

Land Procurement by Land Bank as a Form of Agrarian Reform Based on Law Number 11 Year 2021 Concerning Work Creation

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Abstract

This study aims to determine the implementation and position of the Land Bank in the legal system in Indonesia and the relationship between Law Number 11 of 2021 concerning Job Creation. The amount of land in Indonesia is not commensurate with the increasing need for physical development. This is closely related to the vulnerability of conflicts that occur in the community. The presence of a Land Bank is expected to minimize the occurrence of conflicts because the existence of a Land Bank is intended to address land needs. However, in an effort to realize this, the position of the Land Bank Institution has several things that may cause obstacles in the implementation of agrarian reform itself. This research uses a statutory approach (statue approach) and a conceptual approach. With the conclusion, that the construction of regulatory law related to the Land Bank creates legal certainty and benefits. Land Banks should also be in line with the realization of agrarian reform.

Keywords:

land procurement; land bank; agrarian reform; work creation



I. Introduction

The Republic of Indonesia in its position to regulate land is based on the 1945 Constitution of the Republic of Indonesia, namely in Article 33 paragraph (3) which states that the earth, water and natural resources contained therein are used for the greatest prosperity of the people. This is very different from what happened in the pre-independence period, where a colonial legal policy was adopted which was made to benefit the Dutch East Indies government at that time. Furthermore, with the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, a means in the form of regulations is made to achieve the goal of the people's prosperity, namely by enacting Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA).

The creation of the UUPA was also one of the tools for carrying out a revolutionary overhaul of the feudal and colonial agrarian structures. The reform was realized by making Agrarian Reform policies, or commonly referred to as agrarian reform. According to Setiawan in his book, Agrarian Reform itself contains the understanding as an effort to change or social reform that is carried out consciously, in order to transform the agrarian structure towards a healthier and more equitable agrarian system for agricultural development and the welfare of rural communities.

One of the effort to realize the agrarian reform is through land procurement. It becomes more difficult nowadays, because the amount of land is not proportional to the increasing number of people in Indonesia. Law Number 11 of 2021 concerning Job Creation seeks to create an institution in the form of a Land Bank as an effort to complete the land procurement. However, in reality, the Land Bank actually has several things that raise questions regarding the urgency of establishing the Land Bank as a form of agrarian reform.

II. Research Methods

This research is a legal research conducted in the context of developing legal science. In this legal research, the type of research used is doctrinal legal research or normative research. Doctrinal research is research that provides a systematic explanation of the rules governing certain categories of law and analyzes the relationship between rules. In this type of normative research, a process is carried out to find a rule of law, legal principles and legal doctrines in order to answer the legal issues faced. The result to be achieved is a prescription about what is to be achieved on the issues raised in this research. This thesis is intended to provide a systematic explanation of the position of the land bank in the legal system in Indonesia in relation to the realization of agrarian reform.

III. Result and Discussion

3.1 Land Bank Implementation in Indonesian Law

The state has an important role in the implementation of the land bank, as referred in Article 33 paragraph (3) of the 1945 Constitution and Article 2 of UUPA the institutional, business and regulatory framework of the land bank is very much in line with the needs and our national legal system. The land bank agency as regulated in Article 125 of Law Number 11 of 2020, is established by the Central Government and is a special agency that manages land. The land bank agency functions to carry out the planning, acquisition, procurement, management, utilization and distribution of land. The land bank agency itself has several objectives, namely for the public interest, social interest, national development interest, economic equity, land consolidation and agrarian reform. In addition to these goals, The government, in this case the Central Government, creates a land bank as an effort made by the government in realizing the welfare of the community and requires support for the availability of adequate land or buildings. In its development, the government has issued various policies in the context of land procurement for development purposes.

The development for the public interest requires land whose procurement is carried out by prioritizing the principles contained in the 1945 Constitution of the Republic of Indonesia and the national land law, including the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability and harmony in accordance with the values of the nation and state.

Microeconomic developments are the foundation for economic growth in Indonesia. This show is small and medium industries have good prospects to be developed and have competitiveness and competitive advantage well and contribute to employment safety. One form of microeconomics that can combine large amounts of labor with small capital is small and medium micro enterprises (Ulfha, 2019). The banking sector has a real contribution to the economic development of a country. Banks, especially state-owned banks, have an important role in maintaining monetary stability. A stable monetary

condition will be able to make development efforts run better because the monetary capacity to finance development is getting stronger. Banks must be able to carry out their functions properly in order to ensure the implementation of development that runs on time and minimal constraints, especially from the monetary side (Pradata, 2020).

Land procurement, previously regulated in the provisions of Article 1 point 2 of Law Number 2 of 2012 concerning Land Procurement for the Public Interest, it is stated that land procurement is an activity to provide land by providing appropriate and fair compensation to the entitled party. As for land or buildings for which the Central Government and Regional Governments want to acquire land, it is necessary to pay attention to several things, such as:

- a. Spatial plans;
- b. National or regional development plans;
- c. The strategic plan; and
- d. Work plan for each agency that requires land.

The land procurement can now be carried out by the Land Bank Institution with the same procedure as the land procurement for the public interest in Law Number 2 of 2012. This is regulated in Article 9 of PP Number 64 of 2021 concerning Land Banks that land procurement can be carried out through a staged mechanism land procurement for development in the public interest or direct land procurement.

Land procurement for public interest as stated in Article 6 of Law Number 2 of 2012 can only be carried out by the government. However, with the enactment of the Job Creation (Ciptaker) Law, the Land Bank also has the authority to carry out land procurement, this is also regulated in Article 23 PP 64 of 2012 regarding the authority of the Land Bank.

In relation to the land procurement, Article 14 of UUPA stipulates that the Central Government and Regional Governments make a general plan regarding the supply, designation and use of earth, water, and space, including the natural resources contained therein for the following purposes:

1. Political interests
Including interests of a political nature, such as government or regional government offices, defense and security.
2. Economic interests
Including economic interests, for example land for the development of agriculture, fisheries, animal husbandry, plantations, industry, trade, forestry and mining.
3. Social and religious interests
Including social and religious interests, namely land for housing, worship, graves, health, education and recreation purposes.

The position of the Land Bank, as stated in Article 126 of the Job Creation Law, is also in line with the interests as stated in UUPA. The land that can be given to the Land Bank is Management Rights, as mentioned in Article 129. Thus, the Land Bank becomes one of the subjects of the Management Rights. This is also written in Article 5 letter e PP Number 18 of 2021.

The definition of management rights is regulated in Government Regulation Number 18 of 2021 concerning Management Rights in Article 1 point 3 that Management Rights are the controlling rights of the state whose implementation authority is partially delegated to the holders of Management Rights. The implementation authority is to plan the designation and use of land, use the land for the purposes of carrying out its duties and hand over parts of the land with management rights to third parties and/or cooperate with third parties.

The handover of the right to land means that above the Management Right, rights to the land can be granted, namely the right to cultivate, the right to build and the right to use. The term of the right to use the building above the right of management can be given an extension and renewal of the right if it has been used or utilized in accordance with the purpose of granting the right.

Whereas the Land Bank Institution established to manage land in Indonesia is located as one of the subjects of the Management Right holder and therefore has the same authority as the Management Right holder.

3.2 The Urgency of Establishing a Land Bank Based on Agrarian Reform

In providing land through the Land Bank, it is urgent to implement it to avoid the increase in land prices that are too high, especially in urban areas. Land Bank can be used as one of the alternatives for Land Provision in addition to the land procurement mechanism that has been regulated by Law no. 2 of 2012. The concept of a Land Bank has a similar concept with conventional banks in general. Both forms of this bank have an intermediary function where the land bank that is collected and distributed is land instead of money. The community through the Land Bank mechanism can help the Government by collecting their land in the Land Bank and it will be distributed in the form of other rights such as rent and so on, the community will get economic benefits from it.

The position of the land bank is based on statutory regulations if it is related to agrarian reform, especially the issuance of Government Regulation Number 64 of 2021 concerning Land Banks. Land bank in Government Regulation Number 64 of 2021 is formulated as follows, Land Bank Agency, hereinafter referred to as Land Bank, is a special agency (*sui geneis*) which is an Indonesian legal entity established by the central government which is given special authority to manage land. Based on Article 2 paragraph (2) of Government Regulation Number 64 of 2021 concerning Land Banks, formulate 6 (six) special powers of land banks in the context of ensuring a just economy, namely:

- a. Public interest;
- b. Social interests;
- c. Development and national interests;
- d. Economic equity;
- e. Land Consolidation; and
- f. Agrarian Reform.

Furthermore, as for the functions and duties of the land bank, the function of the land bank is formulated in Article 3 paragraph (1) of Government Regulation Number 64 of 2021 concerning Land Banks, as follows:

- a. planning;
- b. land acquisition;
- c. land procurement;
- d. land management;
- e. utilization of land; and
- f. land distribution.

In carrying out the functions as intended in Article 3 paragraph (1), then in Article 3 paragraph (2) Government Regulation Number 64 of 2021 concerning Land Banks, as follows:

- a. Planning long-term, medium-term, and annual activities;
- b. Acquire land that can be sourced from the stipulation of the government and other parties;
- c. Carry out land procurement for development in the public interest or direct land use;

- d. Carry out land management from development, maintenance and security activities, and land control;
- e. Carry out the utilization of land through utilization cooperation with other parties; and
- f. Carry out land distribution by carrying out land provision and distribution activities.

Land Bank, based on the existing laws and regulations in Indonesia, aims to completely resolve agrarian conflicts for the sake of legal certainty and implement agrarian reform. However, the establishment of the land bank actually made the implementation of the agrarian reform difficult, as follows:

First, the position of the land bank adopts the principle of *domein verklaring* or land stateization and degrades the position of the state's right to control as defined in the Basic Agrarian Law. Formulated in the workings of the land bank, the position of the land belongs to the State Practice. Second, obstacles that will be faced in the implementation and establishment of a land bank namely the state requires lots of capital, there must be monitoring of value increases, the need for financial management and compensation to landowners for activities at the beginning, during the project and after the project is carried out.

IV. Conclusion

Land Bank is one of the institutions established by the government in an effort to manage land. One of the things to be managed is also related to agrarian reform. With the establishment of the Land Bank, it is hoped that there will be improvements in land governance in Indonesia. One of the goals to be achieved is to manage land procurement. This is a form of follow-up to the authority granted by the state to the Land Bank as stated in Law Number 11 of 2020 concerning Job Creation. Thus, the Land Bank has the same authority as other Management Rights holders. However, the form of the Land Bank's authority to carry out land procurement raises several problems, including the existence of a more complicated process than the land procurement which previously regulated in Law No. *domain verklaring* as happened in colonial land law. Preferably, regarding the authority of the Land Bank in carrying out land procurement, it is necessary to review it by taking into account the previous laws and regulations so that there is no conflict of rules from the old rules with the new ones.

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