

Existence of The Land Bank Agency in The Context of Investment Development in Indonesia

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Abstract

Land is an important component in the business world, so in its development it "forces" Indonesia to become an investment-friendly country. To achieve this, Indonesia created the Job Creation Law and formed the Land Bank to collect, manage and distribute land in Indonesia. However, there are pros and cons related to the substance contained in the Job Creation Law, such as seeming to revive the *domein verklaring*, the alleged bias of the Government regarding the granting of permits to business entities and/or investors, overlapping authority and misinterpretation of the public regarding the main duties and functions of the Land Bank which is considered a new forum for corruption, collusion and nepotism (CCN) because, in the same sector, there is already the Ministry of ATR/BPN which also regulates the land sector in Indonesia, so that clear restrictions are needed between institutions, therefore this systematic review is a bridge for the Government, investors and the public to realize legal certainty.

Keywords: Investation; Land; Land Banking.

Introduction

The problems in civil law countries are generally related to disharmony or overlapping regulations, as is the case in Indonesia, to reduce the polemic the Government created Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation in 2020, which was last amended by Law of the Republic of Indonesia Number 6 of 2023 which was promulgated on March 31, 2023 ("hereinafter referred to as the "UUCK"). The creation of this law is considered necessary by the Government to reduce over-regulation because it can change and/or revoke several laws at once, so it is dubbed the omnibus law.

The land sector is one of the sectors that has changed in UUCK, where the

Government created a new agency, namely the Land Bank Agency. The state grants attribution authority, namely the authority granted through law to the Land Bank Agency to carry out management in the land sector. The emergence of this new agency has raised many pros and cons among the public regarding the main tasks and functions of the Land Bank Agency which are considered to complicate agrarian conflicts in Indonesia.¹

These concerns depart from the assumption that the Land Bank Agency will facilitate land ownership for business entities and/or investors, especially regarding the method of land acquisition, because the Land Bank Agency in carrying out its functions seems to revive the principle of *domein verklaring*.², which can be seen in the provisions of Article 7 Letter I of Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning Land Bank Agencies (hereinafter referred to as "PP Land Bank Agencies"), which states that land whose existence does not have a control on it is one of the sources of land acquisition of the Land Bank Agency. In this case, the Government seems to have unlimited power regarding land acquisition, even though currently there are still many lands that have not been certified, especially customary land.³ If the customary land cannot be proven to have ownership that in fact still exists, then the land will become the object of management rights by the Land Bank Agency.⁴ Currently, many lands have the *status quo* also known as "disputed land", where the validity of this land is not clear both in terms of ownership, management and utilization, as well as embossed land and land that has expired its right period, so it requires settlement without violating the rights of the community and becomes state land

¹ Agus Bebung, 2022, "Bank Tanah Lembaga Baru Yang Mubazir dan Mengancam Masyarakat Adat : Akademisi", The Conversation, accessed on 16 September 2024.

<https://theconversation.com/bank-tanah-lembaga-baru-yang-mubazir-dan-mengancam-masyarakat-adat-akademisi-179297>

² Anna Azharniyah and Ahmad Suhaimi, 2022, "Keberadaan Bank Tanah Ditinjau Dari Asas Kemanfaatan dan Politik Hukum di Indonesia", *Jurnal Wasaka Hukum* 10 (02), p. 29..

³ BBC News, 2023, "Terjadi Pertarungan Antara si Kecil dan Si Besar, Penolakan Aktivistis dan Petani Terhadap Bank Tanah Yang Dinilai 'Merugikan Masyarakat'", accessed on September 16, 2024. <https://www.bbc.com/indonesia/articles/cz41pjrepdro>

⁴ *Ibid.*

because in principle the land must be maintained and must not be abandoned.

The lands mentioned above and also the land that has changed its status to state land are not managed optimally, as per the land data for the Riau Province area in 2023-2024, which states that an area of 52.018,962 Ha (fifty-two thousand and eighteen point nine hundred and sixty-two hectares) of land indicated as abandoned land with details, the area of HGU is 32.316,12 Ha (thirty-two thousand three hundred and sixteen point twelve hectares), the area of HGB is 18.702,842 Ha (eighteen thousand seven hundred and two point eight hundred and forty-two hectares), the area of management rights does not exist.⁵

The management and supervision of state land needs to be carried out to avoid land theft or legal smuggling by the land mafia, so the Government has formed a Land Bank Agency to accommodate these lands. However, in addition to issues related to *domein verklaring*, other issues are of concern to the public, namely the dualism of authority and/or interests in the land sector, where there is already the Ministry of Agrarian and Spatial Planning/National Land Agency (hereinafter referred to as the "Ministry of ATR/BPN") which also regulates and manages land in Indonesia, this makes the role of the Land Bank Agency in the land sector questionable. If there are no firm limits, the two agencies can result in overlapping regulations and/or overlapping authorities which complicate agrarian problems in Indonesia.⁶ It is undeniable that land is one of the important indicators in investment development and contains a high economic value, but it also needs to be noted that land also has a sacred relationship with its rights holders, especially customary land that contains religious-magical elements that are hereditary,⁷ Therefore this should not be the reason for the

⁵ House of Representatives of the Republic of Indonesia, 2023, " Laporan Kunjungan Kerja Spesifik Komisi II DPR RI Ke Kantor Wilayah (KANWIL) Badan Pertanahan Nasional (BPN) Provinsi Riau", accessed on September 12, 2024. <https://berkas.dpr.go.id/akd/dokumen/K2-14-9606ff9186ec5f5b2e458440bcd51643.pdf>

⁶ Wahyu Bening and Ilham Dwi Rafiqi, 2022, "Permasalahan Hukum Pengaturan Bank Tanah Pasca Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja", *Jurnal Suara Hukum* 4 (2), p. 266.

⁷ Cicilia Putri Andari and Djumadi Purwoatmodjo, 2019, "Akibat Hukum Asas Pemisahan horizontal Dalam Peralihan Hak Atas Tanah", *Notary* 12 (2), p.704.

violation of people's rights.

The existence of the Land Bank Agency is aimed at reducing agrarian polemics in Indonesia, but there are still several issues that need to be studied more deeply related to the main tasks and functions of the Land Bank Agency in Indonesia, which this study is needed as a manifestation of the principle of prudence in land management and utilization to avoid violations of rights and other more complex problems in the future. Because land is not just an object, but includes the whole life of the community for its survival.

Based on the above explanation, it is necessary to know what is the urgency of the establishment of the Land Bank Agency, especially regarding state land and investment development, whether the distribution of land for business entities/investors is carried out without taking sides in the fulfilment of community rights as widely discussed, or whether there is another urgency where the Ministry of ATR/BPN cannot regulate and manage land fully in Indonesia so that it requires a special institution to run part of the functions. This is an attraction for researchers to raise the topic of the **Existence of the Land Bank Agency in the Context of Investment Development in Indonesia**, which will examine the concept and main tasks and functions of the Land Bank Agency in Indonesia to legal issues that are of concern to the public, academics and legal practitioners in Indonesia today.

Results and Discussion

The Existence of the Land Bank Agency in the Perspective of Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning the Land Bank Agency

The Land Bank Agency also known as land banking, is a *sui generis* or body specifically established by the Central Government to manage land, both to make plans, carry out land procurement, and land utilization and distribution. One of the legal experts, Maria Sumardjono, defines the Land Bank Agency as a body or institution that was formed to regulate Government activities in the provision of land whose use will be

allocated for the future.⁸ She also views the Land Bank Agency as not only an urban renewal strategy to stabilize land values and preserve available open space but also as a practice of expropriation or purchase of land with the aim of sustainable development, as well as access to services in public industry, agriculture and housing to be managed to be marketed and prevent land speculation.⁹ It is slightly different from Annaningsih who argues that the Land Bank Agency is a transaction to buy and sell land or property for future needs, whether used for individuals, groups or companies with the current purchase value, to be developed to have economic value.¹⁰

The idea of the Land Bank Agency has actually been implicitly carried out in the National Long-Term Development Plan for 2005-2025 which states that there will be improvements in land institutions, management systems and enforcement of land rights by implementing the principles of transparency, democracy and justice.¹¹ The National Medium-Term Development Plan for 2020-2024 also explicitly mentions the existence of the Land Bank Agency which was formed to seek the provision of land for the public interest. This idea was finally realized with the creation of the foundation for the establishment of the Land Bank Agency in Indonesia in early 2020 through the UUCK, following other countries, such as the Netherlands which had previously formed the Land Bank.

The Land Bank Agency in the Netherlands is an *ad hoc* institution that implements the practice of land readjustment or land arrangement for the implementation of land consolidation so that the implementation of land acquisition can run quickly and easily.¹² To achieve this, the Netherlands categorizes the duties of the Land Bank

⁸ Maria Sumardjono in Bambang, et.al., 2018, Pembentukan Bank Tanah dan Permasalahannya di Indonesia, Laporan Penelitian. Yogyakarta : Sekolah Tinggi Pertanahan Nasional, p. 5.

⁹ *Ibid.*

¹⁰ S. W. Annaningsih, 2007, Penerapan Konsep Bank Tanah dalam Pembangunan Tanah Perkotaan, *Jurnal UNDIP Tentang Masalah-Masalah Hukum* 36 (4): 36.

¹¹ Chapter IV number IV.1.5 Appendix to Law of the Republic of Indonesia Number 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025.

¹² Sungkana, 2015, " Mengenal Bank Tanah/Land Banking Sebagai Alternatif Manajemen Pertahanan ", Government department Finance of the Republic of Indonesia, accessed December 15,

Agency into 3 (three) types, the first, as an exchange land banking that has the task of buying land which is then stored or collected for a certain period of time before being released or transferred to a third party, the second as a financial instrument which has the concept of purchasing land with the aim of renting it to other parties, for example to farmers for a certain period of time, usually the lease period for farmers is given for 26 (twenty-six) years, and the last is the land bank as developer which is implemented by the private sector, where land is purchased by the private sector in large quantities in the hope that the land can change its function (speculation), For example, an area that was previously used as a recreational area, converted into a residential area or it can also be from what was previously a slum area to be converted into a center of economic activity, the purpose of the conversion is expected to increase the economic value of the land.¹³

The concept of the Land Bank Agency in Indonesia itself is a combination of the three concepts that have been practised by the Netherlands with slight differences, because there are developments and adjustments to the condition of the land and the state of the country, law and Indonesian society, where the Land Bank Agency in Indonesia also has other functions, namely to carry out the design of activities, both long-term activities, medium and annual, in addition to carrying out land acquisition activities, development for the public interest, land management both in terms of maintenance, utilization or control of land distribution through cooperation and land distribution by their functions.

The presentation is also in line with what Harvey Flechner said that the Land Bank Agency can increase growth for the country and its people, such as urban infrastructure arrangement, price control, and quality and quantity of land which will increase land value and investor confidence to invest in Indonesia which will also have an impact on the country's economic progress, where jobs are created for the welfare of the

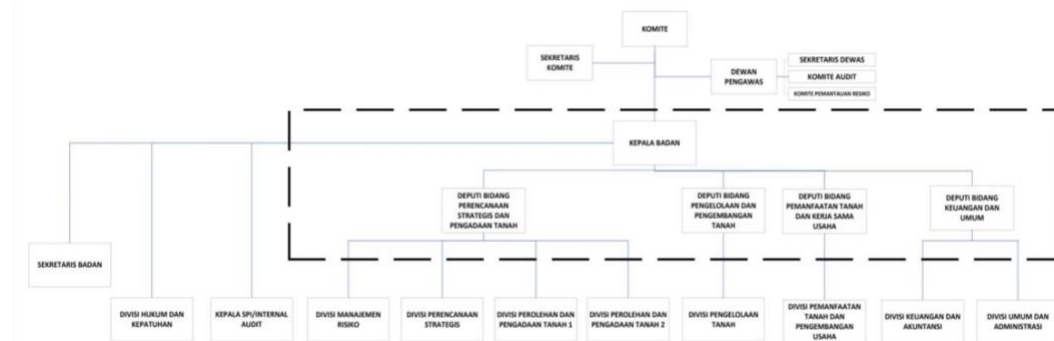
2022. <https://www.djkn.kemenkeu.go.id/artikel/baca/8538/MENGENAL-BANK-TANAHANLAND-BANKING-AS-AN-ALTERNATIVE-LAND-MANAGEMENT>

¹³ *Ibid.*

Indonesian people.¹⁴

The implementation of the duties of the Land Bank Agency in Indonesia as mentioned above must be guided by the principles of transparency, accountability and non-profit.¹⁵ The principle of "Transparency" is a principle that emphasizes openness to the work system of the Land Bank Agency by providing material, accurate, actual and relevant information, which in practice the Government has provided information services through the Land Bank Agency website that can be accessed by the general public, contacts, and articles related to the ongoing project. The principle of "Accountable" explains that in the Land Bank Agency, there is a division of functions and duties as well as responsibilities of the organs of the Land Bank Agency consisting of the Land Bank Committee, the Supervisory Board and the Implementing Body.

Picture 1 Organizational Structure of the Land Bank Agency¹⁶



The Land Bank Committee is authorized to set strategic policies in the operational activities of the Land Bank Agency. The determination issued must be with an in-depth study by paying attention to the principles of prudence and utility. The supervisory board plays a role in supervising all work programs carried out by the Land Bank

¹⁴ Harvey Flechner, 1974, *Land Banking in The Control of Urban Development*, New York: Praeger, p. 10.

¹⁵ Article 4 of Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning Land Bank Agency.

¹⁶ Land Bank Agency, "Struktur Organisasi Badan Bank Tanah ", accessed on September 12, 2024. <https://banktanah.id/struktur-organisasi/>

Agency, as well as providing recommendations for the implementation of the policy. This organ is very important so that there is a check and balances between organs so that the decisions and/or policies taken will be decisions that have considered various aspects. Meanwhile, the Executive Board is authorized and fully responsible for the implementation of activities and/or work programs from the Land Bank Agency, which is led by the Head and Deputy whose number is determined by the Chairman of the Committee as the authorized organ.¹⁷

The next principle is the "non-profit" principle which states that the income obtained from the implementation of the Land Bank Agency will solely be allocated for the benefit and development of the Land Bank Agency itself and not be distributed to the organs of the Land Bank Agency or certain parties, this is in line with the asset management system of the Land Bank Agency which is managed with 2 (two) categories of utilization, namely the utilization used for the operation of the Land Bank Agency and utilization before the distribution stage is carried out.

The utilization used for the operation of the Land Bank Agency can be carried out by the Land Bank Agency itself, such as conducting business activities (business division) to obtain benefits and high economic value for the public interest and can also be done by collaborating with third parties, such as granting land rights in the form of management rights. Meanwhile, the utilization carried out before the implementation of the distribution stage can be carried out by examining the recipients and the function of the land allocation, such as agrarian reform.¹⁸ For maximum land utilization, one of the ways the Land Bank Agency manages its assets is by categorizing its assets into 2 (two), namely fixed and non-fixed assets. Fixed assets are physical assets (generally immovable objects) that require special management, such as land, buildings/buildings. Meanwhile, non-fixed assets are assets in the financial sector, such as deposits, stocks,

¹⁷ Article 1 numbers 5-7 of the Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning Land Bank Agency.

¹⁸ Afifah Satrianty and Nadia Maulisa, 2024, Peran Badan Bank Tanah Sebagai *Land Manager* Dikaitkan Dengan Fungsi Sosial Atas Tanah, *Journal of Swara Justicia* 8 (1), 2024: 20-21.

machinery, cash, and other types of assets (generally movable objects).¹⁹

The above presentation is an overview of the concept, main tasks and functions of the Land Bank Agency as a land manager which is specifically formed as a controller of the effectiveness and rationality of land prices, as a strategic regulator in collecting and managing land in Indonesia, and as a body that functions to collaborate between policies, implementation and evaluation in the land sector.²⁰

Implementation of the Function of the Land Bank Agency in the Context of Investment Development in Indonesia

The 7th President of Indonesia, namely Joko Widodo, once said that he would continue to carry out reforms by making the investment climate-friendly to the world.²¹, this promise was realized with the creation of the UUCK to reduce overlapping regulations that make it difficult for business entities and/or investors to invest in Indonesia, especially in the land sector by forming a Land Bank Agency which is aimed at providing land needs that can be fulfilled by its functions and a destination that is considered appropriate and at a reasonable price, because nowadays the high demand for land is not balanced with the increasingly limited quantity of land in Indonesia coupled with the problem of the land mafia, thus causing land prices to increase higher and higher, and therefore it is necessary to optimize the management and utilization of land through the Land Bank Agency.

Before the use and distribution of land, the Land Bank Agency first plans and acquires land sourced from the Government's determination, or from other parties, so

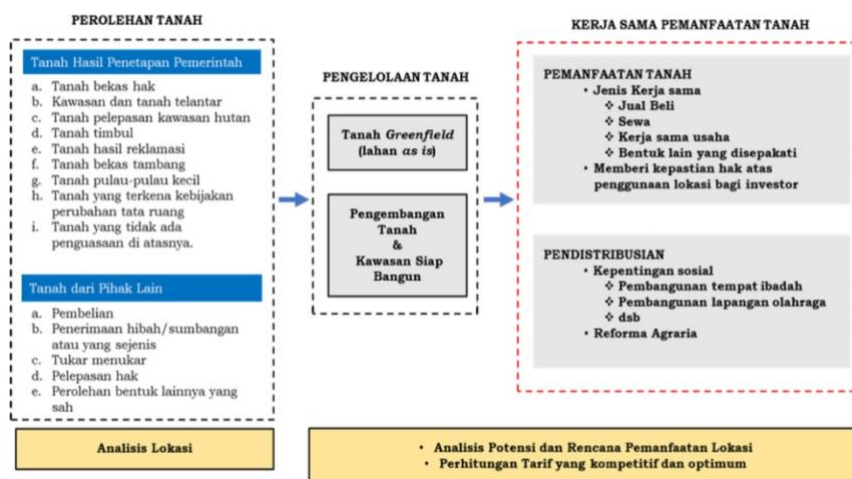
¹⁹ Fidri Fadillah Puspita, (et.al), 2021, Urgensi Kehadiran Bank Tanah Sebagai Alternatif Memulihkan Perekonomian di Indonesia Dalam Perspektif Hukum Islam, *Jurnal Ilmiah Ekonomi Islam* 7 (03): 2021.

²⁰ Rahma Winati, (et.al)., 2022, Eksistensi dan Prospek Penyelenggaraan Bank Tanah, *Jurnal Magister Ilmu Hukum* 7 (1): 25-40.

²¹ Ministry of State Secretariat of the Republic of Indonesia, 2016, " Presiden Jokowi Mengajak Para Investor Berinvestasi di Indonesia", accessed September 26, 2023. <https://www.setneg.go.id/baca/index/presiden-jokowi-mengajak-para-investor-berinvestasi-di-indonesia>

that management can be carried out which includes land development, security and control activities.²² The Land Bank Agency in carrying out its operational activities has public and private functions, where the Land Bank Agency plays a role in making policies and implementing regulations related to the land it manages, as well as its private function which is seen in the authority to make agreements or establish business entities that support its operational activities based on the provisions of the applicable laws.²³

Picture 2 Business Flow Chart in Indonesia Land Bank²⁴



Cooperation in land use is intended for several sectors, the first is for the public interest (such as transportation facilities and infrastructure, educational facilities and infrastructure, public facilities and infrastructure), the second is for social interests (such as places of worship, health facilities, social facilities), the third is for the benefit of national development, the fourth is for land consolidation, the fifth is for agrarian reform (such as providing guarantees for the provision of land of at least 30% (thirty percent) from the management right of the Land Bank Agency, as well as collaborating with cooperatives or other institutions in the context of empowering the community so

²² Article 3 of Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning Land Bank Agency.

²³ Article 37 paragraph 1 of Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning Land Bank Agency.

²⁴ Land Bank Agency (2022), "Company Profile Badan Bank Tanah", p. 6.

that they can use their land for at least 10 (ten) years, and the last is for economic equity (such as cooperation with business entities, pioneer programs, people's markets, and so on).

The Land Bank Agency is expected to hold an investment "party" in Indonesia because unproductive land can be used optimally to strengthen the country's economy and achieve a prosperous society. However, the issue related to the Land Bank Agency which seems to revive the principle of *domein verklaring*, as repealed by Law of the Republic of Indonesia Number 5 of 1960 concerning Agrarian Principles (hereinafter referred to as "UUPA") in the part of revoking point 2 letters a to e is misleading which must be straightened out so as not to hinder the success of the Land Bank Agency. This departs from the sound of Article 6 letter a jo. Article 7 letter I of the Land Bank Agency Government Regulation, stipulates that one of the land sources of the Land Bank Agency can come from land on which there is no control or a right to land.

Based on the Supreme Court's decision No. 35/PUU-X/2012, customary land has been recognized for its existence as long as it exists, but considering the higher status of the UUCK than jurisprudence (the principle of *lex superior derogate legi inferior*) and also as a new law, it is possible to override the decision (the principle of *lex posterior derogate legi priori*). Therefore, the community is still fixated on this issue. However, referring to Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration, has strengthened the existence of customary lands and indigenous peoples, where indigenous peoples are allowed to show that they still exist in real terms as stated in the Supreme Court's decision, as well as in Article 8 paragraph (2) of the Land Bank Agency Government Regulation that the acquisition and/or transfer of land sourced from other parties (one of which is the community) is carried out by the applicable legal process, such as through purchase, grant, exchange, release of rights and other forms of acquisition that are legal in the eyes of the law, not arbitrary land grabbing.

The above statement is also in line with what was expressed by Soepomo that in forming a new regulation, it must be able to create fundamental changes that must be

in the interests of the Indonesian nation.²⁵, therefore the presence of these laws and regulations is a form of strengthening the legal basis for customary land and with a mechanism for the transfer of legal land rights.

Talking about investment is not spared from the discussion about management right as one of the ways investors can manage land in Indonesia. As is known that Article 16 paragraph (1) of the UUPA does not mention management right as a type of land right, but as a derivative of the right to control the state where part of the authority of the right is delegated to the holder of the right to management rights,²⁶ The delegation in question is related to its implementation which can be carried out and/or authorized by the Regional Government and customary law communities as long as it does not conflict with the provisions of the applicable laws.²⁷

Right to control the state does not make the state the owner, but a public ruler so that it is authorized to manage the earth, water, space and natural resources contained in it in accordance with the principles rules and policies of the Government which are used only for the prosperity of the people.²⁸ The control and management of public land by the Government is not necessarily carried out because the Government has right to control the state, but also because the state is considered as the "hands and feet of the people" who are considered capable of adjusting and controlling land use patterns, mechanisms in regulating spatial patterns by minimizing the obstacles faced, ensuring justice and the use of land development for the prosperity of the people. As well as the ability to provide public facilities and infrastructure because ideally the state's authority in land management and procurement must be guided by the principles of justice and respect for individual rights to prevent conflicts between the state and

²⁵ Boedi Harsono, 2005, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria Indonesia, Isi dan Pelaksanaannya*, Jakarta: Djambatan, p. 1.

²⁶ Article 1 number 3 of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration.

²⁷ Kafrawi and Rachman Maulana Kafrawi, 2022, *Kajian Yuridis Badan Bank Tanah Dalam Hukum Agraria Indonesia, Perspektif Hukum* (1): 118.

²⁸ Muhammad Bakri, 2007, *Hak Menguasai Tanah Oleh Negara (Paradigma Baru Untuk Reformasi Agraria)*, Yogyakarta: Citra Media, p. 5.

society.²⁹

The rules related to management rights in the UUCK do contain several substances that are changes for investment development, such as the "renewal of rights", which previously only knew the "term of rights" and "extension of rights", but if we look at other provisions related to management rights, we can analyze that the substance contained still pays attention to the rights of indigenous peoples and the general public, as stated in Article 5 paragraph (2) and Article 15 paragraph (3) of Government Regulation Number 18 of 2021 which stipulates customary rights to indigenous peoples and returns land to customary law communities if the management rights has been abolished, as well as other provisions that protect the rights of indigenous peoples, therefore the need for the Land Bank Agency to regulate the flow or movement of land for the benefit of the Indonesian nation and also for investment, especially foreign investment can provide benefits to the recipient country because the investment obtained can be allocated and It is utilized optimally and efficiently by creating new jobs and a better economic turnaround of the country.³⁰

Investment development is indeed necessary to create progress in a country, however, some people are still worried that management right can create unhealthy practices in the control and/or utilization of land rights, because one of the land sources of the Land Bank Agency is "land on which there is no control on it" which will then be determined as the wealth of the Land Bank Agency in the form of management right, so that it is suspected that it can cause broad rights and authority for the Land Bank Agency and anxiety about policies that favor business entities and/or investors, therefore if land acquisition is carried out from the community, the Government must provide payment and/or compensation with a reasonable value for the impact of the investment project, where the losses experienced are not only in the form of material

²⁹ Rofi Mahanisa, 2009, Pencabutan Hak Atas Tanah dan Benda yang Adad Diatasnya : Antara Ada dan Tiada, *Journal of Rechtsvinding* 8 (3): 2.

³⁰ I Putu Lingga Dhananjaya, 2021, Pengaturan Hak Pengelolaan Lahan (HPL) PascaBerlakunya Undang-Undang Cipta Kerja, *Kertha Semaya Journal* 9 (3): 565.

losses, but also immaterial losses such as access to public facilities becoming further or losing permanent sources of livelihood, therefore before land acquisition is carried out, compensation must be taken into account and carried out first with a long-term partnership pattern, so as to create a mutualistic relationship between the community as land rights holders and business entities and/or investors or the Government as the owner of capital.³¹

The next attention is focused on issues related to the dualism of regulation and interests between the Ministry of ATR/BPN and the Land Bank Agency, the allegation is not only related to overlapping regulation, but it is feared that it can also cause overlapping authority in decision-making between the Ministry of ATR/BPN and the Land Bank Agency which may occur, because the two agencies regulate and manage the same thing. Namely land. So that when an agrarian conflict occurs, which decision will take precedence, whether the Ministry of ATR/BPN or the Land Bank Agency as an independent body, because the authority given to the Land Bank Agency is the authority that has been carried out by the Ministry of ART/BPN both from planning, acquisition, procurement, utilization as well as main tasks and other functions.

The above statement is supported by the existence of similar duties and authorities between the two agencies, as the duties and authorities of the Ministry of ATR/BPN can be seen in the provisions of Article 4 of Presidential Regulation Number 47 of 2020 concerning the Ministry of Agrarian and Spatial Planning, where the Ministry of ATR/BPN is tasked with assisting the President in the implementation of government affairs in the field of agrarian or spatial planning, Article 5 of the same regulation also states that the duties of the Ministry of ATR/BPN are to make plans, establish and implement policies, manage state wealth in the field of agrarian and spatial planning and other main tasks regulated by laws and regulations, while the duties and authorities of the Land Bank Agency are also not much different, namely to make plans,

³¹ Putri Lestari, 2020, Pengadaan Tanah Untuk Pembangunan Demi Kepentingan Umum di Indonesia Berdasarkan Pancasila, *Journal of Law* 1 (2): 82.

procurement, carry out land management and distribution.

The relationship between the Ministry of ATR/BPN and the Land Bank Agency is in the form of land data transfer, where the Ministry of ATR/BPN is the main provider of land data and the Land Bank Agency stores a copy of the land data (back up data system) to prevent damage or loss of land data, so that land that is "scattered" or land whose status is unclear can be restored to its validity. However, if its function is only as a storage of land data, there is already an agency in charge of handling this, namely the National Land Agency (hereinafter referred to as "BPN"), but this BPN is only a Land Administrator not a Land Manager like the Land Bank Agency, so currently there is a vacancy in terms of land.³² Inventory and supervision. Based on the above explanation, it can be said that there is no conflict of interest between the two agencies, because BPN is focused on land administration and the Land Bank Agency plays a role in the management, development and distribution of land for the public interest, and especially investment in the context of sustainable development.

Another relationship can also be seen in land that has a *status quo*, namely land whose condition is unclear, where no physical changes or actions should be taken against the resistance concerned. If the problem cannot be solved, the land will become abandoned or unproductive, with such a soil condition it needs to be resolved, and here the Land Bank Agency is present to investigate and manage the land because in principle the land must be maintained and must not be abandoned.

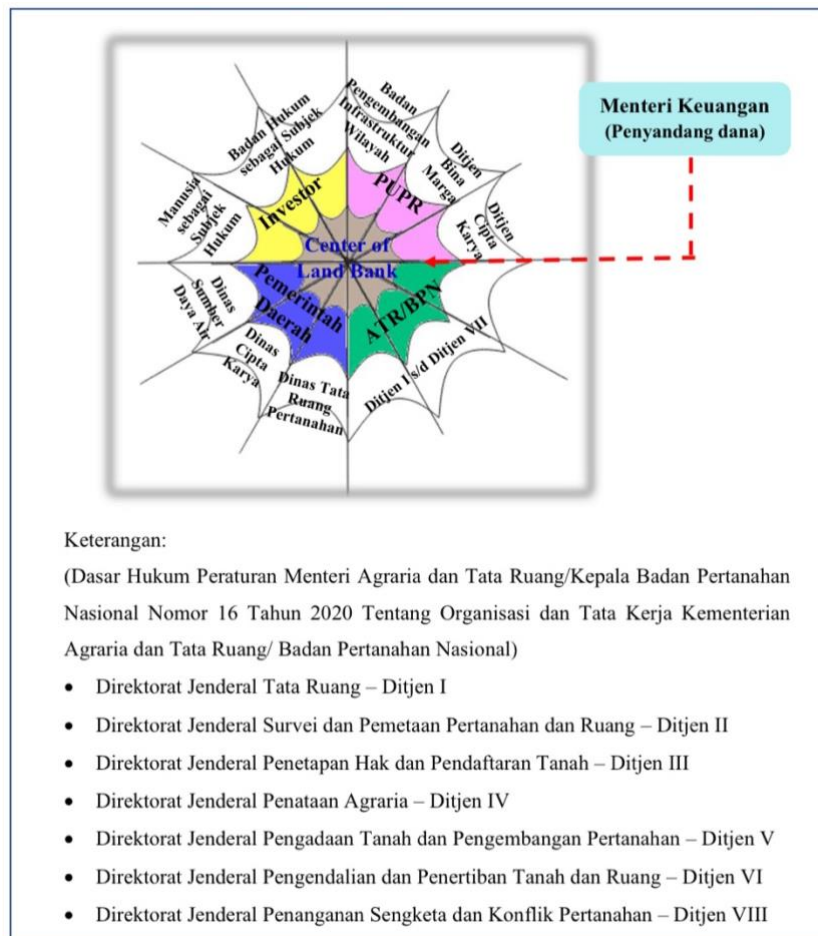
It should be underlined that the land obtained, managed and distributed by the Land Bank Agency is land that has been cleared and cleaned from overlap and other land disputes, so that land that is used for the benefit of the community, especially investment, can be said to be "safe land" to be utilized.

This form of relationship can be conceptualized as a spider web, as carried out by Padjadjaran University Professor, Nia Kurniati whose form is a holding or centre of a

³² Yagus Suyadi, (*et.al.*), 2023, Pengelolaan Tanah oleh Badan Bank Tanah Demi Kesejahteraan Masyarakat dalam Perspektif Islam, *The Indonesian Journal of Islamic Law and Civil Law* 4 (2): 231.

land bank consisting of a collection of several institutions of the Ministry of Public Works and Public Housing (PUPR), Investors and the National Land Agency (BPN), and Regional Governments such as the Cipta Karya Office and the Water Resources Office to regulate and maintain and Managing state assets, in this case land for sustainable investment while still paying attention to the rights of the community and other aspects, so that it is crucial to set firm boundaries to realize legal certainty, because the law is a system in which each element must be a synergistic unit to realize the goals of the aspired law (*ius continuendum*).³³

Picture 3 Land Bank as the Center of Spider Web Concept



³³ Nia Kurniati, " Efisiensi dan Efektivitas Bank Tanah Terhadap Pengamanan Tanah Dalam Rangka Investasi Berkelanjutan ", in the Oration for the Admission of the Position of Professor of Law, Faculty of Law, Padjadjaran University, 2023.

there is concern that the Land Bank Agency has a massive role and authority in the land sector, which is feared to be used by certain individuals to enrich or obtain profits in any form for themselves or certain groups because it seems as if the Land Bank Agency has absolute authority. There is a reporting system that must be carried out by the Land Bank Agency, where the assets must go through the stages of handover and disposal of assets, and assets belonging to the Land Bank Agency that come from the State Budget, capital participation and/or other income are reported by relevant laws and regulations.³⁵

Supervision of the performance of the Land Bank Agency is very necessary as a preventive measure from corrupt practices, collusion and nepotism, as well as unhealthy practices in the control and/or utilization of land rights so that solid pillars such as harmonious regulations between each other, good institutions and governance of the Land Bank Agency, financing that is by the needs and on target in the projects and activities of the Bank Agency Soil, as well as other factors.³⁶

The current existence of the Land Bank Agency in Indonesia is also an effort by the state to carry out its function to achieve prosperity as stated by Friedman, namely, the state as provider, the state as regulator, the state as entrepreneur, the state as umpire.³⁷

Cleveland State University also gave its views regarding matters that support success in the realization of the Land Bank Agency which can also be applied in the Land Bank Agency in Indonesia, namely by having centralized and specific goals, having good and healthy coordination between government institutions and interested parties, having a strong legal basis to support the implementation process of land acquisition, has systematic information management and integrated property technology, there is alignment between the goals of the Land Bank Agency and

³⁵ Fidri Fadillah, *Loc. Cit*, p. 1761-1773.

³⁶ Defrito Bima Oktavio, 2022, The Effectiveness of Land Banks in the Implementation of Land Management in Indonesia, *Jurnal Konstaterring* 1 (3).

³⁷ Friedman W., 1971, *The State and The Rule of Law in Mixed Economy*, London: Steven & Son, p. 5.

regional development and development plans and has an efficient and progressive funding system.³⁸

The maximum management and utilization of land by the Land Bank Agency as mentioned above is expected to benefit as stated by Bernhard Limbong, which can ensure the availability of land for Government needs such as infrastructure development, for investors as capital owners and also the Indonesian people, and can increase the efficiency of the land acquisition process with the existence of flow or a more orderly procedure managed by the Land Bank Agency to carry out compensation to the community affected by Government or private projects, the maintenance of land price stability in Indonesia because it is managed by the Land Bank Agency so that the use of land is in accordance with the target to prevent land speculators and the regeneration of the development of regions in Indonesia, this is related to the role of the Land Bank Agency that ensures the availability of land, where the available land stock has been clear and clean, so that it can be converted to have benefits and added value that have a positive impact on various aspects of community and state life.³⁹

The research also states that in land procurement it is necessary to pay attention to development plans, both national and regional development, work plans in each agency related to the land sector and other strategic plans. Mochtar Kusumaatmadja said that realizing development will always require land, and one of the solutions to get it is to implement a public Land Bank that functions to collect land and carry out land management. The amount of land availability that is always experiencing obstacles can cause physical construction to be stopped, this is due to inappropriate regulations and rapid changes in the economic and political fields, thus creating land prices to rise due to land speculation, therefore the Land Bank Agency is needed to ensure the quality and quantity of land that is adjusted to the needs of the community, business entities and/or investors.

³⁸ Sungkana, *Loc. Cit.*

³⁹ Bernhard Limbong, 2013, *Bank Tanah*, Jakarta: Pustaka Margaretha, p. 62.

As of November 2023, 17.076.4 Ha (seventeen thousand and seventy six hectares) of land have been managed by the Land Bank Agency in the form of management right, with details of management right acquisition in 2022 of 10.961,18 Ha (ten thousand nine hundred and sixty one hectares).⁴⁰ One of which is the provision of land for the construction of IKN Airport which stands on the management right of the Land Bank Agency.⁴¹

Picture 4 Management Right Acquisition Data of the Land Bank Agency until June 30, 2024⁴²

Provinsi	Pulau	Lokasi	Total Luas Lahan (Ha)
17	9	32	19.531,59

2022			2023			2024		
No	Lokasi	Dalam hektar Luas (Ha)	No	Lokasi	Dalam hektar Luas (Ha)	No	Lokasi	Dalam hektar Luas (Ha)
1	Tabanan, Bali	4,52	1	Buton, Sulteng	639,08	1	Sigi, Sulteng	160,20
2	Lombok Timur, NTB	1,00	2	Jember, Jatim	5,29	2	Musi Banyuasin, Sumsel	120,24
3	Lombok Utara, NTB	1,26	3	Sambas, Kalbar	107,33	3	Gantung, Babel	335,24
4	Penajam Paser Utara, Kaltim	4.161,90	4	Badung, Bali	3,40	4	Solok, Sumbar	315,43
5	Tanjung Balai, Sumut	10,00	5	Semarang 2, Jateng	7,40	5	Bolaang Mongondow, Sulut	121,98
6	Asahan, Sumut	30,00	6	Minahasa Utara, Sulut	2,70	JUMLAH		
7	Serang, Banten	7,50	7	Bangka, Babel	3,00	1.053,09		
8	Brebes 1, Jateng	0,19	8	Bengkulu Tengah, Bengkulu	396,00			
9	Brebes 2, Jateng	0,48	9	Sumedang, Jabar	84,00			
10	Purwakarta, Jabar	95,00	10	Cianjur, Jabar	964,98			
11	Poso, Sulteng	6.647,35	11	Halmahera Selatan, Maluku	3.890,00			
12	Batang, Jateng	0,50	12	Tapanuli Selatan 1, Sumut	916,40			
13	Semarang 1, Jateng	0,79	13	Tapanuli Selatan 2, Sumut	494,23			
JUMLAH			JUMLAH					
10.960,49			7.518,01					

The project and data are the tangible evidence that the Land Bank Agency is needed to provide land for both community and investment needs as well as to maintain and maintain land regularly in accordance with applicable laws to avoid speculators' land mafia and other problems for the success of sustainable development.⁴³

⁴⁰ Hilda B. Alexander, 2023, " Hingga November 2023, Badan Bank Tanah Kelola 17.076 Hektar ",Kompas, accessed November 25, 2023. <https://www.kompas.com/propterti/read/2023/11/19/090658921/hingga-Nov-2023-badan-bank-land-managed-17076-hectare>

⁴¹ Badan Bank Tanah (2023), " Presiden Jokowi *Groundbreaking* Bandara IKN di HPL Badan Bank Tanah ", accessed November 25, 2023. <https://banktanah.id/profile/artikel/detail/7>

⁴² Badan Bank Tanah (2022), " *Company Profile* Badan Bank Tanah ", p. 8.

⁴³ Nia Kurniati, *Loc. cit*

Conclusion

The presence of the Land Bank Agency is a "pocket" that contains data from land plots that are clean and clear and "ready-to-serve" to be used for investment interests which undeniably require land to carry out its business activities in various fields. The land inventory is carried out guided by the principles of transparency, accountability and non-profit, as well as the provisions of applicable laws and regulations related to the main duties and functions of the Land Bank Agency. The existence of Land Bank Agency is also a "container" for land plots that are categorized as state land sourced from land that does not have juridical status such as abandoned land, land that has expired, embossed land and so on.

A total of 19.409,6 Ha (nineteen thousand four hundred and nine point six hectares) of land spread throughout Indonesia has been ready to be managed into productive land by the Land Bank Agency by issuing certain land rights to be distributed to business entities and/or investors as evidenced by the issuance of certificates as proof of land rights in accordance with the designation or purpose of land use. The Land Bank Agency can be the Government's strategy in land management in Indonesia to stabilize land value and increase the effectiveness of open space utilization, such as in North Penajam Paser (PPU), where a total of 1.873 Ha (one thousand eight hundred and seventy-three hectares) of land have been used for agrarian reform. The researcher hopes that the results of this study can raise awareness of the importance of the role of the Land Bank Agency in collecting, managing, utilizing and distributing in Indonesia.

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