



The Nature of the Establishment of Land Banks to Provide Legal Protection for the Community from a Legal Certainty Perspective

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Abstract

Land banking is a form of government policy providing land for various community development interests. One form of breakthrough to overcome problems related to land acquisition in development is the issuance of Law Number 11 of 2020 concerning Job Creation, which has mandated the establishment of a Land Banking. What is meant by Land Bank is a form of practice of buying or taking over land which will later be developed in terms of which aim to meet development needs. The impact of land bank implementation is land acquisition, which is the basis for land bank infrastructure development by the government. The effect of land bank implementation is land acquisition, which is the basis for land bank infrastructure development by the government. Of course, this land acquisition process will undoubtedly become a new problem if the process turns out to cause legal uncertainty for the community, especially the land owner of the land to be used by the land banking. Based on the above background, a formulation of the problem of the nature of the establishment of land banking in Indonesia and the legal protection for the community in land acquisition activities can be drawn. His research is normative juridical or library law research, which examines existing primary and secondary legal materials, using a statutory and conceptual approach to later categorising and analyzing.

Keywords: *Land Banking; Legal Protection; Legal Certainty Theory*

Introduction

The increasing demand for development and the decreasing availability of land have made optimizing land use more challenging, especially for projects serving the public interest. This often leads to conflicts over land ownership and use. Land is a very important medium for a development process for the public interest, especially those requiring a large amount of land. The most common problem is that the desired land is not yet available when the government wants to start development. As a result, the government faces difficulties in the land acquisition process, particularly its execution and rising costs, which have become very expensive (Ganindha 2016).

This condition leads to a protracted procurement process, as the limited availability of housing in densely populated urban areas poses significant challenges. This is due to the great desire of people to live in cities which can be said to be still quite high. Apart from the high desire, the increase in population due to births is also one of the reasons for the increasingly narrow land in urban areas (Randy 2013).

The limited housing supply and high demand have increased urban land prices, making it difficult to build affordable housing for low-income residents. Consequently, many seek shelter in precarious areas, such as riverbanks or railroad tracks. This situation exacerbates urban issues, leading to flooding, environmental pollution, and the proliferation of slums (Noegroho 2012). An alternative to solving this problem is the availability of land at affordable prices or the Land Bank Principle. This principle is the provision of land by stealing time where development is still planned (Noegroho 2012).

The Land Bank can improve land utilization through market control and local land stabilization. Therefore, it is necessary to make regulations for the implementation of the Land Bank in Indonesia as well as regulations related to institutions that have the authority to carry out Land Bank practices (Ganindha 2016). The implementation of the Land Bank is expected to be able to help Low-Income Communities in fulfilling their needs regarding housing.

The implementation of land banking primarily impacts land acquisition, serving as the foundation for infrastructure development related to land banks. However, this process can create new challenges, particularly if it negatively affects the welfare of landowners whose property is being utilized for land banking purposes.

Land banking has the potential to enhance land utilization by facilitating market control and stabilizing local land use. To achieve this, it is essential to establish regulations governing land banking practices in Indonesia, as well as guidelines for the institutions responsible for implementing these practices (Ganindha, 2016). Ultimately, the successful implementation of land banking is expected to assist low-income communities in addressing their housing needs.

One significant breakthrough in overcoming the problem of land acquisition in development is the enactment of Law Number 11 of 2020 concerning Job Creation (UUCK), which mandates the establishment of a land bank. A land bank refers to the practice of purchasing or acquiring land for future development to meet various development needs (Trisna and Sandela, 2021).

According to Article 2, Paragraph (1) of Government Regulation Number 64 of 2021 concerning the Land Bank, a land bank is established as a legal entity, with its assets distinct from state assets. This framework allows for flexible and accountable operations of the land bank. Consequently, several preparatory measures are necessary, including the development of derivative regulations that will serve as the legal foundation for the land bank's business processes.

The implementation of a land bank has significant implications for land acquisition as the foundation for the government's development of land bank infrastructure. However, this acquisition process can lead to new challenges, particularly if it generates legal uncertainty within the community, especially among landowners whose properties are designated for use by the land bank. Given this context, two key questions arise: first, what is the nature of the establishment of land banks in Indonesia, and second, how is legal protection provided to the community during land acquisition activities?

The theory of this study is grounded in a review of previous studies related to land banks, which serve as valuable references. For example, the first study, titled "The Existence of a Land Bank in Land Acquisition for Development", discusses the land bank's role as a land collector and security mechanism to ensure land provision, allocation, and utilization by approved spatial plans. In addition, the land bank functions as a land controller, a land appraiser that can suppress the emergence of land speculators and as a land distribution tailored to development programs and spatial plans that direct land use in urban development and a particular region. The concept of a land bank has the potential to be implemented in Indonesia in the form of a public land bank given the provisions of Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia and article 2 of the UUPA, that the state has an important role in the implementation of the land bank.

Another relevant study, titled "Supervision of the Land Bank: Urgency, Authority, and Mechanism," discusses the necessity of supervising land bank operations due to their impact on public livelihoods. Effective internal and external supervision is essential to mitigate land liberalization issues, particularly concerning licensing and land use in development contexts. This study suggests that the supervisory mechanism established by the Job Creation Law will help prevent potential abuses of authority within land banks. The supervisory board outlined in the Job Creation Law aims to enhance the land bank's performance and operations in line with its intended roles. However, clarity is still needed regarding the relationship between the land bank, its supervisory board, and other institutions such as the National Land Agency (BPN) and the Financial Services Authority (OJK), particularly regarding their respective authorities and oversight mechanisms.

The novelty of this study is to find the nature of the establishment of a land bank in Indonesia and to find a form of legal protection for the community in land acquisition activities based on the theory of legal certainty and the theory of tiered law. It is hoped that the results of this study can become research material and study material related to land banks and welfare in land management in Indonesia.

Methodology

This study examines the nature of the establishment of land banks and legal protection for the community in land acquisition activities. This study is normative research aimed at examining the content of legislation while also seeking to establish truths through scientific reasoning from a normative perspective. This research makes the law an independent or autonomous system and closed from external factors outside the law. Data were collected by documenting both primary and secondary legal materials. These materials are then processed and analysed in depth to derive the ratio legis of the legal issues studied (Tinambunan and others 2018).

The method used in this study is a statutory approach. The problem approach used is based on statutory regulations that examine all laws. The legal issues examined in the research are related to the nature of the establishment of land banks and legal protection for the community in land acquisition activities. The statutory approaches used in this research are Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 64 of 2021 concerning Land Banks, Law Number 12 of 2011 concerning the Order of Laws Jo Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation. In addition, another approach method used in this research is the conceptual approach method, which departs from various views and doctrines that have developed in legal science (Marzuki 2005).

Discussion

The Nature of Land Banking

Land banking refers to activities associated with land banks. Land Banks are institutions or cooperation between institutions active in land acquisition (Al-Zahra, 2019). Land Banks has the meaning of: "*Land banks are governmental or nonprofit entities that assemble, temporarily manage, and dispose of vacant land.*" (Schwarz 2009) or "*Land banks are public authorities that focus exclusively on land banking activities.*" (Alexander 2008). Jack Damen stated, "*Land banking is the structural acquisition and temporary management of land in rural areas by an impartial state agency, with the purpose to redistribute and/or lease this land to improve the agricultural structure and / or to relocate the land for other purposes with a general public interest* (Damen 2006).

A land bank is a land policy that involves state authority exercised by both the government and independent institutions that have the authority to acquire, manage, regulate, and distribute abandoned land for the public good in accordance with government programs (Milicevic 2014). The Land Bank is a

form of government policy in land provision activities for various development interests in society. The Land Bank itself has two benefits, namely general benefits and specific benefits. The general benefits of the Land Bank can help the Government in terms of providing land in the context of development such as housing, infrastructure and so on. Meanwhile, the special benefits of the Land Bank are that it can ensure the availability of land, especially in urban areas, reduce land prices to be stable and affordable, and support food security and housing programs for low-income people (Arnowo 2021).

The establishment of the Land Bank is mandated by Article 2 Paragraph (2) of Law Number 11 of 2020 concerning Job Creation. The Land Bank has been given special authority to ensure the availability of land in the context of an equitable economy for the public interest, social interest, social development interest, economic equity, consolidation and agrarian reform. The Land Bank will be directly responsible to the President through the Land Bank Committee. The committee is tasked with setting strategic policies related to the Land Bank. The Minister of ATR/Head of BPN serves as Chairman and concurrent member of the Land Bank Committee (BPK RI 2022).

The government has officially issued Government Regulation (PP) Number 64 of 2021 concerning the Land Bank Agency. This regulation grants the Land Bank significant authority and functions related to land management, encompassing everything from planning to distribution within the agrarian reform program. Under this regulation, the Land Bank Agency has conferred Management Rights, allowing it to grant Building Use Rights, Business Use Rights, and Use Rights to other parties based on agreements. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency becomes the regulator, while the Land Bank functions as a land manager. In its role, the Land Bank is mandated to facilitate land acquisition for public interests, ensuring the availability of land for various infrastructure developments across the nation. This includes constructing roads, dams, airports, ports, oil and gas infrastructure, hospitals, government offices, schools, markets, and parking lots. In addition, the Land Bank supports the guarantee of land availability for social purposes, including education, worship, sports, culture, conservation, and environmental greening. Notably, for agrarian reform, the Land Bank must ensure land availability for redistribution, with at least 30% of state land designated for this purpose (BPK RI 2022).

Legal Protection for the Community in Land Acquisition Activities

Land is one of the most valuable treasures on this earth, which has continuously provided complicated problems throughout human civilisation. Indonesia, which has a very large land area, has made land issues one of the most urgent. No wonder, after Indonesia's independence, the first thing that the nation's leaders did at that time was the "land reform" project marked by the promulgation of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, hereinafter abbreviated as UUPA (Rusyaidi 2009).

The construction of public facilities requires land as a fundamental resource. Development proceeds smoothly when land supply is abundant; however, challenges arise because land is a finite natural resource that does not increase in size. Much of the land available today has been encumbered with rights (the land rights), while state land is already in minimal supply.

With the increasing need for land in land acquisition activities for infrastructure development in the public interest, the Government established a Land Bank institution that can provide convenience to the Government regarding the provision of land or land as mandated in the UUCK. Regarding land provision activities, the Government must still consider legal protection and certainty for the community, especially land rights holders.

According to Satjipto Rahardjo, legal protection is to protect human rights that are harmed by others and to protect the community so that they can enjoy all the rights granted by law (Raharjo 2000). Philipus M. Hadjon argues that legal protection is an action to protect or assist legal subjects using legal instruments (Hadjon 2011).

Legal protection is a universal concept of the rule of law. Legal protection consists of two forms, namely preventive legal protection and repressive legal protection: Preventive Legal Protection, which means prevention. Preventive legal protection is significant for government actions based on freedom of action because with preventive legal protection the government is encouraged to be careful in making decisions. The form of preventive legal protection is contained in laws and regulations to prevent the occurrence of an offence and to provide limitations in carrying out obligations. Repressive legal protection serves to resolve disputes that have arisen as a result of violations. This protection is the final protection in the form of sanctions against violations that have been committed.

The importance of legal protection for the community, especially land rights holders in land acquisition activities by the Government, is closely related to the existence of legal certainty. According to Kelsen, law is a system of norms. Norms emphasize the "should" or *das sollen* aspect by including rules about what to do. Norms are products and deliberative human action. Laws that contain general rules become guidelines for individuals to behave in society, both in relation to fellow individuals and in relation to society. These rules limit society from burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty (Marzuki 2008).

When examining the legal certainty that can provide legal protection for the community in land acquisition activities by the Government, especially in the case of the Land Bank as an institution that provides land or land, we need to know and understand in advance the order of the legislation relating to this matter, whether the legislation has guaranteed legal certainty that can provide legal protection for the community.

According to Hans Kelsen, norms are structured hierarchically, tiered manner. This means that lower legal norms derive their validity from higher norms, and each higher norm is also based on an even higher norm, continuing up to the highest norm known as the *Grundnorm* (Basic Norm). Kelsen further argues that this framework exists within a dynamic system of norms. Consequently, laws are continually created and repealed by the appropriate authoritative bodies based on higher norms, allowing lower norms (inferior) to be established following higher norms (superior). Finally, this results in a layered and hierarchical legal system (Syamsuddi 2011).

Concerning the order of laws and regulations by Article 7 of Law No. 12/2011, namely (1) the 1945 Constitution of the Republic of Indonesia; (2) Decree of the People's Consultative Assembly; (3) Law / Government Regulation in Lieu of Law; (4) Government Regulation (PP); (5) Presidential Regulation (Perpres); (6) Provincial Regional Regulation (Perda Provinsi); (7) Regency / City Regional Regulation. The laws and regulations relating to land banks are regulated in the UUCK and Government Regulation No. 64 of 2021. However, they do not reflect the legal certainty as mandated in the 1945 Constitution. The vagueness of norms in the UUCK and Government Regulation No. 64 of 2021 related to land banks has not provided legal certainty and legal protection for the community, especially for holders of land rights, because it seems strong sectoral and does not reflect agrarian politics in Indonesia today.

Conclusion

The land bank is a land policy with state authority both from the government and from independent institutions that have the authority to acquire, manage, regulate, and distribute abandoned land for the public interest according to government programs. The establishment of the Land Bank is mandated by Article 2 Paragraph (2) of Law Number 11 of 2020 concerning Job Creation. The Land Bank has been given special authority to ensure the availability of land in the framework of an equitable economy for the public interest, social interest, social development interest, economic equity, consolidation and agrarian reform. The Land Bank will be directly responsible to the President through

the Land Bank Committee. The Committee is tasked with setting strategic policies related to the Land Bank. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency is the Chairman and concurrent member of the Land Bank Committee.

With the increasing need for land in land acquisition activities for infrastructure development in the public interest, the Government established a Land Bank institution that can provide convenience to the Government regarding the provision of land or land as mandated in the UUCK. Regarding land provision activities, the Government must still consider legal protection and certainty for the community, especially land rights holders. The legislation relating to land banks is indeed regulated in the UUCK and Government Regulation No. 64 of 2021 does not yet reflect the legal certainty as mandated in the 1945 Constitution. There is ambiguity in the norms in the UUCK and Government Regulation No. 64 of 2021 related to land banks that do not provide legal certainty and legal protection for the community, especially for holders of land rights, because it seems strong sector.

Recommendation

The establishment of a land bank aims to provide legal certainty for the community, particularly for land rights holders, ensuring that its implementation offers adequate legal protection. To achieve this, it is essential to develop a legal framework concerning land banks that guarantees both legal certainty and protection for the community during land acquisition activities. While the legal provisions related to land banks are outlined in the Job Creation Law (UUCK) and Government Regulation No. 64 of 2021, they currently fail to reflect the legal certainty mandated by the 1945 Constitution. The ambiguity of norms within the UUCK and Government Regulation No. 64 of 2021 has not delivered the necessary legal certainty and protection for the community, especially for land rights holders, as these regulations exhibit strong sectoralism and do not adequately represent the current agrarian politics in Indonesia.

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