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LAND BANK MAINTAINS THE EXISTENCE OF LAND ACQUISITION FOR DEVELOPMENT

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Abstract

This study aims to analyze the urgency of land banks in maintaining the existence of land acquisition for development. This research method uses normative legal research methods with a statutory approach and a conceptual approach. The types and sources of legal materials used are primary, secondary and non-legal legal materials. The method of collecting legal materials uses the method of literature study. Analysis of legal materials using qualitative descriptive analysis. Based on the results of the study, it shows that the urgency of the Land Bank in land acquisition activities for development has the function of overcoming the problem of the form and value of compensation for land acquisition objects, preventing the growth of inventory of land needs for development activities for the public interest and reducing the implementation of land acquisition activities that require large costs and that take people's rights to their land.

Keywords: development; land acquisition; land bank

1. INTRODUCTION

The land has a strategic position for the nation and state. In addition, the land for the Indonesian people contains social, economic and cultural values. The economic value of land is that land is the main element in production, increasing the value of land can be done through agricultural and plantation businesses. The cultural value of land is that land is a medium for shaping creation, taste and taste by across generations.

The constitutional basis for the regulation of land can be seen in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which stipulates that "the earth, water, and natural wealth contained therein, are controlled by the state and used for the greatest prosperity of the people". The implementation of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 was then born Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles which regulates that: "On the basis of the provisions in Article

33 paragraph (3) of the Basic Law and matters as referred to in Article 1, earth, water and space, including the natural wealth contained therein are at the highest level controlled by the state as an organization of power of all people (Article 2 paragraph (1) of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles)."

The definition of being controlled in Article 2 paragraph (1) of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles above does not mean owned but is interpreted by granting authority to the state as an organization of power from the Indonesian nation (Right to Control the State). Based on the right to control from the state that gives the authority to regulate, organize and determine in Article 2 paragraph (2) of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, the meaning of the Right to Control from the State referred to by the 1945 Constitution of the Republic of Indonesia is as a legal relationship that is solely public.

On the basis of the Right to Control from the State, it is determined that there are various rights to land that can be owned by individuals or legal entities. This is regulated in Article 4 paragraph (1) of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles which stipulates that: on the basis of the right to control from the state as referred to in Article 2, it is determined that there are various rights to the earth's surface land, called land, which can be given to and owned by people, either alone or together with other people and legal entities.

The Indonesian government is currently actively or intensively implementing infrastructure development to improve the community's economy. Development is a human effort in managing and utilizing resources to be used to meet needs and improve the welfare of life. To carry out development, the government needs a lot of lands. Therefore, the government is obliged to provide the land needed for development, namely from state land that is not controlled by the people.

One of the complicated problems in Indonesia's land sector is the lack of availability of land for development and other purposes such as social interests, national development interests, economic equality, land consolidation and agrarian reform. The lack of availability of land controlled by the state, the only way to go is to acquire land owned by the people, both controlled by customary law and other rights attached to it. One of the land acquisitions owned by the people can be carried out through Land Acquisition activities as stipulated in Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest with appropriate compensation (Sumardjono, 2015).

Based on this, it has not been able to overcome existing problems, especially related to land management for various interests, mainly for development purposes, namely the establishment of a Land Bank Institution or called a Land Bank. As stipulated in Government Regulation Number 64 of 2021 concerning the Land Bank Agency.

Similar studies have been conducted previously by some researchers. Busroh & Santiago (2017) in their research about *'the Establishment of Land Bank Institutions for Strengthening the National Development'*, revealed that policies relating to land bank institutions

established as instruments to support development which should be transparent because they are of public interest. The required land is partly from the community and the subsequent allocation is also intended for the benefit of society as a whole. Meanwhile, Darwita (2021) in her study that examined *'The Existence of Land Bank Institution in Supporting Land Procurement for National Development in Perspective of Indonesian Agrarian Law'* showed that the Land Bank whose existence is to support land acquisition for development must really be carried out as well as possible so that there is no impression that its existence is an order from certain parties, prioritizing abandoned state lands or abandoned lands to be managed and being exploited and taking privately owned land is the last option. The implementation of the land bank must be in accordance with the regional planning that has been determined both nationally and at the provincial and district levels.

Based on the background, the various problems and the previous studies above, thus this study aims to the urgency of the land bank in maintaining the existence of land acquisition for development.

2. METHOD

The type of research used is normative legal research or doctrinal legal research. In this type of legal research, often the law is conceived as what is written in laws and regulations (law in books) or the law is conceptualized as a rule or norm (Nugroho, 2020). The normative legal research method is carried out with a statutory approach and a conceptual approach. The types and sources of legal materials used are primary, secondary and non-legal legal materials. The method of collecting legal materials uses the method of literature study. Analysis of legal materials using qualitative descriptive analysis.

3. DISCUSSION

The Urgency of Land Banks in Maintaining the Existence of Land Acquisition for Development

The legal basis for the establishment of a Land Bank is Law Number 11 of 2020 concerning Job Creation. The establishment of a Land Bank is regulated in Article 125-135 of Law Number 11 of 2020 concerning Job Creation. The implementing regulation of Article 125-135 of Law Number 11 of 2020 concerning Job

Creation related to Land Banks is Government Regulation Number 64 of 2021 concerning Land Bank Agencies. Article 1 paragraph (1) of Government Regulation Number 64 of 2021 concerning the Land Bank Agency stipulates that: "The Land Bank Agency, hereinafter referred to as the 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."

The form of activities of the Land Bank according to Nur (2009) is the provision of land, land maturation and land distribution. The Land Bank can provide land by means of land acquisition, buying and selling, and exchanging. In land maturation activities, the Land Bank prepares facilities and infrastructure as well as supporting facilities. Then at the distribution stage, the land is distributed according to the plan of its allotment.

One of the functions of a Land Bank based on Article 3 paragraph (1) letter c of Government Regulation Number 64 of 2021 concerning the Land Bank Agency is to carry out Land Acquisition. Then Article 9 of Government Regulation Number 64 of 2021 concerning the Land Bank Agency stipulates that Land Acquisition as referred to in article 3 paragraph (1) point c is carried out through the mechanism of the stages of Land Acquisition for development for the public interest or Land Acquisition directly. Furthermore, Article 1 paragraph (2) of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest determines that "Land Acquisition is an activity of providing land by providing appropriate and fair compensation". Basically, Land Acquisition is carried out by the government but based on Article 123 paragraph (1) of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest, Land Acquisition can also be carried out by the Land Bank, with sources of funds coming from the company's internal and/or other sources in accordance with the provisions of laws and regulations.

Based on the theory of the concept of a land bank according to F. Alan Shirk in (Gasteyer & Johansen, 2015), "A land bank is not actually a "bank", in the traditional sense of the word. There are no drive-up ATMs, no tellers, and no home equity or auto loans". Although the Land

Bank is not a conventional bank, in principle the concept of a Land Bank with a conventional bank is not much different. The equation lies in the intermediation function of conventional banks and Land Banks. The difference is that conventional banks collect money or funds from the public in the form of current accounts, deposits, savings and deposits and then return them back to people who need funds through the sale of financial services. Meanwhile, the Land Bank collects and develops land from communities, especially abandoned and State Land that is not used for distribution or rentback. On the other hand, a person or legal entity controls a large piece of land but is not cultivated according to the provisions of the circumstances as well as the nature and purpose of their rights, and is more likely to be abandoned (Idris & Utama, 2018).

According to Alexander (2011), land banking is the process or policy by which local governments acquire surplus properties and convert them to productive use or hold them for long-term strategic public purposes. Land banks are public authorities or special purpose not-for-profit corporations that specialize in land banking activities. Land banking can be undertaken by other public agencies, and not all communities need to create a separate land bank. Furthermore, Kildee & Hovey (2010) explained that: "Land banks are not financial institutions. They are public or community-owned entities created for a single purpose: to acquire, manage, maintain, and repurpose vacant, abandoned, and foreclosed properties-the worst abandoned houses, forgotten buildings, and empty lots".

The definition and activities of the Land Bank can be:

Land Bank in the context of the public sector as a government strategy to deal with urban renewal, preserve open space and stabilize land value in certain areas;

Technically, a Land Bank is a practice of purchasing/expropriating land with the intention of being developed/matured to meet future development needs;

The Land Bank is a concept related to accessing land for the purpose of providing public services for housing, industry, with land management, directing the land market as well as preventing land speculation.

Meanwhile, according to Limbong (2013), the Land Bank is a land

management instrument to deal with various issues such as land transfer and more effective land use. Based on the definition of understanding the Land Bank above, the Land Bank can be termed with the words "land bank" and "land banking". Land bank refers to an institution in land management, while land banking refers to the form of activity of a Land Bank institution.

The form of Land Bank activities consists of General Land Banking and Special Land Bank (Special/Project Land Banking). General Land Banking is run by government agencies to organize the provision, maturation, and distribution of land for all types of use both for public and private use. Meanwhile, the activities of the Special Land Bank (Special/ Project Land Banking) consist of providing land for urban renewal, industrial development, housing development, and construction of various public facilities.

Land Banks can be run by public institutions and private organizations or a combination of the two. Thus, the types of Land Banks include Public Land Banks and Private Land Banks or a combination of both. Then, according to Alexander (2011), land banks can exist as independent public legal entities created at the local level pursuant to statewide enabling legislation, as an independent authority authorized by statute, or as a non-profit entity. Frank also stated that to accomplish its task of facilitating the transformation of vacant and abandoned properties, a land bank must have specific legal powers. The special authorities are Property Acquisition, Property Management, and Property Disposition.

The stages of the Land Bank's activities in the provision of land can be divided into three activities, namely:

The provision stage, which is the initial activity of the Land Bank, is to acquire land that can be done through land acquisition, disenfranchisement, sale and purchase, exchange, or acquisition of abandoned lands. Based on the form and activities of the Land Bank, the method of obtaining land can be distinguished for general Land Bank activities and special Land Bank activities.

The maturation stage, namely soil maturation activities is the activity of preparing facilities and infrastructure or supporting facilities, including the manufacture of roads, sanitation channels and so on.

Stage of soil distribution. That is, the last stage is the distribution of soil after going through the soil maturation process. The land is then distributed according to its needs, namely for social (government) or commercial (private) interests. Before the distribution of Land Bank institutions, they have prepared data in advance, including; what amount/area of land is the object of the Land Bank; which parcels of land are the priority (general or special); how long it takes for ripening before distribution; What percentage of the amount of available land can be distributed and how is the distribution of land.

In its application, the Land Bank can perform a number of functions. According to Alexander (2011), the function is: "One important function of a land bank is to recognize the special nature of these properties and create a far greater degree of flexibility in the terms and conditions under which the properties can be conveyed to third parties". Furthermore "Land bank generally does not serve as a developer for the properties in its inventory. It will instead either hold onto the legal title for the property for which there is no demand at all or will convey the property to an eligible transferee for use in accordance with the land bank's policy priorities".

Himawan Arief Sugoto in Alisa (2021) explained the background of the formation of the Land Bank, namely as follows:

Land prices continued to rise sharply in the middle of the city;

Urban sprawling due to land problems in the middle of the city;

The low supply and high demand for land that causes GAP is the limited availability of land versus the need for large land. It is further explained that so far it is known the existence of State Land, but *de facto* the government cannot control the land. Of course, the government only plays the role of land administrator while the role of executor still does not exist. Therefore, a solution is needed so that the government has this function to become an executor by forming a Land Bank Agency.

Yagus Suyadi in Alisa (2021) explained that in essence, the Land Bank is present in order to carry out the authority of the state, a form of the implementation of the Right to Control from the State. On the other hand, there is an interest in optimizing the use of land throughout

Indonesia which in turn is to improve the welfare of the community.

The specific purpose of establishing a Land Bank can be seen in Article 126 of Law Number 11 of 2020 concerning Job Creation which regulates that: The Land Bank Agency guarantees the availability of land in the framework of an equitable economy to:

- Public interest;
- Social interests;
- National development interests;
- Economic equality;
- Land consolidation; and
- Agrarian.

Based on Article 3 of Government Regulation Number 64 of 2021 concerning the Land Bank Agency, it stipulates that the Land Bank has the functions of planning, land acquisition, land acquisition, land management, land use and land distribution. The function of the Land Bank is explained in Article 5 to Article 15 of Government Regulation Number 64 of 2021 concerning the Land Bank Agency.

Himawan Arief Sugoto in Alisa (2021) explained that the Land Bank Agency carries out planning, acquisition, and even procurement. After the Land Bank gets its own income for its development, the Land Bank can carry out procurements both procurements carried out according to the Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest or buying directly to the community. Then the Land Bank must also manage, where this management task must be managed so that the land is maintained, for example, land that originally came from abandoned land must be kept from being abandoned or prepared into a ready-to-build area. This includes controlling land prices and also controlling land conversion. Then the land is utilized and redistributed. Furthermore, the Land Bank should not build itself because the task of the Land Bank is only to provide land. Land Development carried out by the Land Bank is carried out if the land managed by the Land Bank is tilted, damaged and so on at the time of land acquisition, it is necessary to make improvements such as providing road access and so on.

Article 16 of Government Regulation Number 64 of 2021 concerning the Land Bank Agency stipulates that in carrying out the functions and duties as referred to in Article 3, the Land Bank guarantees the

availability of land in the context of an equitable economy for the public interest, social interests, national development interests, economic equality, land consolidation, and agrarian reform.

Based on Article 31 of Government Regulation Number 64 of 2021 concerning the Land Bank Agency, it is stipulated that the structure of the Land Bank consists of a Committee, a Supervisory Board, and an Implementing Agency. Himawan Arief Sugoto explained that the Land Bank is actually not directly under the supervision of the Ministry of ATR/BPN. The Land Bank is under the umbrella of the Committee, where the Committee is chaired by the Minister of ATR/BPN. So, it's like the Land Bank is a cousin of the National Land Agency.

Based on Government Regulation Number 64 of 2021 concerning the Land Bank Agency, it is stipulated that the Land Bank is a special entity (*sui generis*) in the form of an Indonesian Legal Entity. *Sui generis* institutions are institutions outside the government established through legislation, these institutions exercise some of the authority that was previously governmental authority but is autonomous or independent.

Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 64 of 2021 concerning the Land Bank Agency stipulate that the Land Bank has the function of Land Acquisition and has the authority to carry out Land Acquisition. This is regulated in Article 129 paragraph (4) of Law Number 11 of 2020 concerning Job Creation, based on the provisions of Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest and the provisions of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest, then in Land Acquisition activities the Land Bank is domiciled as an agency that requires land because it gets special assignments of the central government. This means that the Land Bank should not carry out Land Acquisition on its own initiative nor should it be due to obtaining special assignments from other agencies.

The position of the Land Bank in Land Acquisition activities as an agency that requires land because it gets a special assignment from the central government contains two different meanings, namely as follows: First, that if the Land Bank

requires land for development for the public interest, it can be obtained through Land Acquisition activities after obtaining a special assignment from the central government. Normatively, this can be justified because Government Regulation Number 64 of 2021 concerning the Land Bank Agency regulates Land Banks in carrying out land development in the form of construction of infrastructure facilities and infrastructure for industrial estates, tourism areas, agriculture, plantations, special economic zones, other economic zones that support Land Bank activities where all of these things are included in the category of public interest. However, according to the author, the use of this meaning is inappropriate, because it would be contrary to the function of the Land Bank as a provider of land, one of which is for development in the public interest. Second, if the Central Government requires land for development for the public interest, it can be obtained through Land Acquisition activities by giving a special assignment to the Land Bank to act on behalf of the central government as an agency that requires land. The author himself agrees more on this meaning in viewing the position of the Land Bank as an Agency that requires land because it gets a special assignment from the central government. This is because the task of carrying out development for the public interest is the duty of the central government and other government agencies while the Land Bank only serves as a provider of land for development for the public interest.

The source of land acquisition funds carried out by the Land Bank because it received a special assignment from the central government was sourced from internal Land Bank companies. Based on Government Regulation Number 64 of 2021 concerning the Land Bank Agency, the source of funds from the internal Land Bank can be sourced from the state budget, own income, state capital participation, Land Bank capital, loans, and other legitimate sources.

4. CONCLUSIONS

Based on the explanation above, it can be concluded that with the position of the Land Bank in Land Acquisition activities as a Government Agency that requires land because it has a special assignment from the Central Government, the functions of the Land Bank in land acquisition activities for development include: a) Can overcome the issue of the form and value of

compensation for land acquisition objects that rarely obtain the agreement of all parties. b) Can prevent the growth of inventory of the need for land for development activities for the public interest. This is because the concept of the Land Bank is to collect land first and then distribute it. c) Can reduce the conduct of land acquisition activities that require large costs and that take away the rights of the community to their land. This is because the Land Bank can also provide land for development for the public interest through the acquisition of land obtained from the government's determination and from other parties.

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