

Legal Certainty of Land Banking Institutions: Theoretical and Current Challenges

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Abstract

Land banking is a form of land acquisition carried out by systematically acquiring land that has yet to be developed, abandoned land, or vacant land for further development and optimized use to benefit the community. The Government carries out this form of land acquisition to implement public land policies. This research uses doctrinal or normative legal research with a doctrinal approach and statutory regulations related to the Land Bank Concept and Institutions that are in accordance with the development of Indonesian Constitutional Law. Those legal material collected are analysed prescriptively. The result shows that the form of land banking is a special body (*sui generis*) that manages land with assets separate from state assets so that activities are more flexible, efficient, and effective. The appropriate Land Bank institutional model is in the form of a public service agency. As a separate institution from the ministry, the land bank's governance is based on general principles in the financial accounting system. Land asset management is directed at utilizing land in collaboration with other parties and distributing it to specified parties. Using land bank assets is to obtain income as capital accumulation. Meanwhile, the distribution of land assets is in the context of realizing a just economy through activities in the public interest, social interests, national interests, economic equality, land consolidation, and agrarian reform. Land banks must allocate part of their land assets for land reform.

Keywords: Agrarian; Land Banking; Legal Certainty; Land Reform; Institutions.

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1. INTRODUCTION

Institutions, according to Hodgson [¹], are 'systems of established and prevalent social rules that structure social interactions,' while North, defines institutions as the rules of the game in society or, more formally, they are the humanly devised constraints that shape human interaction [²]. Though the definitions provided share many similarities, yet there is no consensus on a single definition of institutions because, scholars propose definitions of institutions that fit their disciplines or theories. However, all definitions agree on the core issue - i.e. institutions are rules and regulations that govern the behavior of players [³].

The concept of institution has been used in various disciplines and they are evident in different sectors. Land Banking Institutions in Indonesia for example. This institution was established on the basis of anticipating economic liberalization, which caused land prices to soar due to speculators. This issue has an impact on government projects in an effort to build constrained infrastructure related to land compensation. This situation clearly complicates the provision and procurement for the public interest [⁴].

Establishing a Land Bank is a powerful tool that can significantly influence development patterns in line with spatial planning and overall development planning objectives. It's a proactive step towards addressing the

¹Hodgson, Geoffrey M. "What are institutions?." *Journal of economic issues* 40, no. 1 (2006): 1-25.

²North, Douglass C. *Institutions, institutional change and economic performance*. Cambridge University Press, 1990.

³Koroso, Nesru H., Jaap A. Zevenbergen, and Monica Lengoiboni. "Land institutions' credibility: Analyzing

the role of complementary institutions." *Land Use Policy* 81 (2019): 553-564.

⁴Permadi, Iwan. "Land Tenure and Utilisation Challenges of The Land Bank Concept in Indonesia." *Jurnal Hukum dan Kenotariatan* 7, no. 3 (2023): 185-196.

growing demographic bonus, ensuring the provision of housing through infrastructure development in residential and residential areas. This can help curb the massive conversion of agricultural land to non-agricultural land in rural areas. Moreover, it can contribute to a robust food security system, a crucial development priority. However, to avoid potential conflicts over land use, it's essential to prepare good planning through the development of integrated national and regional spatial plans.

The Land Bank is a special agency (*sui generis*) by the central government that is given special authority to manage land. In order to carry out its authority, the Indonesian Land Bank has the function of carrying out planning, acquisition, procurement, management, utilization, and distribution of land [5].

In comparison, implementing the land bank concept has been proven effective and efficient in many developed countries. Many countries have implemented Land Banks as a means of land management. Land Banks have been implemented in Europe, America, Africa, and Asia. Land banking is a form of refinement and expansion of land management patterns implemented in several European countries several centuries ago when they implemented land consolidation programs, especially in the agricultural sector, such as in England (1710-1853), Denmark (1720), Sweden (1749), Norway (1821) and Germany (1821) [6]. The difference is that if land consolidation is implemented in the agricultural sector, which is organized by the Government (Public), then the Land Bank (land banking) can be organized by the government or the private sector.

In Indonesia, the concept of land banks is not entirely new. There are already activities that can be considered as early forms of land banks, such as the formation of the Jakarta Industrial Estate Pulo Gadung (JIEP) in Jakarta and the Surabaya Industrial Estate Rungkut (SIER) in Surabaya [7]. However, it's crucial to recognize that the institutional, business, and regulatory framework of land banks can vary significantly in different countries.

2. METHOD

This research uses doctrinal or normative legal research with a doctrinal approach and statutory

regulations related to the Land Bank Concept and Institutions that are in accordance with the development of Indonesian Constitutional Law. This research also uses primary data in the form of interviews with stakeholders [8]. Furthermore, the data were analyzed with content analysis to analyze the formulation of the problem and then made a conclusion and suggestion. Those legal material collected are analysed prescriptively.

3. THEORETICAL FRAMEWORK AND LEGAL POLICY OF LAND BANKING INSTITUTIONS

Historically, the concept of a Land Bank was initiated in Western countries since the 1700s and adopted by many countries, including Asian countries. There are several definitions of Land Bank. According to Maria Sumardjono, a Land Bank is any government activity providing land that will be allocated for use later [9]. This explanation states that the land bank mechanism is intended to provide land for public purposes and community welfare, so government intervention is required.

Conceptually, there are two forms of land banks, each with its unique mission and function. The first is general land banking, which is primarily focused on providing land for large-scale social needs and maintaining land price stability, without pursuing profit. The second is special land banking, which is tasked with providing land on a smaller scale for commercial purposes, often with the aim of generating revenue.

Judging from its function, land banks have several functions as follows [10]:

- a. Land keeper, as a land collector, namely inventory and development of land databases, administration and provision of land information systems;
- b. Land warrantee, as land security, namely guaranteeing the provision of land for development, guaranteeing land value and fair land market efficiency, and securing optimal land use;
- c. Land purchaser, as land controller, namely control of land, determining land prices which are related to the perception of equal land and building tax values;
- d. Land valuer, as a land appraiser, namely carrying out objective land assessments in creating a value system in determining land value that applies to various purposes;

⁵ Article 124 Paragraph (4) Law Number 11 of 2020 concerning Job Creation

⁶ Purba, Agata Wanda Yunitha, Lego Karjoko, and Moch Najib Imanullah. "Legal Transplantation of Land Bank in Indonesia: A Comparative Study of Land Bank Policy from Leading Country." *Educational Administration: Theory and Practice* 30, no. 5 (2024): 3264-3276.

⁷ Afrimadona, Shanti Darmastuti, and Andi Kurniawan. "Industrial Park and Welfare Effect: A Preliminary Evidence from Indonesia." *Malaysian Journal of Social Sciences and Humanities* 4, no. 7 (2019): 77-86.

⁸ Irwansyah. *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, (Yogyakarta: Mirra Buana Media, 2020), p. 41.

⁹ Harjono, Dhaniswara. "Tanggung Jawab Penilai dalam Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum." *Jurnal Hukum Indonesia* 2, no. 1 (2023): 14-24.

¹⁰ Roestamy, Martin, Abraham Yazdi Martin, Radif Khotamir Rusli, and Mohamad Ali Fulazzaky. "A review of the reliability of land bank institution in Indonesia for effective land management of public interest." *Land use policy* 120 (2022): 106275.

- e. Land distributor, as a land distributor, namely ensuring fair and fair distribution of land based on the unity of land value, securing planning, provision, and distribution of land;
- f. Land management, as a land manager, namely carrying out land management, which is part of managing assets as a whole, carrying out analysis, strategies, and managing implementation related to land.

The essence of establishing a Land Bank is that reserves are for the state's interests. State interests in terms of the state needing land to improve society's welfare and living standards. To improve the standard of living, new jobs are needed. New jobs require infrastructure development, which involves land. So, infrastructure development is in the country's best interests. The state is accelerating infrastructure development by establishing national strategic projects. Hence, this land banking is formed to support national strategic projects. This National Strategic Project is in the country's interest to create accelerated prosperity for the people. Land banks may not be for personal interests or private, so they are genuinely purely for the benefit of the state.

The need for implementing land management is urgent, primarily due to the continuous rise in the world population. This growth puts pressure on static land to meet the basic needs of its inhabitants. To illustrate the magnitude of this population growth, we can refer to World Bank data, which shows that the world population increased from 3.195 billion in 1963 to 7.125 billion in 2013.

Another reference that illustrates the rapid growth of the world population can be seen in the report published by the UN Headquarters in New York entitled "World Population Prospects: 2012 Revision" which states that the world population will increase to 8.1 billion people in 2025 from approximately 7.2 billion people currently, it is estimated that the world population will reach 9.6 billion people in 2050 ^[11]. This situation results in increasingly limited land availability, especially in urban areas. This causes a significant increase in land prices, which can trigger land problems.

The policy regarding the establishment of a Land Bank is already outlined in the National Long Term Development Plan (RPJPN) 2005-2025. It focuses on effective and efficient land management, with the enforcement of land laws based on the principles of justice, transparency, and democracy. In the public interest, Land Banks are mandated to support the availability of land for various infrastructure developments across the country. This includes the

construction of roads, dams, airports, ports, oil and gas infrastructure, hospitals, government offices, schools, markets, and parking lots. Additionally, Land Banks also ensure land availability for social purposes such as education, worship, sports, culture, conservation, and reforestation. Specifically for agrarian reform, Land Banks guarantee the availability of land for land redistribution. At least 30% of state land designated for Land Banks will be used for agrarian reform.

The land bank is used to overcome the problems of high land prices, limited availability of government land, and urban sprawling, which results in uncontrolled land conversion and inefficient city development. The land bank work scheme, among other things, plans the availability of land for public, social, development, economic equality, land consolidation, as well as agrarian reform and land justice. Acquisition of land banks, namely land determined by the government and land from other parties. Land banks can procure land using a staged land acquisition mechanism for development in the public interest or direct land acquisition.

Land utilization by land banks is carried out through cooperative use with other parties, and the principle of benefit and priority continues to be paid attention to. Distribution by land banks to Ministries, regional governments, social and religious organizations, and communities determined by the central government. The land bank organization was formed through the signing of Presidential Regulation No. 113 of 2021 on the Structure and Implementation of Land Banks. The government introduced the Land Bank as an institution projected to consolidate and accommodate "abandoned land" for various development and economic purposes, even reaching agrarian reform arrangements.

Land banking or land banking is intended as a government activity to provide land that will be allocated for use later. Land in the community, especially abandoned land and state land that has not been used, is collected and developed to be redistributed per the land use plan. Thus, land banks also play a role in carrying out land inventory and management ^[12].

Land banking is a form of land acquisition carried out by systematically acquiring land that has yet to be developed, abandoned land, or vacant land for further development and optimized use to benefit the community. The Government carries out this form of land acquisition to implement public land policies. Based on their function, land banks are divided into two categories, namely general land banking and project land banking, all of which generally direct land use and influence or regulate land prices.

¹¹ United Nations. (2014). *World population prospects: The 2012 revision*. Department of Economic and Social Affairs, Population Division. New York: United Nations.

¹² Pargendler, Mariana. "State ownership and corporate governance." *Fordham L. Rev.* 80 (2011): 2917.

The Land Bank Agency holds a pivotal role in agrarian reform, ensuring the state's commitment to providing equal land rights to all citizens. This role is derived from the concept of state control rights, which empowers the government to use land banks as a tool to support various land policies. By increasing land area and acquiring land in a balanced manner, the Land Bank Agency contributes to the overall development and welfare of the population.

Land banks can be established and operated by public institutions, private organizations, or a combination of both, depending on the funding sources. This diversity in ownership leads to the existence of various types of land banks, including public land banks, private land banks, and hybrid models that combine public and private ownership. Each type serves a unique function in land acquisition, development, and management.

a. Public Land Bank

A public land bank is a land bank whose management involves public institutions. A public institution or several public legal entities can run this land bank. This land bank is an independent body with purely public service duties whose responsibility lies entirely in the hands of the government. Flechner then differentiated public land banks based on their scale and purpose into general and special ones. Public land banks serve the acquisition of undeveloped and abandoned land, holding land and dividing land for all types of land use, both public and private, without prior specification of use for specific areas.

A public agency runs this land bank to control urban growth patterns, regulate land prices, capture profits, and/or regulate land use. Meanwhile, specialized land banks focus more on some functional regions. Land banks specifically serve urban renewal activities, providing housing for low-income earners and land acquisition for public facilities. Apart from that, particular land banks also offer land for green open spaces and industrial development.

b. Private Land Bank

Apart from the public sector, the private sector can also run land banks. Private actors will become land bank shareholders. When one or more private actors take the initiative to fund land banks, private land banks are born. Thus, this private land bank can be run by individuals or national or foreign private companies. Important motives for private players to participate in land banking are profitability, availability of land funds for exchange and indirect acquisition purposes. The

advantage of a private land bank is a combination of income from long-term rental contracts and increased land value. While private parties have full responsibility for land banking, it's important to note that the government still has a regulatory role in overseeing land purchases. Types of private land banks include land banks for investment, real estate, industrial areas, business development or expansion, and plantations.

Private parties are responsible for land banking, so the state cannot fully influence land purchases. To keep the land market efficient and controlled, the government is required to actively operate a public land bank through regional spatial plans and anticipation of future city and regional developments. Apart from that, the government must be able to utilize its power to issue regulations regarding restrictions on land control, effectiveness of land use, taxation, and incentive-disincentive policies.

c. Mixed Land Bank

As stated by Rozemarijn van den Berg and friends [¹³], land banks can also be run jointly by public institutions, namely the government and the private sector. This institutional combination was carried out primarily to overcome funding limitations due to land acquisition and/or developing it before distribution, which requires large and sustainable funds. Some of these combination or mixed model land banks can be developed for low-cost subsidized housing, plantations, and industrial areas. In this case, the government, which is most interested in land banks for various purposes, can invite the private sector to carry out joint ventures to acquire and develop land banks.

This joint venture, of course, has consequences in terms of the distribution of company shares. However, this public-private collaboration land bank must remain oriented towards public services, which in this context refers to the land bank's commitment to serving the public interest, such as providing affordable housing or supporting economic development. Therefore, the composition of company share ownership must remain dominated by the government; hence land bank company management policies are in the hands of the government as the majority shareholder [¹⁴]. Land banks carry out several stages of acquiring land, namely the provision, maturity, and land distribution stages.

Land banks can also help realize various goals. Land banks are not used to make large-scale property acquisitions solely to hold a large public land inventory. A frequent goal of land bank programs is affordable housing, including home ownership and rental programs.

¹³ Padmawati, Ida Ayu Putu Sri Astiti, I. Made Suwitra, and Putu Ayu Sriasih Wesna. "Legal Construction for The Establishment of Land Banks in Land Procurement for Fair Public Interest." *Jurnal Hukum Prasada* 10, no. 1 (2023): 1-11.

¹⁴ Kahan, Marcel, and Edward B. Rock. "When the government is the controlling shareholder." *Tex. L. Rev.* 89 (2010): 1293.

Land banks with this purpose are usually run by non-profit entities. Another goal is encouraging economic redevelopment that both non-profit and profit-oriented entities can carry out.

Land banking is a flexible concept that can be implemented by a range of entities. It is not limited to specific organizations, but can be carried out by existing public entities or newly formed ones. For instance, existing redevelopment authorities can adapt their functions to include land banking activities, showcasing the versatility of this approach.

Land banks have the potential to revolutionize metropolitan land planning. They can be integrated into existing government agencies or established as new institutions, fundamentally reshaping land policy. Land banks can function as a unique urban planning tool, addressing market distortions that lead to property oversupply. They can also act as conventional banks, ensuring real estate liquidity and capitalization. This innovative approach to land planning positions land banks as a leading model for the future.

The allocation of Land Bank Management Rights is divided into just economic interests and investment. Allocation of just economic interests must be based on a priority scale so that it is apparent within the framework of the planned program. It is hoped that the land bank can provide land for the community. Meanwhile, for investment purposes, land banks can collaborate with the beneficial owners, which is expected to lead to community prosperity as mandated by Article 33 paragraph (3) of the 1945 Constitution as a constitutional right.

4. CONCLUSION

The form of land banking is a special body (*sui generis*) that manages land with assets separate from state assets so that activities are more flexible, efficient, and effective. The appropriate Land Bank institutional model is in the form of a public service agency. As a separate institution from the ministry, the land bank's governance is based on general principles in the financial accounting system. Land asset management is directed at utilizing land in collaboration with other parties and distributing it to specified parties. Using land bank assets is to obtain income as capital accumulation. Meanwhile, the distribution of land assets is in the context of realizing a just economy through activities in the public interest, social interests, national interests, economic equality, land consolidation, and agrarian reform. Land banks must allocate part of their land assets for land reform.

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