is normative juridical research, with a statutory approach and a conceptual approach. The data used is secondary data consisting of primary legal

materials and secondary legal materials. Secondary data was obtained through literature study, and analyzed qualitatively.

4. Discussion

4.1. Pros and Cons of Establishing a Land Bank

Land Bank in Statutory Regulations

The term land bank is presented in Law No. 11 of 2020 concerning Job Creation. Articles 125 to 135 of the Law regulate land banks. The central government emphasized the establishment of a land bank agency, namely a special agency that manages land. The existence of a land bank guarantees the availability of land in the framework of a fair economy for public interests, social interests, national development interests, economic equity, land consolidation, and agrarian reform. Availability of land for agrarian reform is at least 30% of state land allocated by land banks. Land managed by a land bank agency is given *hak pengelolaan* (right to manage). Land rights above *hak pengelolaan* (right to manage) can be given *hak guna usaha* (right to cultivate), *hak guna bangunan* (right to build), and *hak pakai* (right to use). In order to support investment, the holder of *hak pengelolaan* (right to manage) of land bank is given the authority to prepare master plans, assist in facilitating business licensing/approval, conduct land acquisition, and determine service rates. The central government supervises and controls the use and/or utilization of land under *hak pengelolaan* (right to manage). Further provisions regarding land bank bodies are regulated in Government Regulation (GR) No. 64 of 2021 concerning the Land Bank Agency. In this GR, what is meant by a land bank agency is a special agency (*sui generis*) which is an Indonesian legal entity established by the central government that is given special authority to manage land. Land Bank has the functions of planning, land procurement, land acquisition, land management, land use, and land distribution. To realize this function, Land Bank has the following tasks: a) carry out planning, long-term, medium-term and annual activities; b) carry out the acquisition of land which can be sourced from the determination of the government and other parties; c) carry out land acquisition for development in the public interest or direct land acquisition; d) carry out land management from development, maintenance and security, and land control activities; e) carry out land utilization through utilization cooperation with other parties; and f) distributing land by carrying out land provision and distribution activities. In Government Regulation No. 64 of 2021 as stipulated in Article 130 of the Job Creation Law, land bank agency consists of a Committee, a Supervisory Board, and an Implementing Body. The Committee determines the strategic policy of the Land Bank. The Supervisory Board is tasked with supervising and providing advice to the Executing Body in carrying out the activities of managing the Land Bank. Meanwhile, the Land Bank is responsible for managing the Land Bank for the interests and objectives of the Land Bank, as well as representing the Land Bank both inside and outside the court. Presidential Regulation No. 113 of 2021 concerning the Structure and Implementation of

the Land Bank Agency, stipulates that the Committee consists of the Minister as chairperson concurrently a member, Ministers who carry out government affairs in the financial sector as members, Ministers who carry out government affairs in the field of public works and public housing as members, and/or Ministers/Heads of other Institutions appointed by the President as members as needed. In carrying out its duties, the Committee is assisted by the Committee Secretariat. While the Supervisory Board consists of one chairman who also concurrently serves as a member and six members. Members of the Supervisory Board are a maximum of 7 people, consisting of 4 people from the professional element, 3 people from the government who are elected by the President on the recommendation of the Committee. The Implementing Body consists of a Head and Deputy. The Implementing Body in carrying out its duties is assisted by the Secretary of the Implementing Body and the Internal Supervisory Unit. In managing the Land Bank, the Executing Body must apply consistent and sustainable good governance within the Land Bank. According to Government Regulation No. 124 of 2021 concerning Land Bank Agency Capital, the Republic of Indonesia provides capital to Land Bank Agencies with a capital value of Rp1,000,000,000,000.- (one trillion Rupiah). The capital is in the form of cash and is a separate state asset. This capital comes from the State Revenue and Expenditure Budget for Fiscal Year 2021.

Causes pros and cons of establishing a land bank

Since the beginning, the presence of regulations regarding land banks has given rise to various opinions which can be divided into two groups, namely those who are pro towards the existence of land banks, and those who are against or do not agree with the existence of land banks. In one study it was explained that the government needed the existence of a land bank as a guard to supply the government's need for land, especially in big cities.[6] There are also studies which suggest that a land bank will bring a number of benefits and answer real crucial issues such as providing government land stocks for various development needs in the future, saving funds from the State Budget/Regional Expenditure Budget, and reducing conflicts in the land acquisition process.[7] This study is also supported by opinions which explain that the land bank is an agency capable of answering questions related to land acquisition for development in Indonesia.[8] These three studies can be grouped as opinions that are pro towards the existence of a land bank. A different opinion was expressed by Dewi Kartika, Secretary General of the Consortium for Agrarian Reform, who asked the Government to stop plans to establish and implement a land bank. She considered that the existence of a land bank would only accommodate land acquisition for business interests and large-scale businesses. The mention that the land bank provides land for agrarian reform, for the Agrarian Reform Consortium, it is just a sweetener.[9] Hariadi Kartodihardjo, Professor at the Bogor Agricultural Institute, considers the existence of a Land Bank unnecessary, because the government already has the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency whose job is to ensure balance and fairness in land allocation, including for indigenous peoples.[10] Meanwhile, Maria S. W. Sumardjono, Professor at Gajah Mada University, said that the

Land Bank Agency is at risk of being misused to take indigenous peoples' land which until now has not received legal certainty from the state.[10] There are pros and cons to land banks because the objectives of land banks and agrarian reform goals are actually different. Historically, land banks are regulated in Law No. 11 of 2020 concerning Job Creation, where one of the objectives of the law is to create and increase employment by providing convenience, protection and empowerment to cooperatives and Small and Medium Enterprise as well as industry and national trade. To achieve this goal, Law No. 11 of 2020 stipulates strategic policies on Job Creation, which include improving ecosystems and business activities, ease of doing business, land acquisition, economic zones, and investment by the Central Government and accelerating national strategic projects. Even though Law No. 11 of 2020 concerning Job Creation is based on Constitutional Court Decision No. 91/PUU-XIX/2021 was proven unconstitutional, but to avoid legal uncertainty and a bigger impact, the Constitutional Court stated that the Job Creation Law was still conditionally valid. The Constitutional Court stated that the Job Creation Law must be corrected within 2 years of the Constitutional Court Decision taking effect, but the Law was later revoked by *Peraturan Pemerintah Pengganti Undang-Undang* (Government Regulation in Lieu of Law) No. 2 of 2022 concerning Job Creation. Then the Government Regulation in Lieu of Law No. 2 of 2022 became Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation. Through existing regulations, the existence of a land bank is further regulated in Government Regulation No. 64 of 2021 concerning Land Bank Agencies. In essence, the purpose of the land bank is the provision of land for the economy and investment. What is being debated is Article 126 of Law No. 11 of 2020 stating that the Land Bank Agency guarantees the availability of land in the framework of a fair economy for public interests, social interests, national development interests, economic equality, land consolidation, and agrarian reform. This is also regulated in Article 2 paragraph (2) of Government Regulation No. 64 of 2021 which emphasizes that land banks are given special authority to guarantee the availability of land in the framework of a just economy for public interests, social interests, national development interests, economic equity, land consolidation, and agrarian reform. The reliability of land bank reviewed in the case of Indonesia may contribute to the future direction of sustainable land management for achievement of social justice mirrored prosperity of society.[11] The inclusion of the land bank's authority to guarantee the availability of land, among other things for agrarian reform, is considered inappropriate, because the aim of agrarian reform is to carry out a more equitable arrangement of control, ownership, use and utilization of land through asset management and accompanied by arrangement of access for the prosperity of the Indonesian people, while the agency land bank was born on the basis of the provision of land for the economy and investment.

4.2. The Role of Land Bank in Land Redistribution for Agrarian Reform Agrarian Reform in Presidential Regulation No. 86 of 2018

In Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that land, water, and natural resources are controlled by the state for the greatest prosperity of the people. Through Law No. 5 of 1960 concerning the Basic Agrarian Law and their implementing regulations, land tenure has been regulated for the prosperity of people. It is realized that everyone's economic capacity is different, because in society it is known that there are three income groups, namely the high-income group, the middle-income group, and the low-income group. The high-income group has the potential to own large amounts of land, while the low-income group does not have the purchasing power to own land. If the number of poor people is greater than the number of rich people, then there is a condition where a few people control a very large amount of land, while many people do not own land. There is an imbalance in the structure of land tenure which shows that people's prosperity has not been achieved in the land sector. In the Old Order Era, Agrarian Reform Indonesia was established which consisted of: 1) renewal of agrarian law; 2) the abolition of foreign rights and colonial concessions on land; 3) a gradual end to feudal exploitation; 4) reform of land ownership and control as well as legal relations related to land exploitation in realizing an even distribution of prosperity and justice; 5) planning for supply and allotment of land, water and natural resources contained therein and their use in a planned manner, in accordance with their carrying capacity and capability.[12] In order to realize the prosperity of the people, especially farmers, the government carried out a land reform program which consisted of: 1) limiting the maximum area to control land; 2) prohibition of absentee or guntai ownership of agricultural land; 3) redistribution of land which is more than the maximum limit, land subject to absentee prohibition, ex-self-governing land and state lands; 4) arrangements for the return and redemption of mortgaged agricultural land; 5) regulation of agricultural land production sharing agreements; and 6) stipulation of the minimum area of agricultural land ownership accompanied by a prohibition to commit acts resulting in the splitting of agricultural lands into too small parts.[13] In the New Order Era, the government carried out a land reform program similar to that carried out by the Old Order government, but it was linked to the transmigration program. In fact, the people have not gained prosperity in the land sector. Moreover, the imbalance in the structure of tenure, ownership, use and utilization of land is getting sharper. In the Reformation Era, the People's Consultative Assembly issued the Decree of the People's Consultative Assembly of the Republic of Indonesia No. IX/MPR/2001 dated 9 November 2001 concerning Agrarian Reform and Management of Natural Resources. This Decree of the People's Consultative Assembly forms the basis of laws and regulations regarding agrarian reform and management of natural resources. One of the policy directions for agrarian reform in the Decree of the People's Consultative Assembly is to carry out a just rearrangement of tenure, ownership, use and utilization of land (land reform) by taking into account land ownership for the people. Following up on this Decree of the People's Consultative Assembly, Presidential Regulation No. 86 of 2018 concerning Agrarian Reform. It was emphasized that agrarian reform in the Reform Era meant restructuring the structure of control, ownership, use and utilization of land in a more just manner through asset management and accompanied by arrangement of access for the prosperity of the

Indonesian people. There are things that are very different from the land reform carried out in the Old Order and New Order Era, because the implementation of agrarian reform was carried out through the stages of asset management and access management. Asset arrangement consists of land redistribution or asset legalization, while access arrangement includes social mapping, institutional capacity building, business assistance, skills improvement, use of appropriate technology, business diversification, facilitation of access to capital, facilitation of access to marketing, database strengthening and commodity, and/or provision of supporting infrastructure. Basically, access reform is the provision of the widest possible opportunity for the community to manage and utilize natural resources in Indonesia with support and facilities from the government.[14] The arrangement of access is carried out on a cluster basis in order to increase economies of scale, added value, and encourage entrepreneurial innovation on the subject of agrarian reform. According to Article 12 of Presidential Regulation No. 86 of 2018, the subjects of agrarian reform consist of individuals, community groups with shared ownership rights, or legal entities. For the subjects of agrarian reform, redistribution of *tanah obyek reforma agraria (TORA)* can be given. The object of land redistribution includes land redistribution for agriculture and for non-agriculture. The objects of land redistribution that have been determined are used in accordance with land capability, land suitability, and spatial planning.

Land Bank in land redistribution for agrarian reform

In many Eastern European countries, there is a significant state-owned reserve of agricultural land. If properly used, this resource may support land-related policies for the benefit of various public purpose projects or to support defined groups such as livestock farmers or young farmers. If the land bank (or a state institution playing the role of the land bank) is conferred the right to manage the whole or part of the state-owned agricultural land, it should ensure that this land is used in a most efficient way and not simply privatized for the highest price.[15] In Indonesia, the special authority possessed by the land bank is to guarantee the availability of land in the framework of a fair economy, for public interests, social interests, national development interests, economic equity, land consolidation and agrarian reform. In carrying out this special authority, the Land Bank has the functions of planning, land procurement, land acquisition, land management, land use, and land distribution. The distribution of land in question is the activity of supplying and distributing land. Distribution is aimed at least for ministries/agencies, regional governments, social and religious organizations, and/or communities determined by the central government. According to Article 22 of Government Regulation No. 64 of 2021 concerning the Land Bank Agency, it is emphasized that support in guaranteeing the availability of land for agrarian reform is a guarantee for the provision of land in the framework of land redistribution. It is also regulated that the availability of land for agrarian reform is at least 30% of the state land allocated to land banks. Regarding the arrangement of land bank agency, received a response from the Agrarian Reform Movement which disagreed with the existence of a

land bank. The Agrarian Reform Movement consists of *Aliansi Organik Indonesia*, *Aliansi Petani Indonesia*, *Bina Desa*, Ecosoc Rights, *FIAN Indonesia*, Indonesia Human Right Committee for Social Justice, *Koalisi Rakyat untuk Kedaulatan Pangan*, *Konsorsium Pembaruan Agraria*, Lokataru Foundation, Sawit Watch, and *Wahana Lingkungan Hidup Indonesia* considers Government Regulation No. 64 of 2021 to be contradictory to Law No. 5 of 1960 concerning the Basic Agrarian Law, contradictory to Law No. 30 of 2014 concerning Government Administration, contradictory to Law No. 12 of 2011 concerning *Pembentukan Peraturan Perundang-undangan*, and contradictory to Decisions Constitutional Court No. 91/PUU-XVIII/2020 which states Law No. 11 of 2020 concerning conditional unconstitutional Job Creation. In this regard, Government Regulation No. 64 of 2021 was submitted for judicial review to the Supreme Court.[16] The Supreme Court of the Republic of Indonesia No: 6 P/HUM/2023 and 7/P/HUM/2023 rejected the petition for objection to the judicial review rights from the applicants, namely the group calling it the Agrarian Reform Movement. The Supreme Court decision confirmed the position of the Land Bank Agency and provided legal certainty for the implementation of the functions of the Land Bank Agency. Since the land bank has been effectively operating since 2022, the Land Bank has obtained land that is ready for cooperation with other parties in several industrial estate locations, including 40 ha of land in Tanjung Balai Regency, 7.5 ha in Serang, Banten, with a land area of 1,828 m² in Jatirokeh, Brebes, 4,787 m² in Cigedog, Brebes, 7,896 m² in Kenteng Village, Bandungan District, Semarang Regency, 4,162 ha in North Penajam Paser Regency, and 52,930 m² of land in Jember Regency.[17] The land area of 4,162 ha located in North Penajam Paser Regency was obtained by the Land Bank from the former *hak guna usaha* (right to cultivate) of *PT Triteknik Kalimantan Abadi* whose term has expired and its rights have not been extended, so that it has become state land. Of this land area, 1,836 ha was redistributed to the community in three sub-districts, namely Gersik Sub-District, Jenebora Sub-District, and Pantai Lango Sub-District, Penajam Sub-district.[18] In addition, there is used land of *hak guna usaha* (right to cultivate) of *PT Maskapai Perkebunan Moelia (PT MPM)* covering an area of 203.74 ha which will be redistributed to 1,400 heads of families with a scheme of granting rights above *hak pengelolaan* (right to manage) of the land bank agency.[17] The ability of land banks to acquire land and then redistribute land to agrarian reform subjects as shown above shows that land banks exercise their authority to ensure the availability of land for agrarian reform of at least 30% of the land they acquire. At present the Land Bank has exercised its authority, but in relation to land redistribution for agrarian reform at least 30% of the land acquired by the land bank, the role of the land bank has not been optimal, it can even be said that the land bank which should act as a land manager, has only succeeded as a land collector in an amount that has not yet reached the target, so that the meaning of the existence of a land bank has not provided optimal benefits in land redistribution for agrarian reform.

5. Conclusion

The establishment of a land bank raises pros and cons due to the fact that the objectives of the land bank are different from the objectives of agraria reform. The goal of the land bank is to provide land for the economy and investment, while the goal of agrarian reform is to reorganize the structure of tenure, ownership, use and utilization of land to make it more equitable through asset management and access management. At present the Land Bank has exercised its authority, but in relation to land redistribution for agrarian reform at least 30% of the land acquired by the land bank, the role of the land bank has not been optimal, it can even be said that the land bank which should act as a land manager, has only succeeded as a land collector in an amount that has not yet reached the target, so that the meaning of the existence of a land bank has not provided optimal benefits in land redistribution for agrarian reform.

It is suggested to the land bank to improve coordination with the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency to obtain information regarding land that can be collected by the land bank. Besides that, the land bank needs to cooperate with *Gugus Tugas Reforma Agraria* (the Agrarian Reform Task Force) in accelerating land redistribution activities for agrarian reform.

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