

Land Banking Establishment As the First Step Acceleration for Post COVID-19 Pandemic Investment

Vincensia E.P. Sari¹, Serlly Waileruny², Graceyana Jennifer³

Vincensia.sari@uph.edu¹, Serllywaileruny@gmail.com²,

jennifergraceyanaxx@gmail.com³

Faculty of Law, Universitas Pelita Harapan, Karawaci, Indonesia^{1, 2, 3}

Article Info

Received: 2022-05-08

Revised: 2022-07-04

Accepted: 2022-07-04

Keywords:

Land Banking,
Investment Acceleration,
COVID-19 Pandemic

Abstract

The collapse of the country's economy as a result of the COVID-19 pandemic is necessary to be resurrected, one of which is through investment, including investment inland. Thus, through the Law of Republic Indonesia No. 11 of 2020 on Job Creation and Government Regulation No. 64 2021 on Land Banking, the government has defined the formation of a body of Land Banking that has been authorized specifically to manage land. Does this post to highlight two issues: 1) the urgency of the bank's establishment in response to the question of the land itself in Indonesia's investment activities? 2) the role of the bank bodies as the first step acceleration of the national economy post-covid-19 pandemic? The research method used was the juridic-normative law research method, which used secondary data and was acquired through literature studies. According to the authors, there are at least 3 problems in the land: a) license and bureaucratic deliberations; b) the lengthy process of land acquisition; and c) high cost. However, the presence of ground bank agencies as the land keeper, land warranty, land valuer, land distributor, land manager, can help to accelerate the investment.

Keywords: Land Banking, Investment Acceleration, COVID-19 Pandemic

I. Introduction

The State of Indonesia is a legal state where this is in accordance with Article 1 point 3 of the 1945 Constitution of the Republic of Indonesia (hereinafter will be shortened to the 1945 Constitution). As a state of law, Indonesia bases all policies taken by law and with the greatest aim for the welfare of the people. The fourth paragraph in the preamble to the 1945

Constitution of the Republic of Indonesia states that the goals of the state are, (1) to protect the entire Indonesian nation and the entire homeland of Indonesia; (2) promote the general welfare; (3) the intellectual life of the nation; and (4) participate in carrying out world order based on freedom, eternal peace and social justice. From that, Article 33 paragraph (3) of the 1945 Constitution then states that, "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".

Based on the above state objectives, the State needs to be present and make various efforts to promote general welfare, including the fulfillment of Article 27 paragraph (2) of the 1945 Constitution which reads, "every citizen has the right to work and a decent living for humanity." One of the forms of the presence of the State to promote general welfare in particular to fulfill the rights of citizens to a decent life is the issuance of Law no. 11 of 2020 concerning Job Creation (hereinafter will be abbreviated as the Job Creation Act), while the Job Creation Law was made using the omnibus law technique. The Law Dictionary defines an omnibus as, *in all thing; on all points*.¹ On the other hand, The Duhaime Legal Dictionary defines omnibus law as, "*a draft law before a legislature which contains more than one substantive matter, or several minor matters which have been combined into one bill, ostensibly for the sake of convenience*".²

Through the omnibus law technique, the Job Creation Law has streamlined around 80 laws and simplified more than 1200 articles with the aim of regulating various sectors in Indonesia, among others, (a) improving the investment ecosystem and business activities; (b) employment; (c) convenience, protection, and empowerment of cooperatives and MSMEs; (d) ease of doing business; (e) research and innovation support; (f) land acquisition; (g) economic zones; (h) Central Government investment and acceleration of national strategic projects; (i) implementation of government administration; and (j) imposition of sanctions.³

According to Article 1 point (1) of the Job Creation Law, what is meant by Job Creation is an effort to create jobs through facilitating, protecting, and empowering cooperatives, and micro, small and medium enterprises, improving the investment ecosystem and facilitating business, and investment by the Central Government and acceleration of national strategic projects. The birth of the Job Creation Law in Indonesia is in line with the country's hard struggle against the pandemic. Since the World Health Organization (WHO) declared COVID-19 as a pandemic, many changes have occurred in social life.

¹ The Law Dictionary, "In Omnibus" <<https://thelawdictionary.org/in-omnibus/>> [accessed 29 July 2021].

² Louis Massicotte, "Omnibus Bills in Theory and Practice," *Canadian Parliamentary Review*, 13 (2013), 13–17.

³ Pasal 4 *Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja*, 2020.

Various aspects of life are forced to change, people on the other hand are also required to be able to adapt to the existing changes. Normal interactions that occurred previously, such as the offline teaching and learning process in the classroom, were shifted to online, as well as meetings to worship activities. The rate of virus transmission that can increase rapidly in crowds has resulted in the government issuing regulations aimed at limiting crowds, among others, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Coronavirus Disease 2019 (COVID-19), Presidential Decree Number 7 of 2020 concerning Task Force, Acceleration of Coronavirus Disease 2019 (COVID-19); Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Coronavirus Disease 2019 (COVID-19); Decree of the Chief of the Police of the Republic of Indonesia Number: Mak/2/III/2020 concerning Compliance with Government Policies in Handling the Spread of the Corona Virus (COVID-19).

Responding to regulations made by the central government, regional heads simultaneously issued regulations regarding guidelines for limiting community activities, including the Joint Decree of the Governor of Bali and the Bali Province Traditional Village Council Number 472/1571/PPDA/DPMA, Number 05/SK/MDA- PROV.Bali/III/2020 concerning the Establishment of a Task Force for Covid-19 Prevention Based on Traditional Villages in Bali; West Java Governor Regulation No. 36 of 2020 concerning Guidelines for Large-Scale Social Restrictions in Combating Coronavirus Disease 2019 (COVID-19) in the Province of West Java; Regulation of the Governor of the Special Capital Region of Jakarta No. 33 of 2020 concerning the Implementation of Large-Scale Social Restrictions in Combating Coronavirus Disease 2019 (COVID-19) in the Province of the Special Capital Region of Jakarta. Large-scale social restrictions (hereinafter abbreviated as PSBB in Indonesian) on the other hand create a new problem. The PSBB policy has resulted in many offices requiring their workers to work from home (WFH), which of course has other impacts.

The economic sector in particular has been significantly impacted by this pandemic, as many companies are struggling to survive during the pandemic. Launching from research conducted by Jobstreet.id which was held in mid-2020, there were many industries that had to give up because they were affected by the pandemic so they had to lay off their employees either temporarily or permanently, namely; hospitality/catering, tourism/travel, advertising/public relations/marketing services, apparel/garment/textile, food and beverage, architecture/building/construction. Furthermore, according to the same data, half of the participants, namely 54% were directly

affected by the COVID-19 pandemic, 35% of them had to be laid off permanently and 19% were temporarily laid off.⁴

It is hoped that through the Job Creation Law, even though in the midst of a pandemic there will be new job fields opened which is also in accordance with the purpose of the Job Creation Act. The objectives of the establishment of the Job Creation Act are:⁵

1. Creating and increasing job opportunities by providing convenience, protection, and empowerment for cooperatives and MSMEs as well as national industry and trade as an effort to be able to absorb the widest possible Indonesian workforce while taking into account the balance and progress between regions in the national economic unity;
2. Ensuring that every citizen gets a job, and gets fair and proper remuneration and treatment in an employment relationship;
3. Adjusting various regulatory aspects related to alignments, strengthening, and protection for cooperatives and MSMEs as well as national industry; and
4. Adjusting various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented to national interests based on national science and technology guided by the ideology of Pancasila.

One of the scopes regulated through the Job Creation Law is regarding Land Banks as referred to in Chapter VIII concerning Land Procurement, particularly in Part Four Paragraph 1 concerning Land. In Article 125 of the Fourth Part, it is stated that the Central Government shall establish a Land Bank. This Land Bank is a special agency that manages land and owns wealth, where the wealth is separated state assets. The Land Bank functions to carry out planning, acquisition, procurement, management, utilization, and distribution of land

Land Bank is a special agency (*sui generis*) which is an Indonesian legal entity formed by the central government which is given special authority to manage land.⁶ The existence of the Land Bank Agency is not a new thing, its history has started since the Dutch era with the presence of *Grond Bedrift* in several areas in Java, including in Batavia, Surabaya and also in Semarang.⁷ Along with the times, the concept of Land Bank is also used both in Aceh and

⁴ Jobstreet, "Covid-19 Job Report" <<https://www.jobstreet.co.id/en/cms/employer/wp-content/themes/jobstreet-employer/assets/report/covid-19-job-report-id/JobStreet-COVID-19-JOB-REPORT-INDONESIA-FINAL-27082020.pdf>> [accessed 1 July 2021].

⁵ Pasal 2 *Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja*.

⁶ Pasal 1 angka 1 *Peraturan Pemerintah Nomor 64 Tahun 2021 Tentang Badan Bank Tanah*, 2021.

⁷ Hilman Tisnawan, *Optimalisasi Pemberdayaan Kekayaan Negara* (Jakarta: FH UI, 2009), 106.

in Makassar City in Baitul Mal along with the concept of *ihya' al-mawat*.⁸ Baitul Mal functions as a religious property manager in this case determining the status of abandoned land for its designation so that it can be managed properly and managed with the aim of developing and empowering the community.⁹

The presence of the Land Bank was later clarified by Government Regulation no. 64 of 2021 concerning the Land Bank Agency (hereinafter referred to as PP No. 64/2021). The issuance of PP No. 64/2021 illustrates the seriousness of the government to immediately realize the function of the Land Bank Agency as a means of managing land related to increasing investment which is the goal of the Job Creation Law. However, it is undeniable that until now various problems in the land sector are still rolling, including the limited availability of land while population growth continues to increase, the limited supply of land as development progresses, especially in urban areas which is increasingly skyrocketing, the difficulty of the land acquisition process which of course also requires high costs, the convoluted land acquisition process, and so on. It is certainly a hope for all of us, that the increase in investment through the role and function of the Land Bank Agency guarantees welfare for all Indonesian people in accordance with the state objectives in the 1945 Constitution.

From the background above, the formulation of the problem that becomes the framework for a deeper study of the Land Bank Agency in this study, namely: 1) What is the urgency of establishing a Land Bank as an answer to land problems in investment activities in Indonesia? and 2) What is the role of the Land Bank Agency as the first step in accelerating national economic recovery after the COVID-19 pandemic? Thus, from the two problem formulations, it is possible to achieve a holistic understanding of the usefulness of the Land Bank Agency as the right step in achieving national economic recovery after the COVID-19 pandemic.

2. Research Method

The research method used is a juridical-normative legal research method. With this type of research method, the law is described as the rules that guide the behavior of legal subjects that are considered correct and obtain justification.¹⁰ The author then uses secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. After that, in order to achieve the objectives referred to in this study, the approach

⁸ Zaku Ulya, "Ekspektasi Pengelolaan Tanah Terlantar Oleh Baitul Mal Dalam Peningkatan Kesejahteraan Masyarakat," *Jurnal Hukum & Pembangunan*, 46.4 (2016), 504–20 <<https://doi.org/http://dx.doi.org/10.21143/jhp.vol46.no4.80>>.

⁹ Ulya.

¹⁰ Zainal Asikin and Amiruddin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Rajagrafindo Persada, 2012).

used by the author is the Statute Approach, which is carried out by reviewing the laws and regulations that relate to one another along with the legal issues of risk-based investment. being researched.¹¹

In terms of collecting data, the authors use secondary data, namely data that is already available in the form of writing, tables, pictures which are the results of research, or the opinions of experts. The secondary data used consists of 3 (three) legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials. Primary Legal Materials are legal materials that are binding, including: 1). 1945 Constitution of the Republic of Indonesia; 2). Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles; 3). Law Number 11 of 2020 concerning Job Creation; 4). Government Regulation Number 64 of 2021 concerning Land Bank Agency. In addition to Primary Legal Materials, Secondary Legal Materials are also used which consist of books and other references related to the topic of this paper. This paper is also equipped with Tertiary Legal Materials consisting of general dictionaries, legal dictionaries, and writing sources via the internet.

The method used by the author to obtain data is literature study which is a way of collecting data to obtain information as a basis for thinking by studying books and literature related to the problem under study. The approach method used is a deductive approach method by describing the facts obtained and drawing a conclusion on what is being studied based on the facts obtained.

3. Results and Discussion

The Urgency of Establishing a Land Bank Agency as an Answer to Land and Investment Problems in Indonesia in the Realization of Community Welfare

Departing from the understanding that land is an important component in the development of the country, it creates a necessity and awareness of the government as a facilitator and dynamist in mobilizing all the potential of Indonesia's land. The reason is that Indonesia, which is known to have an area of 7.81 million km² stretching from Sabang to Merauke with a total of 17,499 islands, should make Indonesia a country that is quite abundant in natural wealth.¹² Thus, there is an alignment of Indonesia's abundance with Indonesia's increasing land potential. This has actually been based on the

¹¹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia Press, 2007).

¹² Kementerian Kelautan dan Perikanan, "Konservasi Perairan Sebagai Upaya Menjaga Potensi Kelautan Dan Perikanan Indonesia" <<https://kkp.go.id/djprl/artikel/21045-konservasi-perairan-sebagai-upaya-menjaga-potensi-kelautan-dan-perikanan-indonesia>> [accessed 20 July 2021].

Indonesian constitution itself, precisely in Article 33 of the 1945 Constitution of the Republic of Indonesia which reads as follows:

- “1) The economy is structured as a joint effort based on the principle of kinship;
- 2) Production branches which are important to the State and which affect the livelihood of the people are controlled by the State;
- 3) Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people
- 4) The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and maintaining a balance of progress and national economic unity;
- 5) Further provisions regarding the implementation of this article are regulated in the Law.”

So when it comes to Indonesian investment, what are the land problems that actually hinder Indonesia's economic development? As presented by the Data of the Committee for the Acceleration of Priority Infrastructure Provision (in Indonesian: KPPIP), the investment problem that comes with Indonesia's land is the most important one regarding land acquisition.¹³ This is due to the fact that land acquisition in Indonesia is considered difficult for investors. According to the author's opinion, the present problems can be formulated in 3 main types of difficulties, namely: a) Convoluting licensing and bureaucracy; b) Land acquisition mechanism which takes a long time; and c) Expensive costs. As a result, the need for land for investors to carry out industrial activities and the desires of investors themselves are actually broken by these problems in continuing their development.

For the problems above, then through Law no. 10 of 2020 (Law on Job Creation) and PP No. 64/2021, the Land Bank is here to accommodate the problem of land acquisition. In this juridical review, the existence of the Land Bank is the concern of various groups, including policy makers, academics, and legal practitioners in Indonesia. The reason is, the background of the emergence of the Land Bank in Indonesia is as an agenda and mandate from the Job Creation Act, where one of the things discussed in the Job Creation Act is the Land Bank Agency. Through this law, it is more emphasized that the presence of the Land Bank is also one of the implementations or derivatives of Article 33 paragraph (3) of the 1945 Constitution.

The juridical review of the Land Bank actually also discusses the right to control and manage the state as contained in the 1945 Constitution of the Republic of Indonesia, which gave birth to a special authority for the Land

¹³ Komite Percepatan Penyediaan Infrastruktur Prioritas, “Tanah Untuk Kepentingan Umum” <<https://kppip.go.id/opini/tanah-untuk-kepentingan-umum/>> [accessed 21 July 2021].

Bank to carry out its functions as agreed in the background of this writing, namely based on Article 2 PP No. 64/2021, the Land Bank is an Indonesian legal entity, with the special authority to ensure the availability of land in the framework of a just economy, for: a) public interest; (b) social interests; (c) the interests of national development; (d) economic equity; (e) land consolidation; and (f) agrarian reform.¹⁴ The Land Bank will then be managed by the Land Bank Agency whose function is to carry out the planning, acquisition, procurement, management, utilization, and distribution of land.¹⁵

From these special powers, it outlines how the Land Bank can solve 3 land problems in the investment realm as formulated above. However, it should be understood beforehand about the basic concept of a Land Bank, where the existence of a Land Bank itself is actually not a completely new concept, because its existence has been implemented in many countries in the world. Starting from the first concept of a land bank in the world which was initiated in the Netherlands in 1890, the concept of a land bank is as a mechanism in which there are agencies that acquire land, reserve land, then delegate the land to be used as a place of development, especially the development of various industries. Not only that, the Land Bank in fulfilling its function as the fulfillment of the public interest also has the authority to manage and control land prices, as well as support the implementation of the Indonesian State Spatial Plan.

From this basic concept, the author believes that the position of the Land Bank in Indonesia is actually a step in realizing the nation's national goals, which is to organize the welfare of its people. Considering that the Land Bank focuses on justice in the land area for the people (agrarian justice) and for the sake of obtaining people's welfare (social justice). The reason is that through ongoing investment and supported by the state, it actually reflects the active implementation of the state to achieve prosperity itself. This is also inseparable from the declaration of the Indonesian state as a welfare state (*walvaarstaat*) which has been emphasized from the beginning by the nation's founders, so that Indonesia is not only a night watchman state (*nachtwachterstaat*) alone.

So, how is the real practice of the Land Bank to solve the 3 problems above? Starting from the function of the Land Bank which has the task of: a) planning long-term, medium-term, and annual activities; b) acquire land that can be sourced from the stipulation 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 activities, and land control; e) make use of land through

¹⁴ Pasal 126 *Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja*, 2020; Pasal 2 ayat (2) *Peraturan Pemerintah Nomor 64 Tahun 2021 Tentang Badan Bank Tanah*, 2021.

¹⁵ Pasal 125 ayat (2) *Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja*, 2020.

utilization cooperation with other parties; and f) distributing land by providing and distributing land.¹⁶

From this task function, the actual implementation of land procurement and management is able to provide solutions to the problems as intended at the beginning of the discussion, namely by: First, Land Bank as a solution to the problems of licensing and complicated bureaucracy. The Land Bank mechanism basically uses the institutional form of the Public Service Agency (in Indonesian: BLU), bring up to an orientation for government land agencies that focuses on community service and not for mere profit (non-profit). As a result, a precise policy implementation was come up when the administrative steps for land acquisition were carried out; Second, the Land Bank in overcoming the land acquisition mechanism which takes a long time. Still with the BLU institutional form it adheres to, the Land Bank can carry out its functions as quickly as possible, because it adheres to the sustainable principle of its performance in managing the land itself;¹⁷ Third, the Land Bank overcomes land acquisition which is expensive, where land acquisition initially requires a lot of costs, starting from overhead costs,¹⁸ to taxation. However, by utilizing the Land Bank, of course, the principle applied is the non-profit principle, so that land acquisition is not a means to earn profits but to facilitate the people in using the land.

Thus, from the mechanism described above, an understanding can be drawn that in order to support investment, the holder of the right to manage the Land Bank is authorized to:¹⁹ a) prepare a master plan; b) assisting in facilitating business licensing/approval; c) carry out land acquisition; and d) determine service rates. Thus, the four powers can be practical evidence of how the role of the Land Bank is so important and beneficial in creating a good business and investment climate, through land management and procurement that is right on target for investors.

The Role of the Land Bank Agency as the First Step to Accelerate National Economic Recovery after the COVID-19 Pandemic

The COVID-19 pandemic, which has garnered a lot of attention, not only the Indonesian people but the entire universe over the past year, has ravaged

¹⁶ Pasal 3 ayat (2) *Peraturan Pemerintah Nomor 64 Tahun 2021 Tentang Badan Bank Tanah*, 2021.

¹⁷ Raditya Ganindha, "Urgensi Pembentukan Bank Tanah Sebagai Alternatif Penyediaan Tanah Bagi Masyarakat Untuk Kepentingan Umum," *Arena Hukum*, 9.3 (2016), 442–62 <<https://doi.org/http://dx.doi.org/10.21776/ub.arenahukum.2016.00903.8>>.

¹⁸ Biaya *overhead* dalam pembebasan lahan merupakan biaya-biaya yang harus dibayarkan oleh investor ketika ingin memperoleh hak atas suatu lahan demi dijalkannya industri tertentu. Biaya *overhead* ini pada dasarnya tidak meliputi biaya yang terlibat langsung dengan inti pekerjaan yang ingin dilakukan. Maka dari itu, ketika biaya *overhead* tinggi, ditemukan bahwasanya investor cenderung menolak dan menarik investasi yang telah direncanakannya tersebut.

¹⁹ Pasal 129 ayat (4) *Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja*, 2020.

the economic situation of various countries globally and Indonesia in particular. Based on data compiled from the Central Statistics Agency, Indonesia's economic growth in the first quarter slowed down from the previous quarter, which was only 2.97% from 4.97% in the fourth quarter of 2019, where the growth in the first quarter of 2020 will be worse than the first quarter of 2019, which is equal to 5.07%.²⁰ Furthermore, in the second quarter, Indonesia's Gross Domestic Product (GDP) at current prices was IDR 3,687.7 trillion, but when compared to constant prices (year on year - yoy), the second quarter decreased by -5.32%.

Facing the economic sector that went down quite risky, the government did not stay silent but made various efforts in order to overcome the effects of the COVID-19 pandemic, in particular for people affected by the COVID-19 pandemic. In order to provide a safety net for affected communities and with the aim of continuously increasing people's consumption power, at least the government has provided social protection realization of Rp. 85.3 trillion. These funds are then disbursed for, a) Hopeful Family Program, b) Village Fund Direct Cash Assistance, c) Basic Food Cards, d) Pre-Employment Program, e) Jabodetabek Basic Food Assistance, f) Non-Jabodetabek Food Assistance; and g) electricity discount.²¹

However, restoring the state of the Indonesian economy is certainly not as easy as turning the palm of the hand, there needs to be an effort needed. In order to improve the national economic recovery, the government stipulates various policies, including, among others, a) investment arrangements that are open to all business fields except those that have been declared closed; b) establishment of an Investment Management Institution (in Indonesian abbreviation: LPI) as an alternative financing; c) an import substitution program which is of course required to encourage industrial deepening; d) Regional Comprehensive Economic Partnership (RCEP) cooperation agreement; and e) Indonesia's digital transformation acceleration program.²²

In addition, in the context of accelerating the national economic recovery in this case through accelerated investment, according to Himawan Arief Sugoto, Secretary General (Secretary General) of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (in Indonesian abbreviation: BPN), the existence of a Land Bank in the future is to present opportunities that are in accordance with the spirit of Employment Creation Law, where we will have a standard of changing the ease of investment, in

²⁰ Badan Pusat Statistik, "Berita Resmi Statistik 5 Mei 2021" <https://www.bps.go.id/website/materi_ind/materiBrsInd-20210505113458.pdf>.

²¹ Dewi Wuryandani, "Dampak Pandemi Covid-19 Terhadap Pertumbuhan Ekonomi Indonesia 2020 Dan Solusinya," *Info Singkat - Kajian Singkat Terhadap Isu Aktual Dan Strategis*, XII.15 (2020), 19–24.

²² Kementerian Koordinator Perekonomian Republik Indonesia, "Akselerasi Pertumbuhan Ekonomi 2021 Dengan Konsumsi Investasi Dan Ekspor" <<https://www.ekon.go.id/publikasi/detail/908/akselerasi-pertumbuhan-ekonomi-2021-dengan-konsumsi-investasi-dan-ekspor>>.

addition to having to prepare land for ready to invest, creating economic growth and jobs.²³

The Land Bank ensures the availability of land for various development purposes in the future, the efficiency of the APBN/APBD, reduces conflicts in the land acquisition process and reduces the adverse effects of land liberalization.²⁴ Secretary General (Secretary General) of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (in Indonesian abbreviation: BPN), Himawan Arief Sugoto said, so far the Ministry of ATR/BPN has been the regulator of spatial planning and the regulator as well as land administration. In the future, the Land Bank will be present as a land manager in land management activities. Conceptually, the Land Bank must make policies and strategies for optimizing land use and use, so that it is expected to be able to direct the development of land use.²⁵

In addition to realizing the state's goal of creating general welfare, the Land Bank can also be said to have further clarified the line of state management in state land. Starting from the interpretation of the state's right to control the wealth contained therein, which includes 3 (three) obligations, namely:²⁶ a) Utilization of earth, water and natural products must be explicitly able to improve the welfare of the Indonesian people; b) There is protection and guarantee of community rights; and c) There is prevention from all kinds of actions that can cause people to no longer have the opportunity or lose their right to enjoy natural products.

The presence of the Land Bank Agency in the context of increasing investment in Indonesia needs to be implemented in this case the need for an inventory of land evenly and quickly. Based on Article 7 PP No. 64/2021, where the Land Bank Agency as land manager to manage state lands can depart from land resulting from government determination consisting of a) ex-titled land; b) abandoned areas and lands; c) land released from forest area; d) raised land; e) land resulting from reclamation; f) ex-mining land; g) land of small islands; h) land that is affected by the policy on spatial change; and i) land that there is no control over it. For the lands mentioned above, clear data collection is needed for the allotment of accelerated investment according to the condition of the land. In acquiring land from other parties, which is intended for public interest and investment, it must be carried out in a fair and commendable manner and bring benefits to both parties. Land that comes

²³ Vendy Yhulia Susanto, "Pembentukan Bank Tanah Diklaim Mampu Meningkatkan Investasi" <<https://nasional.kontan.co.id/news/pembentukan-bank-tanah-diklaim-mampu-meningkatkan-investasi>>.

²⁴ Bernhard Limbong, *Bank Tanah* (Jakarta: Margaretha Pustaka, 2013), 45.

²⁵ Susanto.

²⁶ J. Ronald Mawuntu, "Konsep Penguasaan Negara Berdasarkan Pasal 33 UUD 1945 Dan Putusan Mahkamah Konstitusi," *UNSRAT Repository*, XX.3 (2012), 11–21.

from community land and is obtained by buying it should be appreciated at a reasonable price and method.

The lands that have been inventoried are then adjusted to their needs and designations. Where there needs to be mature plans regulated by the Land Bank Agency. Designs that are strategic and intended for investment must go through proven processes. In addition, there is a need for land reserves which are needed by the government from time to time as a safety net in investment. In terms of policy making, the government still has to focus on the principles of ESG (Environmental, Social, Governance) where the investments implemented are aimed at long-term investments but still side with nature and bring positive contributions to society.

Therefore, through the Land Bank, it is fitting to become a model of the welfare state applied in Indonesia, as a result of the combination of the state's extensive role in social welfare efforts and segmented social security accompanied by family networks as reflected in Article 33 and Article 34 of the 1945 Constitution.²⁷ This model then emphasizes that the state must continue to take part in handling social problems and administering social security, although in its operation it still involves the community. Meanwhile, according to Mubyarto, the two articles are a causal relationship that became the basis for the ratification of the 1945 Constitution of the Republic of Indonesia by the founders of the country, because the good or bad of the national economy will also determine the level of social welfare.²⁸ Thus, according to the author, the existence of the Land Bank is the embodiment of the Indonesian welfare state model in this paper.

Next, Bagir Manan also explained that state control rights include, a) control of a kind of ownership by the state, where the government acts as the authority holder that determines rights; b) the existence of regulation and supervision of the utilization of the earth, water and all the natural resources contained therein; and c) the existence of natural capital participation in the form of state companies for certain businesses.²⁹ State control based on Constitutional Court Decision No. 35/PUU-X/2012, Constitutional Court Decision No. 50/PUU-x/2012 and Decision No. 3/PUU-VIII/2020 states that the right to control the state does not mean that the state owns the earth, water and all its wealth, but that the state functions as a regulator (*regelendaat*), policy maker (*beleid*), supervisor (*toezicchoundendaad*), and manager (*beheersdaad*).

²⁷ Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas, Dan Aktualitas Pancasila* (Jakarta: Gramedia, 2011), 582.

²⁸ Latif.

²⁹ IBR. Supanca, *Laporan Tim Analisa Dan Evaluasi Hukum Hak Penguasaan Negara Terhadap Sumber Daya Alam (UU No. 22 Tahun 2011 Tentang Minyak Dan Gas Bumi)* (Jakarta: Departemen Hukum dan Hak Asasi Manusia RI Badan Pembinaan Hukum Nasional, 2008), 2.

As a result, if the relevance is outlined with existing investment problems, state control rights are manifested in the Land Bank agency which processes and interferes in land management, especially abandoned land in Indonesia. That way, the Land Bank is able to become a collector or reserve of abandoned lands (land keeper), land security for future development (land warrantee), land controller (land purchaser), land valuer, and as a land distributors and land managers to analyze assets and land management strategies (land manager).³⁰

4. Conclusion

Thus, from the explanation and description above, the conclusions can be drawn regarding the formulation of the existing problems as follows:

1. Land is a means and instrument of the state to organize general welfare for the people of Indonesia. This is as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia, which emphasizes the administration and utilization of Indonesian resources, including national land. This welfare must be achieved through agrarian justice which is able to provide equitable use of land with orientation to the public interest and the interests of the people. One of the manifestations or the provision of appropriate land use for the community by the state is through the use of land in supporting investment in the country. However, there are actually 3 (three) main problems that actually hinder investment in the country due to land acquisition problems. These problems, among others, relate to complicated bureaucracy and administration, the long duration of land acquisition, and the nominal cost of land acquisition which is burdensome for business actors or investors. Therefore, a land management agency is needed in Indonesia that is nationally integrated, even though it regulates land in a people-oriented manner in its sustainable principles. The agency in question is the Land Bank, which is a Public Service Agency which is on the agenda of the Job Creation Law and its derivatives, namely PP No. 64/2021 which aspires to a land agency that is able to effectively and efficiently manage land, distribute land, and control land, especially abandoned land in Indonesia in order to obtain easy access to existing land by the people. That way, the three problems that arise from the land acquisition step in investment activities as formulated above can be resolved quickly and precisely through the Land Bank, so that the existence of the Land Bank must be further explored nationally in order to

³⁰ S. W. Annaningsih, "Penerapan Konsep Bank Tanah Dalam Pembangunan Tanah Perkotaan," *Masalah-Masalah Hukum*, 36.4 (2007), 961–65 <<https://doi.org/https://doi.org/10.21512/comtech.v3i2.2329>>.

obtain the maximum practical benefits for the community, especially in improving Indonesia's business and investment climate.

2. Overcoming the national economy after the COVID-19 pandemic requires time and the right method of recovery, one of which is by accelerating investment. However, the acceleration of a good investment starts from the availability of land for investors to start building. The problems that often arise and become a barrier for investors to invest and carry out development in Indonesia are expected to be facilitated by the existence of the Land Bank Agency. The presence of the Land Bank Agency which functions as a land keeper, land warrantee, land purchaser, land valuer, land distributor, land manager, is a new and good breath of fresh air in accelerating investment in Indonesia. The Indonesian government, in this case the Land Bank Agency, then became an extension of the state's function to bring prosperity to the community. The process of implementing the Land Bank Agency, of course, cannot be separated from the inventory of land designated by the state to land acquisition for investment. However, what should be emphasized is how the Land Bank Agency remains focused on investments that prioritize ESG principles, which are able to provide a good economic impact in the long term, are friendly to nature and also make a positive contribution to society.

Suggestion

1. For the Government

It is better to pay attention to and improve the performance of the Land Bank in Indonesia, so that the sustainable principles and work orientation of the Land Bank as a Public Service Agency (in Indonesian abbreviation: BLU) can be implemented properly in order to provide the maximum benefit in bringing agrarian welfare to the people, especially investors in developing their business or industry. Not only that, the systematic use of a nationally integrated Land Bank as an information tool for investors should also be carried out in an integral, solution and progressive manner by utilizing the development of information technology in the community.

2. For the Community

The community as the main orientation of the existence of the Land Bank, should have a cooperative attitude towards the legal status of the land and buildings where its business activities are carried out, so as to be able to establish coordination and synergy between the Land Bank and the people which has a good impact on the implementation of the duties and

authorities of the Land Bank when determining the area or ready-to-build areas for business people and investors.

References

- Annaningsih, S. W., "Penerapan Konsep Bank Tanah Dalam Pembangunan Tanah Perkotaan," *Masalah-Masalah Hukum*, 36 (2007), 961-65
<<https://doi.org/https://doi.org/10.21512/comtech.v3i2.2329>>
- Asikin, Zainal, and Amiruddin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Rajagrafindo Persada, 2012)
- Badan Pusat Statistik, "Berita Resmi Statistik 5 Mei 2021"
<https://www.bps.go.id/website/materi_ind/materiBrsInd-20210505113458.pdf>
- Ganindha, Raditya, "Urgensi Pembentukan Bank Tanah Sebagai Alternatif Penyediaan Tanah Bagi Masyarakat Untuk Kepentingan Umum," *Arena Hukum*, 9 (2016), 442-62
<<https://doi.org/http://dx.doi.org/10.21776/ub.arenahukum.2016.00903.8>>
- Jobstreet, "Covid-19 Job Report"
<<https://www.jobstreet.co.id/en/cms/employer/wp-content/themes/jobstreet-employer/assets/report/covid-19-job-report-id/JobStreet-COVID-19-JOB-REPORT-INDONESIA-FINAL-27082020.pdf>>
[accessed 1 July 2021]
- Kementerian Kelautan dan Perikanan, "Konservasi Perairan Sebagai Upaya Menjaga Potensi Kelautan Dan Perikanan Indonesia"
<<https://kkp.go.id/djprl/artikel/21045-konservasi-perairan-sebagai-upaya-menjaga-potensi-kelautan-dan-perikanan-indonesia>> [accessed 20 July 2021]
- Kementerian Koordinator Perekonomian Republik Indonesia, "Akselerasi Pertumbuhan Ekonomi 2021 Dengan Konsumsi Investasi Dan Ekspor"
<<https://www.ekon.go.id/publikasi/detail/908/akselerasi-pertumbuhan-ekonomi-2021-dengan-konsumsi-investasi-dan-ekspor>>
- Komite Percepatan Penyediaan Infrastruktur Prioritas, "Tanah Untuk Kepentingan Umum" <<https://kppip.go.id/opini/tanah-untuk-kepentingan-umum/>> [accessed 21 July 2021]
- Latif, Yudi, *Negara Paripurna: Historisitas, Rasionalitas, Dan Aktualitas Pancasila* (Jakarta: Gramedia, 2011)
- Limbong, Bernhard, *Bank Tanah* (Jakarta: Margaretha Pustaka, 2013)
- Massicotte, Louis, "Omnibus Bills in Theory and Practice," *Canadian Parliamentary Review*, 13 (2013), 13-17
- Mawuntu, J. Ronald, "Konsep Penguasaan Negara Berdasarkan Pasal 33 UUD

- 1945 Dan Putusan Mahkamah Konstitusi," *UNSRAT Repository*, XX (2012), 11-21
- Peraturan Pemerintah Nomor 64 Tahun 2021 Tentang Badan Bank Tanah, 2021
- Soekanto, Soerjono, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia Press, 2007)
- Supanca, IBR., *Laporan Tim Analisa Dan Evaluasi Hukum Hak Penguasaan Negara Terhadap Sumber Daya Alam (UU No. 22 Tahun 2011 Tentang Minyak Dan Gas Bumi)* (Jakarta: Departemen Hukum dan Hak Asasi Manusia RI Badan Pembinaan Hukum Nasional, 2008)
- Susanto, Vendy Yhulia, "Pembentukan Bank Tanah Diklaim Mampu Meningkatkan Investasi" <<https://nasional.kontan.co.id/news/pembentukan-bank-tanah-diklaim-mampu-meningkatkan-investasi>>
- The Law Dictionary, "In Omnibus" <<https://thelawdictionary.org/in-omnibus/>> [accessed 29 July 2021]
- Tisnawan, Hilman, *Optimalisasi Pemberdayaan Kekayaan Negara* (Jakarta: FH UI, 2009)
- Ulya, Zaku, "Ekspektasi Pengelolaan Tanah Terlantar Oleh Baitul Mal Dalam Peningkatan Kesejahteraan Masyarakat," *Jurnal Hukum & Pembangunan*, 46 (2016), 504-20
<<https://doi.org/http://dx.doi.org/10.21143/jhp.vol46.no4.80>>
- Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja, 2020
- Wuryandani, Dewi, "Dampak Pandemi Covid-19 Terhadap Pertumbuhan Ekonomi Indonesia 2020 Dan Solusinya," *Info Singkat - Kajian Singkat Terhadap Isu Aktual Dan Strategis*, XII (2020), 19-24