

Benefits of Establishing a Land Bank for Development in Indonesia

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Abstract

As mandated by Law Number 11 of 2020 on Job Creation, on 29 April 2021 the Indonesian government has enacted Government Regulation Number 64 of 2021 on Land Bank Agency ("GR No. 24/2021"). Land Bank Agency is a special agency called sui generis, formed as a transparent, accountable and non-profit Indonesian legal entity that is established by the central government to be autonomous and independent and is given rights to exercise part of the government authority to manage lands. The Indonesian constitution has provided clear regulations regarding lands in Indonesia under Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which asserts that the power given to the earth, water and natural resources contained therein rests with the state. The state must regulate its ownership and its use. The objective of such stipulation is that all land in its entirety in the territory of the Indonesian nation's sovereignty is used for the greatest prosperity of the people. The Indonesian government hopes that the establishment of the Land Bank Agency will ensure the availability of land for all society groups from the Indonesian people to foreign investors in the field of public interest, social interest and national development to create a fair economy. The Land Bank Agency is viewed to expedite the process in seeking lands for public interest. This article aims to give light on the function of Land Bank for national growth and public interest.

I. Introduction

Currently, national development is taking place on a large scale. The development is focused on aspects that are the mainstay of supporting the welfare and dignity of all Indonesians. National development does not only involve the government as the executor of development and the Indonesian people as connoisseurs of development; private entrepreneurs are also involved in the implementation of national development. Private entrepreneurs and investors also contribute to building the economic climate, which indirectly, consciously or unconsciously, results in the smooth running of national development. With the increase in Indonesia's national development in the form of infrastructure, public facilities, and the development of Indonesia's economic climate, the need for land has also increased. The availability of land in Indonesia will never increase at any time, while population growth and development that continue to increase have resulted in land becoming an increasingly scarce object and asset. In this way, land must be managed in such a way as to provide justice and benefits for all Indonesian people, without exception.

One of the complicated problems that often arises along with the rapid national and economic development in Indonesia's land sector is the problem of providing land for development, especially in urban areas or densely populated areas. This problem arises because, as an area develops, the availability of land in that area will become less and less.

As a result of the scarcity of land, it directly causes land prices in densely populated or urban areas to continue to increase, so that land prices based on the sales value of taxable objects ("NJOP") often become invalid. The high price of land, which often refers to the market price mechanism, arises from imperfect competition. As a result, land acquisition with the aim of national development and economic development now requires very high costs, one of which is to pay compensation to the landowners whose land is to be acquired.

The intense need for higher development coupled with the condition of limited land availability automatically makes it difficult to achieve optimal development in accordance with the needs and development of the community. This poses its own obstacles for the government, which will carry out development, and private business actors, who will carry out investments in Indonesia.

Not only are land prices rising, but convoluted land acquisition procedures are also contributing to development constraints, leaving the government or private sector who need more and are able to use the land parcels immediately unfulfilled, rendering the potential for prosperity unfulfillable materialized.

In principle, the issue of land availability has been accommodated by the legislative council through Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest ("UU No. 2/2012"), which not only regulates land acquisition for development carried out by the government but also for private businesses. The issuance of Law No. 2 (2012) really supports the efforts

of the government in providing land for all needs. However, the procedures for land acquisition mandated in Law No. 2 (2012) took a long time and cost a lot. In addition, if there are land disputes between land owners and land acquisition stakeholders,

In light of this, it is essential to create a separate organization to handle land acquisition concerns in order to prevent the establishment of a disparity between the government's attempts to carry out development and the availability of land. The issue is that when property is acquired for public use, it is done so with the intention of facilitating growth while protecting the legal rights of the intended landowners. This results in an increase in the welfare and prosperity of the community.¹

As a way out of the land acquisition problem, Law Number 11 of 2020 concerning Job Creation ("Job Creation Law") was issued, which first mandated and introduced the establishment of a land bank. The Land Bank was established with the intention of ensuring the implementation of Article 33 paragraph (3) of the 1945 Constitution and promoting a fair, just, and sustainable national development for all Indonesians.

The main objective of establishing the Land Bank institution is to make an effort so that land acquisition for national development does not experience obstacles in the implementation process. Ganindha explained that the purpose of establishing a land bank institution from a government perspective is to:²

- a. Shaping the regional development of society;
- b. Regulate the development of urban planning;
- c. Minimizing land speculation;
- d. Reducing the amount of restoration funds for the community; and
- e. Reducing the amount of public service costs as a result of development patterns.

The state possesses tenure rights over land without holding land rights, according to Law Number 5 of 1960 Concerning Agrarian Principles ("UUPA"). In contrast, the Job Creation Law's notion that a land bank has the authority to provide management rights to property it manages creates the appearance that the state is the true owner of the land, which is contentious in and of itself. Management rights, on the other hand, are land rights that are not governed and are not acknowledged in the BAL.

The Indonesian government finally adopted Government Regulation Number 64 of 2021 regarding land banks, as required by the Job Creation Law. The creation of the Land Bank, according to President Joko Widodo, will facilitate national development and draw foreign investors to conduct business in Indonesia.

¹ Basoeki Hadimoeljono, "Mencari Kelembagaan Pengendalian Pemanfaatan Ruang yang Efektif", *Jurnal Direktorat Tata Ruang dan Pertanahan BAPPENAS Vol. II*, (Juni 2013): hlm. 23.

² Ganindha, R. (2016). Urgensi Pembentukan Kelembagaan Bank Tanah sebagai Alternatif Penyediaan Tanah bagi Masyarakat untuk Kepentingan Umum. *Arena Hukum*, 9(3), 442-462. DOI: <https://doi.org/10.21776/ub.arenahukum.2016.00903.8>

According to the Land Bank PP, the Land Bank is a government institution established as a transparent, accountable, and independent Indonesian legal entity that is given the right to exercise some of the government's authority to manage land. Thus, in practice, the Land Bank institution will act as a bridge between the state and public entities and stakeholders.

Land that has been acquired by the Land Bank will then be managed for distribution to meet the needs of various sectors and used by the Land Bank itself. The main things that are important to regulate with derivative regulations are institutions, the management of land assets, and the distribution of land assets to parties or sectors in need.

Few studies regarding the urgency of the existence of land banks in Indonesia are found in electronic or print media. The land bank's main job is to act as a supporting tool for the implementation of various land policies designed to promote development through just land acquisition. The purpose of this study is to ascertain how quickly the land bank agency should provide land for development. Thus, it is necessary to examine further whether the use of the land owned by the Land Bank can be distributed properly and optimally so as to resolve the existing land problems surrounding development. The author hopes that this article can clarify the benefits of establishing a land bank for national development in Indonesia.

2. Research Method

The research method used by the author is a normative research method, namely, research carried out with reference to legal concepts, legal principles, and legal norms contained in all laws and regulations.

The research materials used consist of primary, secondary, and tertiary legal materials, which will then be analyzed and processed with a qualitative approach in order to understand the meaning of the said legal materials.

Subject Problems

1. What are the Procedures for Distribution of Land Bank Assets?
2. What are the Benefits of the Land Bank for the Acceleration of National Development?

3. Results and Discussion

1. What are the Procedures for Distribution of Land Bank Assets

The Land Bank is a unique entity known as *sui generis* that was established by the central government to be independent and independent and given the right to exercise some of the government's land management powers. It is a

transparent, accountable, and independent legal entity in Indonesia. The Land Bank is an independent organization from the Ministry of Agrarian Affairs and Spatial Planning (the "Ministry of Agrarian Affairs"), which in general has the responsibility and power to control land in Indonesia.

The Land Bank Institution operates using the following structure:³

a. Land Bank Committee⁴

The Committee is responsible for relaying information from the Land Bank organization to the President of the Republic of Indonesia. The Land Bank Committee will consist of the Ministers of Housing, Public Works, and Finance in addition to the Minister of Agrarian Affairs, who will serve as the committee's chairperson. The head and members of the Land Bank Committee will be decided by way of a Presidential Decree, which will take into account the nomination made by the ATR Minister. The Land Bank Committee is a group that has the authority to guide the strategic policies that are implemented by the Land Bank Agency.

b. Supervisory Board⁵

The Executing Body is responsible for carrying out the operational tasks of the Land Bank Agency. The Supervisory Board, which is the organ of the Land Bank, is entrusted with overseeing these activities and offering advise to the Executing Body. Members of the Supervisory Board and its chairman are appointed by the President and consist of a maximum of seven (seven) people, consisting of four (four) people with professional backgrounds and three (three) people selected by the Central Government.

c. Implementing agencies⁶

The Implementing Body is the part of the Land Bank that is in charge of managing the Land Bank in order to further its goals and interests. It is legal for the Implementing Body to represent the Land Bank in and out of court. The chairman of the Land Bank Committee chooses the number of the Implementing Body's deputies, who report to the head of the body. The Chair of the Committee appoints and removes the heads and deputies of the Implementing Body. The Supervisory Board may also provide recommendations about the appointment and removal of the chairman and deputy of the Implementing Body.

According to Article 3 (1) of the PP Land Bank, the Land Bank's responsibilities include managing, using, and distributing land as well as planning, acquiring, and procuring it. According to Article 5 of Presidential Regulation Number 47 of 2020 concerning the Ministry of Agrarian Affairs and Spatial Planning ("Perpres

³ Pasal 31 PP No. 64/2021.

⁴ Pasal 32 PP No. 64/2021.

⁵ Pasal 33 PP No. 64/2021.

⁶ Pasal 34 PP No. 64/2021.

47/2020"), the Land Bank's function to carry out land acquisition activities initially appears to conflict with the authority of the Ministry of Agrarian Affairs and Spatial Planning, which also has the authority to carry out land acquisition. However, as stated in Presidential Decree 47/2020, according to information from Mr. AB, Staff of the Ministry of Agrarian Affairs and Spatial Planning, the Land Bank's procurement authority does not overlap with that of the Ministry of Agrarian Affairs and Spatial Planning. The Land Bank's procurement authority, which is only loosely regulated to meet the Land Bank's needs in working with other parties in accordance with its goals and objectives for land it manages, is the authority for land acquisition under its ownership.

Meanwhile, the authority for land acquisition owned by the Ministry of Agrarian Affairs and Spatial Planning is the authority to carry out land acquisition, not only for land controlled by the state but also for land controlled by other parties, if necessary. Thus, according to Mr. AB, the authority to acquire land owned by the Land Bank and that owned by the Ministry of Agrarian Affairs and Spatial Planning does not overlap.

In addition, the Land Bank institution is responsible for carrying out its duty of land planning in accordance with the national medium-term development plan and the spatial plan, both of which are specified by the Chair of the Executing Agency after receiving permission from the Committee. Planning must cover the following areas: i) long-term planning for 25 (twenty-five) year activities; ii) medium-term planning for 5 (five) year activities; and iii) annual planning for 1 (one) year activities.⁷

Land that can be obtained by Bank Tanak consists of land determined by the government and/or land from other parties. Land originating from a government stipulation consists of state land originating from:⁸

- a. previous land rights;
- b. Abandoned areas and lands;
- c. Land from forest area release;
- d. Raised ground;
- e. Land reclamation results;
- f. ex-mining land;
- g. small island lands;
- h. Land affected by spatial change policy; and
- i. Land that has not been controlled by other parties.

Other parties' land is land obtained from (i) the central government; (ii) local governments; (iii) state-owned enterprises ("BUMN"); (iv) regionally owned enterprises ("BUMD"); (v) business entities; (vi) legal entities; and (vii) the general public, and is obtained through the following process:

⁷ Pasal 5 PP No. 64/2021.

⁸ Pasal 7 PP No. 64/2021

- a. Sale and purchase of land;
- b. Grants/donations or other similar schemes;
- c. Exchange;
- d. Relinquishment of land rights; and
- e. Other legal processes for acquiring land.⁹

Distribution of land through the Land Bank institution can be in the form of land provision activities as well as land distribution. Land distribution is aimed at at least: (i) ministries or agencies; (ii) regional governments; (iii) religious and social organizations; and (iv) communities that have been determined by the central government.¹⁰

In carrying out the functions mentioned above, the Land Bank agency must guarantee the availability of land with the following criteria:¹¹

- a. Public interest (i.e. public roads, toll roads, tunnels, oil and gas infrastructure, geothermal infrastructure, power plants/grids/transmission networks, informatics and telecommunications networks, hospitals, special economic zones, industrial estates, food security areas, technology development sector) ;
- b. Social interests;
- c. National development interests;
- d. Economic empowerment (ie housing for low-income residents);
- e. Land consolidation; and
- f. Agrarian reform, in relation to a minimum of 30% (thirty percent) of state land must be allocated to the Land Bank.

The management of the land acquired by the Land Bank can be utilized by other parties through cooperation and an agreement on the use of land rights between the Land Bank and the other party. Land managed by the Land Bank will then be given Management Rights ("HPL") and then utilized by granting land rights as follows:

- a. Cultivation Rights ("HGU");
- b. Building use rights ("HGB"), which can be extended for a period of time and the rights can be renewed after the land has been used and/or used for the purpose of granting this right; and
- c. usufructuary rights.

⁹ Pasal 8 PP No. 64/2021

¹⁰ Pasal 15 PP No. 64/2021

¹¹ Pasal 16-17 PP No. 64/2021.

The Property Bank may enter into an arrangement with third parties in order to make use of, or transfer ownership of, a portion of the land owned by the HPL. In this scenario, the land rights that were indicated earlier might be hampered by mortgages. In addition, the Land Bank will ensure that land rights granted under the HPL would be extended and renewed in accordance with the conditions outlined in the agreement that is pertinent to the situation. It is possible to give such extensions and renewals immediately upon usage, although this is subject to approval. In this scenario, the Land Bank may engage into a contract governed by civil law that specifies a validity term that is longer and more marketable. In addition, it is important to note that land owned by the Housing and Public Lands Board (HPL) may be converted into public property through the use of the Hak Milik program, provided that the land in question has been appropriately utilized for at least ten (ten) years in certain regions for the purpose of agriculture, plantations, or housing for people with low incomes.

2. What are the Benefits of the Land Bank for the Acceleration of National Development?

The distribution of land managed by the Land Bank aims at public interest, land consolidation, development, and agrarian reform. What's more, the management of the land will be distributed to ministries, government agencies, organizations, institutions, or the community in accordance with policies that have been determined through central government regulations. Arnowo (2022), in his research, explains that the land management system of the Land Bank needs to consider the following aspects:

- a. Land management that provides added value by implementing Land Value Capture so that it can be cooperated with other parties using higher land prices.
- b. Land management using a direct cooperation scheme with other parties.
- c. Management of land without giving any treatment because it will be used for the benefit of development and society.

Arnowo (2022) then explains that the Land Bank's division of land assets, which will be channeled to social interests, national development needs, and economic equity, requires separate arrangements that clearly regulate the scope, purpose of dividing land assets, and mechanism for handing over land assets to determined parties. The disposal of land assets from the Land Bank for the purposes of land consolidation must be linked to the ministry's program as the executor. Meanwhile, arrangements regarding agrarian reform need to be regulated in a separate ministerial regulation as the implementing regulation of Presidential Regulation Number 86 of 2018.

The significant benefit of the land bank for national development is the acceleration of the land acquisition period. As has been stated, one of the

obstacles to national development is the convoluted process of land acquisition, which then results in an increasingly long period of time. For land acquisition carried out by the Ministry of Agrarian Affairs and Spatial Planning, land acquisition must include the following stages:

a. Land acquisition planning ¹²

The Regional Spatial Plan (also known as "RTRW") is used as a foundation for public interest land acquisition planning. The Regional Spatial Plan's development goals are outlined in the Medium-Term Development Plan, the Strategic Plan, and the Government Work Plan of relevant agencies.

This plan is produced and stated in the land acquisition planning document based on the feasibility study that has been carried out as decided by the provisions of the laws and regulations. The research was carried out as specified by the provisions of the laws and regulations.

b. Preparation of land acquisition ¹³

The provincial government and the relevant agencies that need land go through the steps of I notifying the affected communities of the development plan; (ii) collecting initial data on the internal development plan as soon as possible but no later than 30 (thirty) working days after the development plan was notified to the affected communities; and (iii) holding public consultations on the development plan.

c. Implementation of land acquisition ¹⁴

Acquiring land entails the following steps: (i) conducting an inventory and determining control, ownership, use, and exploitation of land; (ii) assessment of losses that can be compensated for, including the land itself, all above- and below-ground space, all buildings and plants, and all other things associated to the stated land; (iii) No later than 30 (thirty) calendar days after the submission of the evaluation results, the Minutes of Agreement shall reflect the results of the deliberations and determination of compensation carried out with the entitled party; (iv) monetary compensation, new land, relocation, stock ownership, or some other kind of compensation mutually agreed upon by the parties; (v) The government's relinquishment of land acquisition objects.

d. Results submission ¹⁵

The last stage is the handing over of the results of land acquisition to the agency that needs the land after compensation has been awarded, related land rights have been released, and/or the compensation has been deposited with the local district court.

The stages of land acquisition for the public interest as described above clearly have long stages that also take a long time. In addition, there is the potential for land disputes if the landowner is not willing to release his land or does not agree

¹² Pasal 14 – 15 UU 2/2012

¹³ Pasal 16 – 19 UU 2/2012

¹⁴ Pasal 37 – 46 UU 2/2012

¹⁵ Pasal 48 UU 2/2012

on the price of compensation being offered. Furthermore, if the state is ultimately forced to pay a high price for compensation because the landowner will only agree if the amount of compensation is consistent with the landowner's request. Meanwhile, through the Land Bank, the stages above can be completely trimmed. Land acquisition for land managed by the Land Bank will only be through the signing of an agreement on the use of land rights between the Land Bank and the party needing land. Thus, the period of time required by the Land Bank to carry out land acquisition based on statutory regulations will certainly be much shorter.

However, in practice, Mr. AB, a staff member of the Ministry of Agrarian Affairs and Spatial Planning, explained that because the formation of the Land Bank is relatively new, there must still be implementing regulations that regulate in detail the stages of land acquisition by the Land Bank. Even so, these steps will not deviate from the existing arrangements in the Land Bank PP.

Furthermore, Mr. AB explained that the Land Bank institution is still being carefully prepared. Thus, there is no land that has been managed or given land rights by the Land Bank to those who need it, both for national development and investment purposes. However, if the Land Bank is able to carry out its functions optimally, Mr. AB is sure that the benefits of the Land Bank will definitely be felt not only by development actors but also by the wider community.

Mrs. S, an investor who wants to build a factory in the Karawang area, stated that she had never received any information about the land bank. As an investor, one of the difficulties faced by Mrs. S is finding a large piece of land at the right price. When the Land Bank is functioning, Ms. S believes that investors who have difficulty obtaining land to carry out business activities will be greatly assisted.

Furthermore, Mr. C, a landowner whose land was bought by Mrs. S, stated that if the Land Bank wanted to buy his land, then Mr. C would have no problem with that as long as the purchase price agreed upon with the Land Bank was in accordance with the market price.

Based on the descriptions above, according to the applicable laws and regulations, the Land Bank will clearly provide benefits for accelerating national development. However, currently the function of the land bank cannot be implemented because its formation is still in the preparation stage. Therefore, the benefits of the land bank for accelerating national development must still be proven in the future.

Furthermore, even though from the description above it can be concluded that the Land Bank has benefits for development, more detailed regulations are still needed regarding the implementation of the Land Bank's authority so that it remains in the corridor so as not to harm the community.

One of the provisions that, if not further regulated, has the potential to violate community rights is the one contained in Article 7 PP No. 64/2021. The article stipulates that the land that can be obtained by Bank Tanak consists of land determined by the government and/or land from other parties, one of which comes from land affected by the change in spatial planning policy.

From the sound of Article 7 of PP No. 64/2021, there is confusion, which, if not straightened out, can have fatal consequences. As is well known, nowadays, arrangements are often issued regarding changes to spatial designation, which have broad implications for the community. Communities that own a house on the basis of property rights can be affected by changes in spatial allocation, for example when land allotment changes to green belt land where, based on regulations, no buildings are allowed to be built on it.

The author has personally experienced something similar, in which the author owns a piece of land with the right to build a house. Then suddenly the land was planned for road construction, so the writer could not build a house on it. However, after submitting an application for a review of land use, the designation of the land for the construction of the road was finally revoked because it did not correspond to the real surrounding conditions. so that the author, as well as the surrounding community, can build buildings on the land.

If Article 7 of PP No. 64/2021 is not further regulated, if suddenly there is a change in land use that in fact does not correspond to the actual conditions of the area, will the land automatically become the property of the Land Bank? What about the community that owns the affected land? Can the community not take any legal action to change the policies that have been set if they are not in accordance with the surrounding conditions?

Thus, even though the Land Bank has the potential to bring benefits to national development, attention must also be paid to the issuance of other regulations that support the exercise of the Land Bank's authority. Considering that regulations regarding land banks are still at the level of government regulations, which are not very detailed, other implementing regulations must be issued to fill in the blanks in PP 47/2021.

4. Conclusion

The Land Bank was founded by the central government of Indonesia as a separate and distinct legal organization with the capacity to carry out certain of the government's responsibilities in land management. This makes it a *sui generis* agency, which means it is one of a kind.

To fulfill its mission, the Land Bank must guarantee access to land for the purposes of public welfare, social welfare, national development, economic empowerment, land consolidation, and agricultural reform. Cooperation and an agreement on the use of land rights between the Land Bank and the other party are necessary for the utilization of the management of the land purchased by the Land Bank.

The significant benefit of the land bank for national development is the acceleration of the land acquisition period. As has been stated, one of the obstacles to national development is the convoluted process of land acquisition,

which then results in an increasingly long period of time. For land acquisition carried out by the Ministry of Agrarian Affairs and Spatial Planning, land acquisition must include the stages of (i) land acquisition planning; (ii) land acquisition preparation; (iii) implementation of land acquisition; and (iv) submission of land acquisition results.

Meanwhile, through the Land Bank, the stages above can be completely trimmed. Land acquisition for land managed by the Land Bank will only be through the signing of an agreement on the use of land rights between the Land Bank and the party needing land. Thus, the period of time required by the Land Bank to carry out land acquisition based on statutory regulations is much shorter.

Even so, implementing regulations regarding the authority of the Land Bank still need to be issued because there are still articles in PP 64/2021 that have the potential to harm the community. Thus, if there are no adequate implementing regulations, the existence of a land bank may bring problems in the future. Therefore, in order to benefit national development as well as the community, the government needs to issue an implementing regulation that can fill the regulatory vacuum in PP 47/2021.

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