



Legal Construction for The Establishment of Land Banks in Land Procurement for Fair Public Interest

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Abstract

The purpose of this study is to examine and describe the urgency of establishing a land bank and the implications of the authority of a land bank in realizing land acquisition for the public interest that is equitable in Indonesia. The method used in this research is normative legal research and the approaches used are the legislative approach, the historical approach, the comparative approach and the conceptual approach. The results of this research indicated that land is driven by Indonesia's urgency to the problem of very large land needs, which will later be used as a forum for investment activities. The implication of the Land Bank's Authority in the Job Creation Act and the government regulation of land banks raises several problems, namely, firstly, overlapping authorities with other land institutions. Second, the strengthening of Land Management Rights related to the authority of the land bank is intended to provide facilities and/or licensing services more aimed at increasing investment than as much as possible for the prosperity of the people, this has a very broad impact including 1) Causing an increase in the number of Agrarian Conflicts; 2) Bringing back the principle of *Domein Verklaring*; 3) Weakening of the existence of customary law communities and their *ulayat* lands; and 4) the overlapping authority of the land agency.

Keywords: authority; land acquisition; land bank

I. INTRODUCTION

Article 125 to Article 135 of Law Number 11 of 2020 concerning Job Creation in the State Gazette of the Republic of Indonesia of 2020 Number 245 and the Supplement to the State Gazette of the Republic of Indonesia Number 6673 (hereinafter referred to as the Job Creation Law), it is stated that a new institution will be formed in the form of the Land Bank Agency which is allegedly a solution to address the difficulties of land acquisition for public interest in Indonesia. Upon the implementation of these provisions, Government Regulation no. 64 of 2021 concerning Land Bank Agency in the State Gazette of the Republic of Indonesia of 2021 Number 109 and Supplement to the State Gazette of the Republic of Indonesia Number 6683 (hereinafter referred to as Government Regulation of Land Bank Agency). Based on Article 1 point 1 PP of the Land Bank Agency, it is stated that the Land Bank Agency, hereinafter referred to as the Land Bank, is a special agency (*sui generis*) which is an Indonesian legal entity established by the central government which is given special authority to manage land. Land bank agencies are expected to systematically acquire land for land that has not been developed, abandoned land, or that has been left vacant and is considered to have the potential for development (Limjong, 2013:70). However, in reality, the regulations regarding Land Banks in the Job Creation Act and Government Regulation of Land Bank contain many conflicts. Efforts to build a Land Bank as an institution that assists the government in the management of state asset lands should

be accompanied by granting the right position, duties and functions to the Land Bank, but the regulation regarding the position, duties and functions of the Land Bank in the Government Regulation of Land Bank actually reflects the concept of a dichotomy that will have implications for the authority of the Land Bank for land management. In the Big Indonesian Language Dictionary (KBBI), the dichotomy is defined as the division of two groups that contradict each other or the existence of ambiguous conditions (KBBI, 2021). Thus, the concept of the dichotomy of the position of the Land Bank shows that there are 2 (two) positions of the Land Bank that have contradictory tendencies, namely:

The position of Land Bank is placed as a representative of the state. As a representation of this state, the Land Bank is given public authority in land management.

The position of the Land Bank as the subject of the land is the Management Right which is given the private authority to cooperate in the utilization of the Land with the Management Right.

The granting of private authority is considered too broad and open, especially through Article 137 paragraph (2) letter b and Article 138 paragraph (1) and paragraph (2) of the Job Creation Law as well as in Article 11 paragraph (1) jo. Article 11 paragraph (3) and Article 14 Government Regulation of Land Bank to Land Bank will affect the performance of the Land Bank which is oriented to public services. The private authority that is too broad and open is considered to be a core business because the Land Bank as a state representative institution is given the opportunity to work like a private institution to seek its own profit so that the spirit of public services to manage land based on justice and people's prosperity will fade.

Based on this, there is a conflict of norms between private authority which is too broad and open through several business activities and their cooperation to seek profit as a source of funds as regulated in Article 137 paragraph (2) letter b and Article 138 paragraph (1) and paragraph (2). The Job Creation Law as well as in Article 11 paragraph (1) jo. Article 11 paragraph (3) and Article 14 Government Regulation of Land Bank which is contrary to the spirit of public service for Land Bank as mandated by Article 2 paragraph (2) of the Law on Basic Regulations on Agrarian Principles which is oriented towards public services in order to realize people's prosperity.

The study conducted by AlZahra (2017) in analyzing the land bank's concept in finding a legal construction of land bank regulations to realize fair management of state land assets in Indonesia, showed the research results that the legal construction of regulations for a land bank as an effort to realize fair management of state land assets can be achieved with regulations equal to the law. Values of fairness, legal certainty, and legal usefulness in the organization of a land bank must be included in the legal and normative basis of the content of the proposed law. In addition, Suyudia & Suhattanto (2019) in their study that examines the strategic aspects of establishing land banks in land acquisition for public interest in Indonesia, revealed the research results that Land Banks become a priority to be immediately implemented in Indonesia because land acquisition process in Indonesia has experienced various obstacles. Therefore, the purpose of this study is to examine and describe the urgency of establishing a land bank and the implications of the authority of a land bank in realizing land acquisition for the public interest that is equitable in Indonesia.

II. METHOD

In the preparation of this research the type of research used is a normative legal research method, because this research departs from the conflict of norms of Article 137 paragraph (2) letter b and Article 138 paragraph (1) and paragraph (2) of the Job Creation Law as well as in Article 11 paragraph (1) jo. Article 11 paragraph (3) and Article 14 Government Regulation of Land Bank which is contrary to Article 2 paragraph (2) of the Law on Basic Regulations on Agrarian Principles. The approaches used to solve the problems in this research are the Legislative Approach, the Historical Approach, the Comparative Approach and the Conceptual Approach. Source of the legal materials that is used to support the discussion of the above problems are primary legal materials, legal

materials. Legal materials collection techniques by recording via file system (Suwitra, 2009:65-66). The legal analysis in this study uses the principle of legal preference coupled with the legal interpretation method because this thesis departs from the existence of a conflict of norms between the mandates of Article 33 paragraph (3) of the 1945 Constitution jo. Article 2 paragraph (2) of the Law on Basic Regulations on Agrarian Principles which contradicts Article 137 paragraph (2) letter b and Article 138 paragraph (1) and paragraph (2) of the Job Creation Law as well as in Article 11 paragraph (1) jo. Article 11 paragraph (3) and Article 14 PP Land Bank, namely regarding the authority of land banks in Indonesia which results in unclear construction of laws and regulations regarding the land bank agency itself.

III. DISCUSSION

The Urgency of Establishing a Land Bank in Land Procurement for Public Interest

Maria SW. Sumardjono stated that land politics is aimed at ensuring justice for all people to obtain a right to land and have the same opportunity to obtain a share of the benefits of the land for themselves and their families. That is, at the level of national legal instruments, land rights that are known in the community or individual rights of each individual should not prevent the state's right to control from granting other rights to land for the sake of a larger and more beneficial interest. for all Indonesian people with the aim of achieving prosperity for all Indonesian people (Salfutra, 2019:46). Based on the explanation above, the establishment of a land bank cannot be separated from the State's Right to Control (hereinafter referred to as HMN) and the principle of the social function of the land. HMN must be used as the constitutional basis and the social function of land as legal standing to be able to carry out the management of lands in the territory of Indonesia. With this foundation, land banks can optimize the function of land as a national agrarian object to provide benefits and prosper the Indonesian people.

This situation gave rise to the idea of establishing a land bank, which even emerged in the 80s. In Indonesia, activities that can be called embryonic land banks include the Jakarta Industrial Estate Pulo Gadung (JIEP) in Jakarta and the Surabaya Industrial Estate Rangkut (SIER) in Surabaya (SIER, 2022). In concept, the government's consideration in establishing the former land bank in urban areas is because the government is obliged to protect greenbelt areas, namely green open spaces and agricultural areas in urban buffer areas. On the other hand, the government is expected to prevent the development of cities towards peri-urban areas by preventing land conversion. The conversion of rural land into or agricultural land into new urban lands of course requires government intervention in the form of land conventions carried out, Achmad Nurmandi stated that there are several land conversion activities that the government can carry out, one of which is by establishing a Selective Land Bank (Nurmandi, 2006:153-154).

Through land bank institutions, the government can also impose quotas on land distribution to developers by limiting its area, limiting the time of location permits, and supervising developers by imposing penalties if it is proven that the land has not matured and makes land an object of speculation. Land banks can also control land prices through the land price estimating committee, and by imposing land taxes in the form of a betterment tax, or capital gains tax. And the vacant land tax. Land sales can also be carried out by land banks with reference to the current land price (present value) in the sense of not pursuing profits. In addition, land banks can minimize the problem of land speculation which causes land prices to continue to soar, land banks will also foster healthy competition among developers so that the provision of land for social and community-based purposes can be realized (Nur, 2010:176).

Based on this, it can be seen that the initial urgency of establishing a land bank in Indonesia is to: 1) ensure the realization of the objectives formulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia; 2) As an instrument to implement various land policies and support regional development efficiently and effectively; and 3) Control the procurement, control, and use of land in a fair and reasonable manner in carrying out development; and 4) Addressing land issues in

Indonesia. However, the urgency of establishing a land bank after the creation of the Job Creation Act and the PP on Land Banks is driven by Indonesia's urgency in the problem of very large land needs, which will later be used as a forum for investment activities (Setiadi, 2021).

The inclusion of the substance of the land bank in the Job Creation Act has changed the previous government's thoughts to form a land bank that is oriented towards the greatest prosperity of the people through public services in the land sector. In fact, the establishment of a land bank cannot be separated from the investment spirit of the Job Creation Act as the law for its formation. If it is related to the existence of Land Banks in the Netherlands and America, there are many differences which are described as follows:

The existence of land bank in Netherlands

The legal umbrella for Land Banks in the Netherlands is regulated in 1) the Land Consolidation Act, 1954 (Land Consolidation Act, 1954); 2) the Rural Area Development Act (The Rural Area Development Act, 1985); and 3) the Act on Spatial structuring of the rural areas, 2005), (Dijk et al. 2005). Land Banks in the Netherlands only consist of Public Land Banks under the auspices of 2 ministries including 1) State Domains Service (*Domeinen*) which is under the auspices of the Ministry of Finance and 2) Service of *Ijssellake* Polders (RIJP) which is under the auspices of the Ministry of Transport and Water. The mechanism for implementing a Land Bank in the Netherlands is divided into 3 stages, namely the land collection stage, the land management stage, and the land distribution stage (Damen, 2004).

The existence of land bank in United States

The United States Constitution which consists of several states causes Land Bank regulations in the United States to be divided into 2, namely central regulations and state regulations. Central regulations, including the Housing and Economic Recovery Act/ (HERA), 2008 and the American Recovery and Reinvestment Act (ARRA), 2009, amend some of the substances regulated in the HERA. Meanwhile, state regulations include: The Michigan Land Bank Fast Track Authority statute and the Ohio Land Banking Legislation (Alexander, 2005:6). Landbank in the United States consists of 2 types, namely Public Land Bank and Land Bank Mixed. Public Land Bank, can be in the form of (1) An independent land bank institution established by law; (2) Institutions resulting from cooperation between departments within the government; (3) Land Bank activities as part of the national government land program. A mixed Land Bank, can be an institution as a result of collaboration between (1) the government and investors (private) or (2) the government and non-profit institutions such as CDC's (Community Development Corporation) (Alexander, 2011:18). In the United States the Mixed Land Bank is more prominent than the Public Land Bank. The mechanism for operating a Land Bank consists of 3 (three) stages, namely: (1) the stage of collecting or expropriating abandoned lands or tax confiscations; (2) the land management stage; (3) the land reuse stage (Tappendorf & Denzin, 2011).

The Existence of the Land Bank in Indonesia

Regulations for the establishment of a land bank in Indonesia emerged after the enactment of the Job Creation Act and subsequently an implementing regulation in the form of a Government Regulation of Land Bank was formed. The land bank which is proclaimed to be formed by Indonesia obtains attribution authority. Indonesia already has regulations regarding land banks, but Indonesia has not yet established an institution for the land bank itself. It is planned that the land bank will be completed in 2023. Looking at the arrangements for the establishment of a land bank that will be launched in Indonesia, the concept/type of land bank that will be formed is not clearly explained. The concept/type of land bank should be clearly defined in countries that have land bank institutions such as the Netherlands and America. The ambiguity of the concept/type of land bank is seen in the position, duties and functions of the Land Bank in the Government Regulation of Land Bank, instead reflecting the concept of a dichotomy which later has implications for the authority of the Land Bank to manage land.

Article 26, Article 32, Article 33, Article 34, Article 44 and Article 48 PP of the Land

Bank instructs to further regulate the structure and operation of the Land Bank in a Presidential Regulation (Perpres). Finally, as the executor of the Government Regulation of Land Bank, on December 27, 2021, the government established Presidential Regulation No. 113 of 2021 concerning the Structure and Operation of the Land Bank Agency (hereinafter referred to as the Presidential Decree on the Structure and Operation of the Land Bank). After the Decision of the Constitutional Court No. 91/PUU-XVII/2020, the Job Creation Law and its implementing regulations do not have binding legal force since it was decided by the Constitutional Court on November 25, 2021, until the revision of the Job Creation Law has been made within 2 years since November 25, 2021. Decision point 3 means that the Creator Law and its implementing regulations are declared “conditionally unconstitutional” or conditionally unconstitutional (contrary to the Constitution) at the time the decision is read (25 November 2021) and become constitutional (not contradictory to the Constitution) if they meet the stated requirements. determined by the Constitutional Court, namely the revision of the Job Creation Law and implementation regulations within 2 years. If it is not corrected, then the Job Creation Law becomes permanently unconstitutional (Decision item 5). If the Job Creation Law is not corrected within 2 years, then based on Decision point 6, the answer is the consequences, namely: the law, or articles or material content of the law that has been revoked or amended by the Job Creation Act, is declared to be re-applicable.

Understanding Decision Point 7, regarding the Job Creation Law (and implementing regulations) which have no binding power, all actions and policies must be suspended for 2 years during the revision of the Job Creation Law. Articles 125-135 of the Employment Creation Law and the Government Regulation of Land Bank have temporarily no binding legal force, and for 2 years the revision of the Job Creation Law may not issue new implementing regulations. Thus, Presidential Decree No. 113 of 2021 concerning the Structure and Operator of the Land Bank violates the Constitutional Court's Decision No. 91/PUU-XVII/2020 significantly. Therefore, Presidential Decree No. 113 of 2021 concerning Land Bank Structure and Operators should be considered null and void and have no legal consequences.

Based on this, if examined from the theory of legal certainty from Van Kan, namely on certainty in or in the law, it means that certainty in law is achieved if the law is as much as the law, there are no conflicting provisions (laws are based on a logical and definite system). , made based on legal reality (*rechtswerkelijkheid*), and in it, there are no terms that can be interpreted differently (closed) (Suwitra, 2009:65-66). it is clear that the regulation and construction regarding the establishment of a Land Bank in Indonesia do not reflect legal certainty. This legal uncertainty can be seen from the unclear concept/type of land bank so that it affects the position/position of the land bank in the structure of the land bank in Indonesia, the internal structure of the land bank, and overlapping authority arrangements with other institutions. Establishing a Land Bank in Indonesia as an institution is indeed very important in order to assist the government in optimizing land and solving various land problems in Indonesia, it should be appreciated, but its pouring in the form of legislation to establish a real Land Bank in Indonesia must be understood and reconstructed locally. in order to realize the goal of national land, namely to realize the greatest prosperity of the people.

Implications of Land Bank Authority

The strengthening of HPL in the Employment Copyright Act and the PP on land banks is intended to facilitate the purpose or direction of the legal politics of the establishment of the regulation, namely to facilitate investment and make land one of the media or means of holding the investment. The strengthening of HPL in the Employment Copyright Law and Government Regulation of Land Bank is marked by the granting of authority to the Land Bank to manage HPL land on which the right to cultivate, the right to build, and the right to use are given. Article 129 paragraph (1) of the Job Creation Law in conjunction with Article 40 paragraph (1) of the PP on Land Banks stipulates that land managed by a land bank agency is granted management rights. Furthermore, Article 129 paragraph (2) of the Job Creation Law in conjunction with Article 40 paragraph (2) of the Government Regulation of Land Bank stipulates that the rights to land above the

management rights may be granted a Cultivation Rights (HGU), right to build (HGB), and right to use. Article 4 Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration determines the source of Land Management Rights can come from state land and customary land.

Some of the problems in strengthening Land Management Rights in the Employment Copyright Law and Government Regulation of Land Banks include, First of all against Article 129 paragraph (2) of the Job Creation Law in conjunction with Article 40 paragraph (2) of the Government Regulation of Land Bank which determines that the Management Right can be granted an HGU, not in line with Article 28 paragraph (1) of the UUPA which in principle stipulates that HGU is the right to cultivate land which is directly controlled by the state. Second, the Job Creation Bill) stipulates that the term of land rights over HPL is given for a period of 90 (ninety) years. However, there is no further regulation in the Job Creation Act, PP Land Bank, and its implementing regulations regarding land rights over this Land Management Rights. In addition, Article 40 paragraph (6) of Government Regulation of Land Bank further stipulates the extension and renewal of land rights. Land Management Rights can be granted at once after being used and agreed upon. "Can be given at once" In other words, the granting of extension and renewal of land rights on Land Management Rights is not given in stages but can be given directly at the beginning by way of accumulation of the grant period plus the extension period. Article 129 paragraph (2) of the Job Creation Law in conjunction with Article 40 paragraph (2) of the Government Regulation of Land Bank and Article 40 paragraph (6) of the Land Bank Regulation cause problems because it is contrary to the spirit of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the Law on Basic Regulations on Agrarian Principles and the Decision of the Constitutional Court No. Number 21-22/PUU-V/2007 regarding the review of Law no. 25 of 2007 concerning Investment. Strengthening Land Management Rights in the Employment Copyright Law and Land Bank Regulations will later have implications for providing very large problems in the future, namely 1) Causing an increase in the number of Agrarian Conflicts; 2) Bringing back the principle of Domein Verklaring; 3) Weakening of the existence of customary law communities and their ulayat lands; and 4) overlapping authority of the land agency.

Many doubt the existence of a land bank to truly guarantee the availability of land for a just economy, according to the objectives stated in the regulations. The dichotomy of authority coupled with the strengthening of Land Management Rights is one of the factors that is allegedly able to open up the potential for corruption which is not only at the level of individual/group corruption but is already at the level of institutional corruption with institutional and political design or state capture corruption (Kartodihardjo, 2021). Denis F. Thompson states that institutional corruption is the breakdown of public trust that reduces the authority and legitimacy of the state and private sector, the political process, and its accountability. This damage occurs when the public perceives an institution as untrustworthy, even if the institution is functioning as it should. Once public trust is damaged, it is difficult to restore it and fosters a vicious and contagious cycle of institutional corruption (Thompson, 2013).

The spearhead of the HMN is the Land Management Right, it is feared that if the Land Management Right is strengthened by the "nature" of only exploiting lands for the benefit of certain groups, then the ideals of HMN can be said to have failed. However, HMN is under the rights of the Indonesian people, which according to Article 1 paragraph (1) to paragraph (3) of the Law on Basic Regulations on Agrarian Principles has an element of ownership and an element of authority. The element of ownership is that the lands in the territory of Indonesia are the property of the Indonesian people and are used for the greatest prosperity of the people, and the element of authority is that the regulation of these lands is in the hands of the state to manage them fairly. The strengthening of Land Management Rights related to the authority of the land bank does have very large and wide implications, so the regulation on strengthening Land Management Rights in the Job Creation Law, PP Land Bank, and its implementing regulations should be abolished and in accordance with the Constitutional Court Decision Number 021-022/ PUU-V/2007 and of the Law on Basic Regulations on Agrarian Principles, then the regulation regarding the

object of land acquisition by the Land Bank must be reviewed so that it does not conflict with the objects of other institutions.

Through the right policies, the land bank can carry out the meaning and purpose of its formation as a form of state/government intervention as mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia jo. Article 2 paragraph (2) of the Law on Basic Regulations on Agrarian Principles, namely the state or the government has the obligation and responsibility to realize the greatest prosperity of the people. One of its active roles is to establish a land bank as an effort to organize (planning, use and control) the control and ownership of land. After Constitutional Court Decision No. 91/PUU-XVIII/2020, the government should be able to fully interpret the decision. So there are several actions that the government can take, including:

Formil Repair

Reviewing the Job Creation Law, there is a new naming of law, namely the Law on Job Creation which is then in the General Provisions Chapter followed by the formulation of the basic norms, objectives and scope which are further elaborated in chapters and articles related to that scope (Article 6 to 15 of the Employment Creation Law), the Job Creation Law is not in line with the standard formulation or standards in the formation of laws and regulations because this actually shows the established norms as if they were new laws. However, the biggest substance in the Job Creation Law has turned out to be a change to a number of laws. Thus, if the Job Creation Law is intended as the formation of a new law, the format and systematics of its formation must be adjusted to the format for the formation of a new law. If it is intended as a change to the law, the format of the change should follow the format that has been determined as a standard guideline or standard in changing laws and regulations as stipulated in Attachment II of Law 12 of 2011 concerning the Establishment of Legislation. Therefore, there are several ways to make formal improvements to the Job Creation Law, including by:

Improvement of the Law on the Establishment of Legislation with the aim of building a better legal system; or

Each sector/cluster is regulated in a separate law.

Materiil Repair

The Court has split (splitting) the examination between the formal examination and the material examination. Application for review of the Job Creation Law. The judicial review of the Job Creation Law was decided by the Constitutional Court's Decision No. 103/PUU-XVIII/2020, with a decision stating that the Petitioner's application cannot be accepted. This is because based on the decision of the Constitutional Court Number 91/PUU-XVIII/2020, it has been found that the Job Creation Law has been declared conditionally unconstitutional and the decision has binding legal force since it was pronounced. Thus, the application for a material review of the Job Creation Law is no longer relevant for further examination, because the object of the petition submitted by the Petitioner is no longer the substance of the law for which the review is requested. However, the Dissenting Opinion of the Constitutional Court Decision No. 91/PUU-XVIII/2020 and the Constitutional Court Decision No. 103/PUU-XVIII/2020, as well as points of consideration 3.18.10 The Constitutional Court's decision No.91/PUU-XVIII/2020 allows for the need for substantial improvements.

Improvement of this substance must start from the most basic, namely related to the problem of setting up a land bank to be formed in Indonesia. Efforts that can be made to realize a land bank that is fair and with legal certainty are by fixing problematic regulatory substances, including:

First, it must be examined from the basis for the formation of a land bank in Indonesia. the construction of the idea of establishing a land bank as outlined in the Job Creation Law, the Government Regulation of Land Bank, and its implementing regulations do not even reflect and carry out the above foundation. The concept of a just economy with the direction of 'easy investment' which is the foundation of the parent establishment of a land bank, namely the Job Creation Law, is too broad to provide a gap for investors to

empower land. The establishment of a land bank, which seemed to be in a hurry to attract investors after the creation of the Job Creation Act, PP Land Bank, and its implementing regulations actually diminished the usefulness and original purpose of establishing a land bank. Thus, it must be ensured that the foundation for establishing a land bank must be people-oriented. The philosophical basis of the land bank must be re-examined in order to be in line with the juridical basis and the sociological basis as well as the purpose of land use in Indonesia. To be precise, the establishment of a land bank should be directed at the aims and objectives of "the greatest prosperity of the people", this is very appropriate considering that a land bank cannot be separated from the authority obtained from the HMN.

Second, determine the land bank construction to be implemented in Indonesia. In the construction of the establishment of a land bank in Indonesia, the concept/type of land bank to be formed in Indonesia is not clearly explained. This can be seen in the position, duties and functions of the Land Bank in the Government Regulation of the Land Bank, even though it reflects the concept of a dichotomy which later has implications for the authority of the Land Bank to manage land. The article provides several characteristics contained in it, Article 2 paragraph (2) letter a is the authority of the state which is represented through public agencies or institutions in the land sector so this article is public. Article 2 paragraph (2) letter b is public in nature and determines and regulates legal relations between people and the earth, water and space, which can be meant in the form of regulating Land Management Rights with HGB and Right of Use on it. Furthermore, Article 2 paragraph (2) letter c is private as stipulated in Article 4 jo. Article 16 of the Law on Basic Regulations on Agrarian Principles. The provisions of Article 2 paragraph (2) of the Law on Basic Regulations on Agrarian Principles regarding HMN basically have a public nature but do not negate its private nature as regulated in letter c.

Judging from the existing land bank arrangements in Indonesia in the Job Creation Act, PP Land Bank, and its implementing regulations, of course, it cannot be categorized as the conception/type of land bank. The existence of a land bank cannot be separated from the HMN in Article 2 paragraph (2) of the Law on Basic Regulations on Agrarian Principles, so the determination of the conception/type of a land bank must still refer to these provisions. The Land Bank is one of the agencies that represent the state in the land sector as mandated by Article 2 paragraph (2) letter a of the Law on Basic Regulations on Agrarian Principles, so it is better if the land bank formed is a public land bank. By making it a public institution, the position of the land bank should not be parallel (horizontal) with the BPN, but the existence of the land bank must be under the BPN as a new department or it can be formed as an initial proposal in the Land Bill in the form of a Public Service Agency (BLU). Therefore, the source of funds for the establishment of a land bank must come from the State Budget.

As mandated by Article 2 paragraph (2) letter a and so as not to overlap with the authority of BPN, the Land Bank is only tasked with providing and managing lands that have been acquired through land acquisition activities. Land managed by the land bank is given Land Management Rights above the Land Management Rights can only be granted HGB and Right of Use as regulated in of the Law on Basic Regulations on Agrarian Principles jo. Constitutional Court Decision Number 021-022/PUU-V/2007. The authority for licensing and determining Land Management Rights from lands managed by the land bank and which will be distributed will become the authority of BPN. Because the position of the Land Bank should be under BPN, then based on the Theory of Authority by Hadjon (1998:2). Therefore, this land bank, based on its position of authority, should be given delegation authority, so that later land management can coordinate with BPN regarding data collection on these land parcels. For land management activities, complete, accurate, integrated and up-to-date land data is needed to be easily informed. In Indonesia, the institution that has the authority to collect data on land parcels is the National Land Agency through land registration activities based on Government Regulations No. 24 of 1997 concerning Land Registration jo. Presidential Decree 48 of 2020 concerning the National Land Agency. Therefore, based on land data owned by BPN, BPN can determine and grant permits to land which will be provided by the land bank to the party who will be appointed

as the owner of the Land Management Rights. So, it is appropriate if the land bank is only given public authority. Regarding the private element, a land bank cannot be a private institution or exercise private authority considering that the formation of a land bank in Indonesia stems from the idea of "the greatest prosperity of the people". However, the land bank can form a legal entity, either BUMN or BUMD under it which can carry out private properties as HMN which does not negate the private nature in it. The establishment of a business entity in the form of BUMN or BUMD is intended to carry out land use cooperation activities, which later profits from the land use cooperation can be included in the State Budget. So that the land bank does not become the core business in the land sector. The establishment of BUMN or BUMD must be balanced and determined by the minister of ATR/BPN and must be monitored closely and thoroughly, especially in terms of taxation and state revenues. Based on these construction efforts, it can be described as follows:

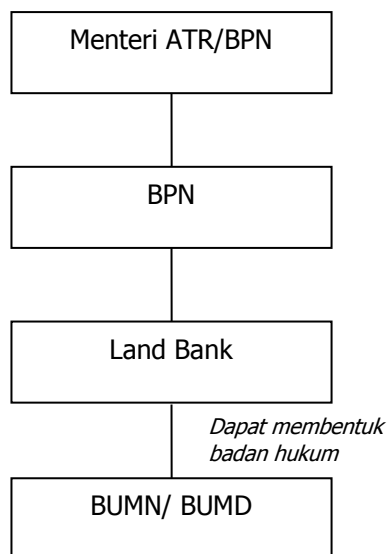


Chart I. Land Bank Construction Efforts in Indonesia

Regarding the overlapping authority between the TORA Group and the Land Bank in the object of land acquisition in the form of abandoned land, Article 20 paragraph (1) letter of the Presidential Regulation on Agrarian Reform stipulates that the Agrarian Reform Task Force is tasked with coordinating the provision of Agrarian Reform Object Land (TORA). abandoned land) in the context of asset management. The land bank's authority in acquiring land in the form of abandoned land is contrary to the task of the Agrarian Reform Task Force. On the other hand, the abandoned land will be managed by the Land Bank. After the regulation on the formation of a land bank, the Land Bank may negate the task of the Agrarian Task Force and the TORA object in the form of abandoned land. So it is better if the acquisition of abandoned land as an object of agrarian reform will later be given to one institution, namely, the Land Bank so that later the TORA group in Presidential Decree 86 of 2018 concerning Agrarian Reform must be declared no longer valid, this is in line with land banks that are public entities so that they can become part of Agrarian Reform Program.

Third, removing the policy of strengthening Land Management Rights and granting Land Management Rights to Customary Law Community which could weaken the existence of the Indigenous and Communal Land Communities. On Land Management Rights land, the Land Bank can only be granted HGB or Right of Use. From this provision, it appears that the purpose of establishing a Land Bank is none other than the granting of land rights for business purposes, not for settlement/residence. This strengthening of Land Management Rights implies that the authority of the land bank will later weaken the existence of the M Customary Law Community and ulayat land because the source of Land Management Rights can come from ulayat rights.

On the other hand, the community must also play a role in supervising the implementation of the land bank, because the people's livelihood cannot be separated from

the land. The community can participate in the planning and implementation of development. This activity is a form of real and targeted community empowerment, with the participation of the community in providing ideas or inspiration and can also supervise the performance of the land bank, thus indirectly providing information to the community and to the land bank later.

Through inter-institutional coordination and community participation coupled with the authority to supervise each other, it is hoped that a checks and balances mechanism will be realized in land institutions in Indonesia. In the Black's Law Dictionary what is meant by checks and balances is: "The theory of governmental power and functional whereby each branch of government has the ability to the counteraction of any other branch so that no single branch can control the entire government" (Checks and balances, 2020). From this formulation, the checks and balances mechanism is intended so that no single branch of government power can do something without consideration and approval from other branches of power so that legal certainty and legal justice are realized.

IV. CONCLUSION

Based on the description above, it can be concluded that the urgency of establishing a land bank in Indonesia prior to the establishment of the Job Creation Act and the Government Regulation of Land Bank is to: 1) ensure the realization of the objectives formulated in Article 33 paragraph (3) of the 1945 Constitution; 2) As an instrument to implement various land policies and support regional development efficiently and effectively; and 3) Control the procurement, control, and use of land in a fair and reasonable manner in carrying out development; and 4) Addressing land issues in Indonesia. However, the urgency of establishing a land bank after the creation of the Job Creation Act and the Government Regulation of Land Bank is driven by Indonesia's urgency to the problem of the very large need for land, which will later be used as a forum for investment activities. So, the norms in the Employment Creation Law and the Government Regulation of Land Bank regarding the establishment of a land bank have not been able to represent the initial urgency of establishing a land bank in Indonesia. The implication of the Land Bank's Authority in the Job Creation Act and the Government Regulation of the Land Bank raises several problems, firstly, the overlapping of laws and regulations in the land sector. Second, the strengthening of HPL related to the authority of the land bank is intended as the provision of facilities and/or licensing services aimed at increasing investment as much as possible for the prosperity of the people, this has a very broad impact including 1) Causing an increase in the number of Agrarian Conflicts; 2) Bringing back the principle of Domein Verklaring; 3) Weakening of the existence of customary law communities and their ulayat lands; and 4) overlapping authority of the land agency.

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