

Distribution of Land Bank Assets Post Application of the Copyration Law in Realizing Equality Development in Indonesia

Upik Hamidah*

Faculty of Law, University of Lampung, Lampung, Indonesia

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*Corresponding author: Upik Hamidah

Abstract

Law Number 11 of 2020 concerning Job Creation establishes a special agency that manages land, namely the land bank agency, which functions to carry out the planning, acquisition, procurement, management, utilization, and distribution of land. The establishment of a land bank in Indonesia has been realized with the issuance of Government Regulation Number 64 of 2021 concerning the Land Bank Agency. Based on this regulation, the Land Bank Agency has a function to distribute land assets owned to realize the economy. With the existence of a land bank, existing interests lead to the community or only the interests of the government to expand assets, especially for equitable distribution of national development. Both internal and external supervision are expected to minimize the behavior of land liberalization, especially the issue of licensing and land use in the context of development which is expected to increase efficiency and strategic utilization in accordance with its designation. The land bank supervision mechanism in the Job Creation Law will provide preventive measures in minimizing the authority over the land bank that will be misused. The distribution of land assets is carried out by the Land Bank based on the activity plan, criteria regarding the land object to be distributed and priority ranking. This is to ensure the accuracy of the target for guaranteeing the provision of land. The distribution for the provision of land for various development purposes must be based on consideration of the interests of the community and regional development.

Keywords: Assets, Land Bank, Community, Development, Job Creation Act.

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INTRODUCTION

Land regulation by the government so far has only relied on its role as a land regulator. While other roles are not carried out by the government, namely the role of regulating land availability (land manager). Meanwhile, the developer has previously carried out large-scale land acquisition for residential areas (real estate) and industrial areas (industrial estate). On this side, the government's role in land regulation is very minimal so that it is always left behind in terms of providing land for development. One of the urgencies for establishing a land bank as a land manager is the increasingly limited land available for various development purposes. The implementation of land provision that has been carried out by the government has always been constrained by the provisions that apply to the government bureaucracy so that the acquisition of the desired land is often left behind by the private sector. The establishment of a land bank as a special agency through Government Regulation Number 64 of 2021 concerning Land Bank Agency is an opportunity to meet land needs effectively and efficiently.

The specificity of the Land Bank is in line with the concept of a land bank proposed by Mochtar (2013), namely that a land bank can function as a land market controller that ensures the efficiency and rationality of land prices, streamlines and guarantees a fair and just land value, and functions to integrate policies, strategies and strategies. Implementation, and evaluation related to land. It is hoped that the existence of a land bank can meet the housing needs of Low-Income Communities (MBR) in urban areas (Noegroho, 2012; Alfansyuri *et al.*, 2020), infrastructure development and other public interests (Genindha, 2016) and the provision of agricultural land (Setyawan & Dahani, 2020).

The Land Bank Agency has special authority, namely to ensure the availability of land in the framework of a just economy in the form of: public interest, social interest, national development interest, economic equity, land consolidation, and/or agrarian reform. Planning, land acquisition, land acquisition, land use, and land distribution. The implementation of the Land Bank function can be carried out in the form of cooperation with other parties. The parties in question are

the Central Government, Regional Governments, state institutions, state-owned enterprises, regional-owned enterprises, business entities, state-owned legal entities, private legal entities, communities, cooperatives, and/or other legitimate parties.

The concept of a land bank basically collects land from the community, especially abandoned and unused state land, then the land is collected, developed and redistributed according to the land use plan. So the land bank is also a means of land management in the context of utilizing and using land to be more productive by obtaining land before there is a need, so that land prices are still cheap. Thus, a land bank is a systematic acquisition of land (land acquisition) of land that has not been developed, abandoned or left vacant land and is considered to have potential for development. Land acquisition by the government by the land bank is held for future use and in the context of implementing public land policies.

The cooperation between the Land Bank and these parties is a form of mutually beneficial relationship, including accepting land entrusted for cultivation. This form of cooperation shows that the Land Bank can move agilely to obtain land to be managed so as to bring profits and at the same time provide land availability for development. The target target for land provision must be part of the Land Bank planning that has been coordinated with the relevant ministries. Each interest in providing land has different activity characteristics, so a mechanism for distributing assets from the Land Bank is needed. Specifically, the target of land asset distribution activities must be coordinated with the land and sectoral development program of the ministry/institution in charge of it.

The enactment of the Job Creation Law has opened new horizons in land acquisition in Indonesia. In this law, there are regulations regarding land banks which are regulated in Articles 125 to 135. Article 125 paragraph 4 regulates the functions of land banks which carry out the planning, acquisition, procurement, management, utilization, and distribution of land. However, there are suspicions from various circles with the existence of this law which is feared to make an increase in state control over land into a new right, namely management rights. In fact, the Basic Agrarian Law does not recognize the existence of management rights by the state. Management rights have resulted in chaos in land tenure, because it is a form of deviation from the State Controlling Rights (HMN).

If you look closely at the current conditions, unequal land tenure inequalities continue to occur in the community. The Gini ratio of land tenure inequality in Indonesia is very high, reaching 0.54-0.67.4 this means that only about 1% of the population controls 67% of agrarian resources, land and space, while the remaining 99% of Indonesians owns 33% of agrarian resources.

Which is available. The high inequality of land ownership becomes an obstacle in providing land for development. Only a small part of the population who can be categorized as financiers (capitalists) controls a very wide area of land (Fatimah Al Zahra, 2017). This capitalist party is very decisive in the success of providing land for development, so that land can be used as an object of speculation to obtain the maximum benefit from compensation provided by the government.

President Jokowi conveyed that the existence of the Land Bank was very important in guaranteeing the community to land and land ownership. In addition, the Land Bank is also needed to guarantee public interest, social interest, national development interest, economic equity, land consolidation, and agrarian reform. However, according to some experts in agrarian law, including Prof. Maria SW Sumardjono assessed that the land bank arrangement in the UUCK was contrary to Article 33 paragraph (3) of the 1945 Constitution, which substantially focused on the interests of a small group of people. Instead, it is used as much as possible for the prosperity of the people and is considered to violate the principles in MPR Decree No. IX of 2001 concerning Agrarian Reform and Natural Resource Management (PA and PSDA) regarding the overlapping authority for the implementation of the provision of TORA objects by the Agrarian Reform Task Force Team.

From the legal aspect, the effectiveness of the implementation of the land bank will also be determined by the regulations that govern it, for example the institutional form, objectives, and various mechanisms for its implementation.²⁰ In general, the implementation of the rules regarding the land bank still requires government regulations along with other implementing regulations at the ministerial level to reinforce the process. its implementation is in accordance with the mandate of the Job Creation Law so that its implementation is in accordance with the philosophical and juridical ideals contained therein. In addition to the Employment Creation Act, implementing regulations related to land banks are currently regulated in the Land Bank PP.

The legal consequence of establishing a land bank through the ratification of the Job Creation Act is the formation of a new agency that specifically manages land. This has increased the government's authority in the land sector, which was originally a regulator in the land sector through the National Land Agency which was established based on Presidential Regulation Number 20 of 2015, plus the provisions of Article 125 paragraph 2 of the Job Creation Law concerning the establishment of a land bank that functions as land manager.

Based on this, the existence of the Land Bank certainly has an impact on several things, especially in the process of equitable development in Indonesia. The distribution of land bank assets for equitable

development aims to improve the welfare of the community or it will conflict with the rights of the community. Therefore, the study that will be focused on in this research is related to the supervision, management and distribution of land bank assets desired by the government.

METHOD OF RESEARCH

Legal/empirical sociological research which includes research on legal identification (unwritten) and research on the effectiveness of law in society/ field research are the methods used in this research which is based on the science of normative law (laws), but not studying the norm system in the rule of law, instead observing how the reactions and interactions that occur when the norm system works in society (Peter Mahmud Marzuki, 2007).

DISCUSSION

1. Supervision of the Land Bank after the Enactment of the Job Creation Act in Indonesia

In the Indonesian context, there are many benefits derived from the presence of a land bank. First, there is always the availability of land for development so that development plans by the government and the private sector are not hampered. Second, the availability of land all the time for development purposes will attract investors. Investors who have issued initial investments have not suffered losses due to the protracted land acquisition process. Third, efficiency. So far, land acquisition activities are often problematic and take a long time because of the issue of compensation value. The price of land in an area soared dramatically at the time of land acquisition (Wahyu Benny Mukti Setiyawan, 2020).

Fourth, the land bank can maintain the stability of land prices. Land prices in an area usually increase immediately when the government will develop an area. This development plan will certainly be equipped with supporting infrastructure that will become a new economic growth area. Of course, with a land bank that has reserved land from various sources, the increase in land prices in a location when needed does not experience a high price increase. Fifth, land banks can provide land for social purposes, especially under certain conditions, such as relocation during a disaster. Land is available, so disaster victims can be handled quickly for relocation and post-disaster recovery (Urip Santoso, 2012).

The land bank guarantees the availability of land for various future development needs, the efficiency of the APBD/APBN, as well as reducing conflicts in the land acquisition process and reducing the adverse effects of land liberalization. Meanwhile, according to (Jack Damen, 2004), "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 out this land with a view to improve the

agricultural structure and/or to re-locate the land for purposes with a general public interest.

Juridically, the regulation of land banks in Indonesia began with the issuance of the Job Creation Law which was ratified on October 5, 2020. The regulations regarding land banks in this law are contained in 10 articles, starting with Article 125 which contains an explanation and the functions to be carried out by the land bank, then Article 26 which explains the nature of the land bank which guarantees the availability of land for the community, followed by Article 27 which underlines the implementation of the duties of a land bank that is transparent, accountable and non-profit oriented, and Articles 128-129 which contains provisions on the assets of the land bank, management of land rights and land bank organization, while Article 130-135 contains an explanation of each organization in the land bank. With the enactment of the articles concerning the land bank, it is hoped that it will be effective in regulating land in the country.

The establishment of a land bank through the Job Creation Law has made land management instruments into the domain of the state, so it needs supervision to monitor its implementation or operation. This section examines the authority and supervisory mechanism related to the implementation or operation of the land bank. Linguistically, supervision is "surveillance and custody", which means a surveillance or guard over something, in this case the operation of the land bank itself. In organizational management, controlling (controlling) is an activity to match whether operational activities (actuating) in the field are in accordance with the plans (planning) that have been set in achieving the goals (goals) of the organization. That way, the object of supervision activities is about errors, irregularities, defects and other negative things (Sentot Harman Glendoh, 200).

According to Effendi, supervision is all actions or activities to ensure that the implementation of an activity does not deviate from the predetermined plan. The main goal is not to find fault, but to direct the implementation of activities so that the predetermined plans can be carried out optimally (Askam Tuasikal, 2017). In administrative law, increasing the quality and quantity of tasks that must be carried out by the government has consequences on the need for a more intensive and effective supervisory system to correct the occurrence of maladministration practices (Soehartono, 2012).

Supervision in administrative law, as explained by Paul E Lotulung, is divided into three things. From the aspect of the position of the supervising organ, supervision is distinguished between internal and external supervisors. Internal supervision is carried out organizationally or structurally in its internal area; while external supervision is carried out by organizations or

structures outside those that are given the task and function of supervising. From the aspect of tempo or time, supervision is distinguished between a priori and a posteriori. A priori control is carried out early before the issuance of a government decision or decree, while a posteriori control is carried out after the decision or decision is made. From the object of supervision, it is distinguished between the legal aspect (*rechmatigheid*) and benefit (*doelmatigheid*). Control in terms of law means the consideration of legal aspects or legality, while control in terms of expediency is to test whether an action is justified or not (Nehru Asyikin, 2020).

In relation to the supervision of the land bank, the term used alone can cause problems, namely the term bank in the land bank. According to Dendawijaya, as quoted by Rahmadhani and Mawardi, a bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the people (Lintang Rahmadhani, 2011).

With this definition, it is very clear that what is managed by the bank is public funds. Meanwhile, in the land bank, what is managed is land, whether controlled by the state or owned by the community. With the difference in terms of the object of management, the question arises whether the term bank in the domain of land bank can be equated with bank in everyday terms. This indicates whether the system adopted by this land bank will be in accordance with the banking system that is known and there have been laws and regulations governing it, or this term is just a common name in terminology, given the similarity in the main tasks and functions of the land bank which are almost the same. With banks in general.

Broadly speaking, the concept of a land bank with a conventional bank has similarities and differences. Limbong as quoted by Ganindha states that there are similarities and differences in terms of function, implementation and operationalization. In terms of function, both institutions can have a function to store assets, help stabilize the secondary market, and hold capital branches. While the difference is, land banks store and manage land, while conventional banks store and manage money and other valuables and securities (Ranitya Ganindha, 2017).

In terms of implementation, both institutions can be implemented by the government or the private sector, while the difference is that land banks focus on environmental and community stabilization and land use, while conventional banks focus on national and international markets. In terms of their operations, both institutions operate within a regulatory framework, while the difference is that land banks are not-for-profit and conventional banks are profit-oriented.

The main tasks and functions of a land bank are similar to conventional banks in general, so that the operations of a land bank can, in some cases, be subject to existing banking regulations. For example, Law Number 10 of 1998 concerning Amendments to Act Number 7 of 1992 concerning Banking, Act Number 3 of 2004 concerning Amendments to Act Number 23 of 1999 concerning Bank Indonesia, and Act Number 21 of 2011 concerning the Service Authority Finance, along with other implementing regulations. This is because until now the government has not issued a government regulation on land bank which is an implementing rule as a rule governing the operation of land bank in the future.

Land bank itself is an agrarian policy in which institutions are authorized by the state to acquire land that is not used or land that is problematic, both land that has not and needs to be developed or land that is considered to have potential in the short and long term. In addition, the land bank is in charge of managing and regulating land as long as the land is still not used. Furthermore, the land bank can redistribution of the land in the public interest based on ideas made by the government, especially in long-term programs.

The management of this land bank is very sustainable with each other, in which the implementing agency is authorized to manage land as cultivation rights, building use rights and use rights, while the supervisory board is authorized to oversee the activities carried out by the implementing agency. The authority of this supervisory board can reduce concerns if there will be an implementation that will harm the general public and the state but benefit themselves and the group.

With regard to the role of the supervisory board, an analogy can be taken with other similar bodies that have an internal oversight mechanism. In general, the supervisory boards of these agencies are tasked with supervising the management policies carried out by the implementing agency, supervising the implementation of the management carried out by the implementing agency, providing advice/advice and considerations to the implementing agency in management, and submitting supervisory reports. With this supervisory procedure, preventive supervision is expected to be able to minimize abuse of authority by the implementing agency that manages the land bank in the future.

External supervision is still a question mark in terms of whether external supervision will be carried out by BPN which is the regulator of the land sector that has existed in the land sector, or will be carried out by OJK, which has been supervising the management of financial services including banking. There is a difference between the BPN institution and the land bank agency that will be formed under the Job Creation Law, although both are bodies that deal with land in general. The difference lies in the function of each agency that is assigned a different task. On the one hand, BPN in land matters functions and

acts as a regulator, while the land bank agency functions and acts as a land manager.

In the application in several countries, the agency in charge of land such as BPN has two functions, namely as a regulator and as a land manager. However, in Indonesia the policy for managing land issues is given to two different bodies, namely the BPN as the regulator and the land bank as the land manager. This is different when it comes to forest management in Indonesia, where the Ministry of Environment and Forestry functions as a regulator as well as forestry manager in Indonesia. The land bank has the task of acting as an intermediary between land owners and those in need of land. This practice is similar to that of banking circles in general, which are intermediaries between the owners of funds and those in need of funds.

Article 128 of the Employment Creation Law states that the source of wealth for the land bank can come from the APBN, own income, state capital participation, other legal sources in accordance with the provisions of the legislation. The existence of provisions for other sources of income in the assets of the land bank is feared to be a new entry point for investors and owners of funds/capital for land liberalization actors in this case land speculators to donate funds for the benefit of the operation of the land bank so that it can influence the policies taken by the agency implementer in land management.

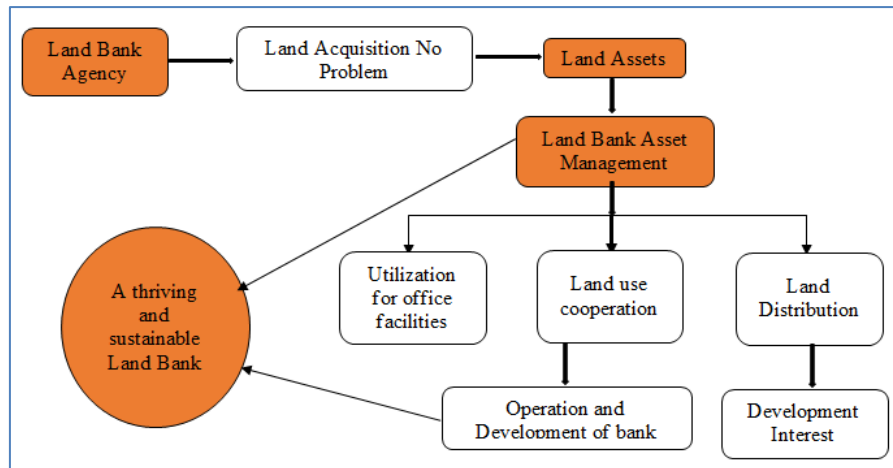
Thus, this land bank can be an alternative form of how to provide land without conflict, especially for preventing various kinds of problems in providing land and achieving development in the public interest. However, in order for this land bank to be carried out according to the desired role and function, of course its supervision must also be carried out properly and efficiently. Even though this supervision, especially internal supervision by authority and mechanism, has been regulated in the Job Creation Law and the PP on Land Banks, namely through an organ called the supervisory board, its existence is still very new in terms of juridical and there are links with other institutions that have functions that in some respects same, requires further clarity so as not to overlap.

2. Management and Distribution of Land Bank Assets in Achieving Equitable Development in Indonesia

Land bank in Indonesia has been established as a special agency (*sui generis*) that manages land based on the provisions in Article 1 of Government Regulation Number 64 of 2021 concerning Land Bank Agency. This means that the Land Bank can fully manage the land assets under its control to create a just economy. Full management is obtained because the assets of the Land Bank and financial system are separate from the state. Although the land bank's financial system is separate from the state, there is a reporting system for certain conditions that must be completed first. For land and building assets that were previously government assets, the process of handing over and removing assets must be carried out based on the applicable rules and regulations.

The assets of the Land Bank, including land assets, are sourced from: 1. State Revenue and Expenditure Budget; 2. own income; 3. state capital participation; and/or 4. other legal sources in accordance with the laws and regulations. The source of assets of the Land Bank originating from the state budget or regional budget must be accompanied by evidence of submission, accountability reports or in other forms in accordance with the provisions of laws and regulations in the field of state assets and finance. After the wealth legally becomes the property of the Land Bank, then the wealth can be managed independently by the Land Bank. The source of wealth of the Land Bank which comes from own income and other legitimate sources is through the land acquisition process. The land acquisition process refers to the provisions of the applicable regulations.

In general, the form of land bank asset management consists of: 1. Asset management for office facilities. 2. Asset management for income sources. 3. Asset management for distribution. The initial capital submitted by the government can be in the form of land and buildings for the head office (home base). Meanwhile, representative offices in the regions can come from their own income or other sources. One way to obtain land can use the land acquisition stage. Asset management for office facilities is relatively permanent, that is, it does not change the area of the office. Asset management for office facilities is not for commercial purposes because it is only used for office operational activities. The form of management is only in the form of maintenance and security.



Asset management for commercial sources of income. The income earned is used for operational activities and capital development. Own operating income obtained by the Land Bank comes from cooperation in the use of land assets with other parties and business cooperation, cooperation in land use, and other legitimate income. Other services, proceeds from the sale of assets, results of business development cooperation with other parties, proceeds from obtaining grants and exchange, proceeds from management, proceeds from asset disposal.

Broadly speaking, the asset management of the Land Bank consists of the management of fixed assets and non-fixed assets. Non-fixed assets are wealth in the form of financial instruments (shares, cash, deposits, etc.), machinery, equipment and so on. While fixed assets in the form of land and buildings that require more attention because they are physically larger.

Another form of land management is land maintenance and security. Land maintenance and security includes legal and physical aspects. The legal aspect is in the form of legal certainty of land rights and being active in legal efforts to maintain legal certainty of land rights both outside and inside the court. This shows the role of the Land Bank which must secure the Management Rights owned and make an accountable agreement regarding the granting of rights on the Land Management Rights. While the physical aspect is related to the maintenance and physical security of the land from the possibility of unauthorized occupation from other parties.

The implementation of the Land Bank is in line with the practice of land banks in the Netherlands as stated by Al Zahra, (2017c), namely through the stages of collection/acquisition, management and distribution. The difference is that the object of the land bank in the Netherlands is more limited to private land parcels, while in Indonesia it also includes state lands based on applicable regulations. Land bank management activities in the Netherlands are in the form of soil conditioning so that it is ready for use such as land clearing, demolition

of previous properties and property maintenance. Meanwhile, land management by the Land Bank in Indonesia covers a wider scale and complex work so that cooperation with other parties is possible. The last part is that the distribution of land by land banks in the Netherlands tends to be of a business nature so that steps are taken such as auctions, buying and selling, exchanging and so on. Meanwhile, land distribution by Land Banks in Indonesia can be carried out in cooperation with other parties in the form of buying and selling, leasing, business cooperation, grants, exchange or other forms agreed with other parties.

The distribution of land assets owned by the Land Bank includes the provision of land and the distribution of land. Provision of land is provision for public interest, social interest, economic equity interest, development interest, land consolidation interest, and agrarian reform. While the distribution of land is in the context of redistribution of land to the community in accordance with the provisions of the legislation. The targets of land distribution are ministries/agencies, regional governments, social and religious organizations and/or communities as determined by the central government. Overall land distribution activities through applicable procedures and provisions.

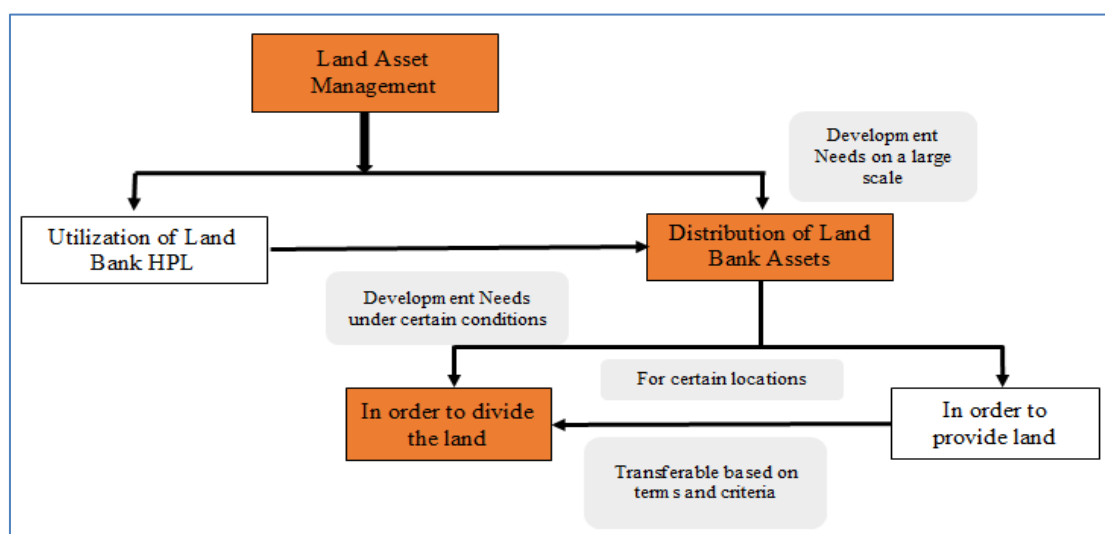
The distribution of land in the context of providing land includes the following activities: 1. public interest; 2. social interests; 3. interests of national development; 4. economic equity; 5. land consolidation; and/or 6. agrarian reform. The distribution of land for public purposes must be based on certain criteria so that it is not misused for commercial purposes. The criteria for the provision of land for the public interest are basically the same as the land acquisition for the public interest. If land has been controlled and managed by the Land Bank, if the Management Right has been granted, the procedure is through the release of the Land Bank assets to the agency that requires the land accompanied by the release of the Management Right. Meanwhile, for lands that have not been granted Management Rights, the distribution of land assets is through the format for surrendering assets to a predetermined party.

Distribution of land in order to guarantee the provision of land for social purposes in the form of education, worship, sports, culture, reforestation, conservation, and other social interests of the community. Provisions regarding criteria in the category of social interest are not regulated. Therefore, the appointment of the parties in the interest must be based on the criteria owned by the Land Bank. The implementation of land distribution must coordinate with the Government and Regional Government so that there is no handover of land to inappropriate parties.

The distribution of land for economic equity is a guarantee of providing land for pioneer programs, opening isolated areas, building people's markets, developing houses for low-income people, and other

economic equity programs. The opening of regional isolation in a local scope is part of the development of rural areas with an emphasis on inter-rural infrastructure development (Hakim, 2019). Meanwhile, the opening of regional isolation on a wider and strategic scale is in land border areas with neighboring countries. Firdaus (2020) raises issues at regional borders due to lack of infrastructure and lack of growth centers caused by land use conflicts. The need for land for the development of infrastructure and public facilities can be pursued with the assets of the Land Bank so that development costs can be reduced significantly.

Mechanism of Distribution of Land Bank Assets in Indonesia



Land consolidation and agrarian reform which are the targets of land distribution are programs from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Ministry of ATR/BPN). The handover of land that will be used for the two activities follows the stages of activities that apply to the Ministry of ATR/BPN program. The reference for the land consolidation program related to guaranteeing land availability is based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 12 of 2019 concerning Land Consolidation and technical instructions for activities. As for the provision of land in the framework of the Agrarian Reform program, it refers to Presidential Regulation Number 86 of 2018 concerning Agrarian Reform.

Land distribution through land division is directed at land redistribution activities to cultivators. The implementation of land redistribution activities by the Ministry of ATR/BPN is based on technical guidelines on land redistribution. In it the Land Bank (operationally) only provides land, while the stages of activities including coordination with the Regional Government are carried out by the National Land

Agency in the regions. Therefore, the allocation of land for the distribution of this land needs to go through a process of coordination and implementation of provisions regarding land redistribution.

CONCLUSION

Based on the discussion above, it can be concluded that supervision of the operation of the land bank is absolutely necessary considering the position of the land bank as a land manager which principally concerns the livelihood of many people, especially the land sector. Through both internal and external supervision, it is hoped that the behavior of land liberalization will be minimized, especially the issue of licensing and land use in the context of development which is expected to increase efficiency and strategic utilization in accordance with its designation. The land bank supervision mechanism in the Job Creation Law will provide preventive measures in minimizing the authority over the land bank which will be misused in the future. The institutional and supervisory authority of the land bank through the supervisory board organ, as referred to in the Job Creation Law, is expected to encourage the performance and operation of the land bank in accordance with its roles and functions.

The distribution of land assets is carried out by the Land Bank based on the activity plan, criteria regarding the land object to be distributed and priority ranking. This is to ensure the accuracy of the target for guaranteeing the provision of land. The distribution for the provision of land for various development purposes must be based on consideration of the interests of the community and regional development. Meanwhile, for the purpose of investment and economic development, it must be based on criteria with business calculation parameters.

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