

Actualizing Land Bank as One of The Efforts to Prevention of Land Disputes and Conflicts Settlement

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Abstract. One of agrarian problems in Indonesia is about prolonged and unresolved land disputes and conflicts. The land disputed and conflicts become strategic including land disputes and conflicts and land tenure, the acquisition of land problems for development in the public interest including to private interest, land supplies to serve national strategic programs, land conflicts impacts to decrease in productivity, neglected land problems and etc. The establishment of the concept of land bank development is expected to become one of solution to prevent land disputes and conflicts especially related on acquisition and availability of land for public interest performed by government or private. The truly substance of this land bank is land reserves conducted by the government through the legitimate acquisition according to the law provisions to fulfillment of the land. The constitutional basis of establishing a land bank is 1945 Constitution especially article 33 paragraph 3 and Law of The Republic of Indonesia Number 5 of 1960 Concerning the Fundamentals of Agrarian Affairs. Research on this land bank is carried out normatively. The research on land bank is conducted in a normative juridical manner in particular this study examines the conception of land bank stipulated in Draft Bill on Land how it can be realized as an effort to prevent land disputes and conflicts in Indonesia.

Keywords: *Land bank, Prevention, Conflict.*

1 Introduction

Disputes and conflicts agrarian or land when this is very complex, both which are horizontal and vertical. Agrarian conflict is a central issue and is the tip of the iceberg of various types of basic and historical land problems in Indonesia [1]. Djalil suggested that one of the causes of Easy of Doing Business (EoDB) lower in Indonesia because settlement of the problem of land deemed not quite good [2]. Tjandra to mention that the problem of agrarian is a problem serious that get attention specifically on the President of the Republic of Indonesia Joko Widodo [3].

Settlement of disputes and conflicts land to be one of the programs of strategic Government in order to provide protection law and certainty of law to the owner of the land that is eligible. In addition to efforts to handling and settlement the Government also undertake efforts to prevention to reduce disputes and conflicts land one of them to carry out registration of land systematically complete in all over Indonesia. With the implementation of registration of land in all over Indonesia are expected to disputes and conflicts of land will be further reduced due to have obtained the boundaries of ownership of land are fixed or permanent.

To download prevent the occurrence of problems of land mainly supplies the land interests of development for the benefit of public as well as investments by private idea of the establishment of a land bank had long proposed. In various seminars scientifically that int he

behavior right by activist land or being campus idea of the establishment of a land bank that became one of the topics are interesting to talk about or discussed. The establishment of the land bank is expected to be one of the solutions to solving the land problem especially the problem of land acquisition and the availability of land for investment purposes.

Based on data from the Directorate General of Handling Agrarian Issues on Spatial and Land Utilization, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency released at the end of 2019, stated that the distribution of land disputes and conflicts based on the subject is (a) Individual (64.00%), (b) Legal Entity (15.00%), (c) Government Agencies (1.90%), (d) BUMN (5.40%), and (e) Community Groups (9.70%). The data was obtained based on data obtained from the Regional Offices of the National Land Agency of Provinces throughout Indonesia.

The occurrence of land disputes between the community and the government is one of them caused by the acquisition of land that is not complete. Act acquisition of land by the State for the benefit of the common good through the acquisition of land or through the revocation of rights on the ground required to provide compensation losses were decent [4]. In the implementation of land acquisition by the State in the public interest, it causes legal problems, one of the causes is land regulations that do not provide guarantees of legal protection [5]. In line with the terms of the Hernando de Soto argued that governments in some countries much involved in the process of expropriation of land for the benefit of the economy is extralegal [6]. Parlindungan suggests that a lot of land that do release the pretext of the interests of general and how the court can participate interfering hand in the manipulation of these [7].

Efforts to seek settlement of the disputed land is not able to be released from effort to understand the various roots of the problems are so complex dimensions. Dimensions are covering the conflict interests, conflicts structural, conflict of values, conflict relationships and conflict data [8]. Regulation of the Minister of Agrarian and Spatial Planning / Head of the Agency Land National Number 11 Year 2016 concerning the Settlement Case Land said that the settlement of disputes and conflicts of land carried out by the Ministry if there is a defect of administration in the issuance of certificates of rights over land or through the courts if it involves ownership. The Bureau of Land National is not authorized to perform the test material in order to find the truth of the dispute is pleased with the correctness of data juridical and / or the data physically [8].

When this term land banks already commonly heard and known, even if the institution is not yet formed, so much that is not understood by either. Understanding that both of the landbanks this becomes an impetus to consider the presence of land banks in the system of law of land in Indonesia. The presence of land banks will be increasingly important because there are many problems and obstacles that can be overcome in the implementation of the procurement of land, especially Developing infrastructure. Because it is the presence of land banks apart resolve the problem of procurement of land, is also expected to be a solution that can provide prevention to the dispute and ground.

2 Methods

The research method used in this research is the type of research legal normative, research to examine the application of the rules or norms of the law positive or reviewing regulatory law in a system of law that is coherent. The rules by laws and regulations that is Law No. 5 of 1960 on Basic Agrarian Principles and Law No. 2 of 2012 on Procurement Land for Development to

Interests General along with regulatory implementation. In addition to that carried out a search of the literature that is associated with the object of writing that institution bank lands.

3 Result and Discussion

3.1. Definition and Role of a Land Bank

There are two terms that differ regarding the banks land. There is mention of a land banking, there are call 1 and banks. Land banking is the process or policy by which local governments acquire surplus properties and convert them to productive use or hold them for long-term strategic public purposes. Land banks are public authorities or special purpose not-for-profit corporations that specialize in land banking activities [9]. If referred to as land banking refers to the activities of the institution land bank, while understanding the bank of land as the land bank refers to the institution or body of law of public who undertake the management of land. Land banks is an institution which provides the ground for the purposes of development, at the same time acting as the institution that has authority form the controller right price of land. Land banks also acts as an agency business which acts as the manager of the land of the terms of controlling the price of land and support the implementation of the Plan of Spatial. Can mentioned that the land bank was present to support the task the Government in the management, provision and control the price of land.

Limbong said land bank as an instrument of management of land which has been used in various countries to deal with various issues such as the removal of land bank and the use of land that is more productive [10]. On the other hand Van Dijk and D. Kopeva argued that Land banking is a systematic acquisition of often large pieces of land, normally land that is pre-development but could be considered having potential for development. Land banking has been defined as public or publicly authorized acquisition of land to be held for future use to implement public land policies [11]. Land bank is defined as the acquisition or expropriation of the lands that have not been developed, the land is empty, or the land of derelict who do it systematically the potential to be developed. Takeover is done in order to use the land that is more optimal in the future will come in order to support program policy of the public. Land banks will provide benefits to the price of land which is cheap and the availability of land will be possible the development of an area that is good and organized Based on experience in countries that have implemented land banks, there are a number of activities that can be carried out through landfills, namely : (a) land acquisition ; (b) soil maturation ; (c) administrative requirements ; (d) land plot arrangement is ready to build ; (e) sale of lots to those in need, and ; (f) the administration of the transitional land in accordance with the provisions of the regulation.

In the Draft Bill of Land, the term Land Bank is referred to as the Land Management Institution. Institutions Management Land is a body of law specifically which manages land and has a wealth that is separated from the financial state and serves as a land banks who do the planning, acquisition, procurement, management, utilization and distribution of is intended to ensure the availability of land within the framework of economic justice, to: (a). public interest; (b). social interests; (c). development interests; (d). economic equality; (e). land consolidation; and (f). agrarian reform and justice land. The nature carry out the task and authority institutions that are transparent, accountable, and nonprofit, while the source of the wealth derived from income alone, the budget, investments in the country's capital, the accumulation of capital and sources of other legitimate in accordance with the provisions of the rules and regulations.

In the Draft Bill of Job Creation, term land bank is raised back to the term Agency Land Bank. For the purposes of the management of land the Government formed a body specifically the agency bank land. The assets of the land bank entity are the separated state assets. The land bank body functions to carry out the planning, acquisition, procurement, management, utilization, and distribution of land bank agency ensures the availability of land in the framework of economic justice, for the benefit of the general, the interests of social, interest development, equitable economy, consolidation of land and Agrarian Reform. Furthermore, the bill that affirmed that land bank in carrying out duties and authority are transparent and accountable. Source of wealth the agency land bank comes from the state budget, revenue alone, investments in capital and sources of other legitimate in accordance with the provisions of regulation law. Land status who managed entity land bank that will formed are given the right of management.

Indeed, land banks is not a concept that is new. The idea to establish a land bank has been doing quite a long time in countries in Europe and America. Typing authorized city planners suggest that every town clicking land. The land is empty which is not utilized which is located on the outskirts of the city. The lands that serve as the object of planning the use of long-term are aimed at controlling the conditions of the city were not organized. Land bank proposed to be present as an alternative method of land use planning the Government through supervision that aims to control stability bag prices land domestic. The implementation of the land bank which is run in Europe mainly intended for the modernization of the city.

To acquire land in general, the land bank me to take some control of land owned by the community as a land fund through the sale and purchase. In some countries land banks acquire land through the mechanism of mandatory purchases and non- mandatory purchases. Method shall when activity land bank has a major impact on the development of the city. In addition, the land bank enables the Government to acquire and compile land for long - term and short - term strategic objectives. Through the land bank the Government can give effect to the policies that have implications for the infrastructure, the arrangement of the area, the maintenance of the environment which have an impact on the prevention of the emergence of speculation and land mafia. In this case through the land bank the Government took over land that was considered gray status, or became the object of speculation and made it a savings that could be utilized for the welfare of citizens.

Based on studies on the land bank in other countries, there is 6 (six) which becomes the function of the bank ground. Functions that includes : (1) the Land Bank as a collector of land (land keeper); (2) Land Bank as a land security (land warentee); (3) Land Bank as the controller of land acquisition (land purchaser); (4) The Land Bank as an appraiser of land (land value); (5) Land Bank as distribution of land (land distributor) and; (6) the Land Bank as management of land (land management).

3.1. The role of the Land Bank to Prevent Disputes and Conflict Land

One of the disputes and conflicts of land that often occurs is a matter of cultivating the people on land estates. The occupation of the people on the lands of the estate becomes a trigger of conflict between employer plantation with the community around it. Directorate General Handling Problems Agricultural Utilization and Space and Land Ministry ATR / BPN noted that the dispute caused by the control and ownership of land as many as 5,187 (56.73%), as well as cases that are caused by the control and ownership of land as many as 7786 cases (61%). Categories that become the cause of the dispute and the case highs that occurred in Indonesia.

The occurrence of occupation of the people of the area of plantation can be caused by the expiration of the right to a business that is given to entrepreneur plantation. The cultivation is

done as the effort mastery of physical land by the public is illegal to land belonging to the company plantations. Principle law of the land we are asserted if the rights to the business ended the status of the land into the land of the country is often interpreted diverge. Understanding it is understood as companies' plantation at once is not entitled on land the former rights to businesses that include plants and buildings belonging to the company that there is in it. Cultivation of this be evidence of mastery of the physical that is done by the community around the plantation often becomes the arena of speculation by the other to acquire the land that even divert it to the other.

Deign to dispute the occupation and cultivation of the land bank, Sumardjono argues that there are two patterns of the base on the culprit that is done by those who feel have rights over the land and occupation/cultivation of the land that is not productive or considered not produce by groups of people who live in around the location of the land without considering the pedestal right [8]. The desire to own and control of land the former the right to a business estates into factors main cultivation of the land bank such. Cultivation of the will increasingly massive if at the beginning of the provision of the right to a business is not preceded by the settlement of a dispute possession or cultivation of the people on the ground are to be completed.

The function of the land bank as a land keeper and land warrantee can be a solution to the land of the former right to use the business that is not given an extension of rights or renewal of rights. One of the provisions in Article 34 BAL states that the right to attempt to remove because of term time expired or abandoned. If the right to a business already ended period of time then the status of the land bank into which is controlled directly by the state. As an institution that was established by the Government land bank can take over the land of former rights to attempt it to be used as a bank's assets land. Mastery and utilization of land can be carried out later in accordance the provisions and directives layout space locals. Expropriation of land by the land bank will prevent the land bank ex- rights to the business estates of disputes and conflicts of land including from spekkulan ground.

Not much different if the land has been confirmed as an abandoned land object. Even though Government Regulation Number 11 Year 2010 jo. Regulation of the Head of BPN Number 4 Year 2010. have determine that the object of land bank displaced serve as land reserves of the general state, but the presence of land bank as a function of land and land keeper Purchaser will provide enrichment to the control of land abandoned it. Expropriation of land abandoned as an object land bank will prevent are of mastery or the cultivation of the people. Land bank as a collector of land in the system of law of land in Indonesia will have the authority of its own. His role as a land distributor will distribute the land in accordance with the designation, using and utilization which refers to the layout space area including planning detailed space. Except for public interests and development interest, abandoned lands that have been taken over by land banks can also be distributed to communities who need according to Presidential Regulation Number 86 Year 2018. The existence of the arrangement and the role of bank land to the land that is earmarked for the benefit of the general and the interests of the people will create regularity possession and use of land to the front.

Pay attention to the many needs of the land for the benefit of public as well as the interests of private, not closed the possibility of the presence of speculators ground and mafia land in provision. The presence of rogue elements have been certainly would create problems of its own which resulted in the occurrence of disputes or conflicts of land horizontally. Not without reason the presence of them will be one of the obstacles to carry out the liberation of land, especially procurement is very urgent for the interests of the development of the economy. If the object of land that needed to be or is located in an area that is positioned as in central urban areas or in the area of development of urban areas, provision of land or release not be done in a time that

is short. Besides going to take some time which is very long, the land will be more expensive and not covered possibility would be the object of a case until all levels of the judiciary supreme (Supreme Court of Indonesia).

The presence of a land bank will precede the expropriation of land long beforehand, because indeed for that matter a land bank was formed. Functions of land bank as land keeper can buy land that of its owner before used as an object for interests that are strategic. Expropriation of land much earlier would shortly right land bank that of the object of speculation. Land bank a role not only as a provider of ground but also into institutions that can prevent the occurrence of disputes and conflicts land bank. By as established by an authority based on the law, then the power bank land to the land that is in that power will be increasingly strong. Possibilities exist parties who questioned its presence in the system of control of land in Indonesia, but the process of the settlement will be running gathering is and lasts a long time and is not going to affect the mechanism the working of land bank.

3.2. Expected Land Bank

According to Sumardjono, based on the assumption that in Indonesia there is the possibility of convening the two kinds of activities of land bank, namely : (a) the institution bank of land specifically the acquisition of land can be implemented through procurement / revocation hak on the ground and the sale and purchase ; (b) the institution bank land public that in accordance with the nature of the use of land yet to be determined at the time of the acquisition of land should be done through the sale and purchase [8]. The existence of this assumption gives flexibility to the Government to establish a land bank institution that is in accordance with statutory provisions. Whether determining the activities of the land bank in advance (land banking) or directly forming the institution land bank) is an option that can be made to establish regulations for the establishment of a land bank institution that will apply in Indonesia.

Taking into account the design of establishing a land bank institution as in the Draft Bill of Land and the Draft Bill of Job Creation it was obtained the hypothesis that the land bank institution to be formed was a special land bank institution. In the Draft Bill of Land stated that the institution managing the land that will be formed is the body of law specifically which manages land. and has a wealth that is separated from the financial state and serves as a land banks who do the planning, acquisition, procurement, management, utilization and distribution of land institutions that aims to ensure the availability of land within the framework of economic justice, within the framework of the interests of the general, the interests of social, interest development, equitable economy, land consolidation, as well as agrarian reform and land justice. Likewise, also the case in the Draft Bill of Job Creation stated that the Government formed body specifically the agency bank land which serves to implement the planning, acquisition, procurement, management, utilization, and distribution of land. Almost the same with Draft Bill of Land fond in the Draft Bill of Job Creation mentioned purpose bank land to ensure the availability of land within the framework of economic justice, for the benefit of the general, the interests of social, interest development, equitable economy, consolidation of land and agrarian reform.

The substance actually from the land bank this is backup ground were conducted by the Government through the acquisition of the valid corresponding provisions of law in order to meet the requirement to be ground. Land bank also becomes a means of management of land in order to use and the use of land that is more productive to achieve the objectives and targets of development as a whole. Through the presence of land bank is also expected to be instrumental

maintain the availability of land for the benefit of the Government and the private sector as well as guaranteeing free from the problems of disputes or conflicts. If viewed from the constitution, the establishment of a land bank in Indonesia refers to the provisions of Article 33 paragraph (3) of the 1945 Constitution and Law Number 5 of 1960 (LoGA), specifically the authority to control the state.

If the institution land bank which would set up an agency specialized, then pay attention to Sumardjono opinion activities of the acquisition of the land can be done through the sale and purchase and/or through the revocation of rights. Acquisition of land by way of sale and purchase can be done through the deed of sale and purchase, Engagement sale and purchase or provision of compensation damages on land cultivated according the agreement between the land bank o with the owner of the land/plots. If through the revocation of the right to the acquisition are based to Article 18 of the BAL, as well as provisions regarding the abolition of the rights on land as in Article 27, Article 34 and Article 40 BAL. One of the ways the abolition of the right over the land is caused by the revocation of the rights over the land by the Government. Article 18 of the BAL mention that for the benefit of public, including to the interests of the nation and the state and the interests together of the people, right on the ground can be revoked, by giving compensation losses were worthy legislation.

As an institution land bank which is the body specifically there is the authority of the public which is attached to the land bank that will be formed. The authority was an authority attribution are obtained by law, in case the Draft Bill of Land and the Draft Bill of Job Creation has been passed into law. Because of having the authority in accordance with the law the land bank can exercise authority to regulate the land which is controlled based on the designation, control, use and utilization of the land according to the spatial plan. Land bank also can perform the acquisition of the lands that status into the ground state as the land estates former rights to businesses, lands abandoned, or the lands of the state that has been removed from the area of forestry or land which is the result of the settlement of disputes and conflicts land bank.

Although the acquisition of land that is done through the provision of compensation and loss, but the right of priority to take control of land as mentioned in the above into an absolute for the institution land bank. Presence land bank of with the authority that is attached to it, in addition to air function as agencies collecting land (land keeper), also will be present and functioning as an institution to carry out the prevention of disputes and conflicts land bank. The activities of land bank that do acquisitions or takeover of land by planning how the provisions of law, will stop the step speculators lands, bandit land or mafia land. Stopping the step is meant to close the door or access to perform activities of land tenure is illegal which affects also the reduction of disputes and conflict land that will arise. Land bank that will be formed is expected to serve up the appropriate authority and the authority that is attached to it to perform the control further regulation of use of land which became the object land bank.

4 Conclusion

Establishment of institutions land bank aims to ensure the availability of land within the framework of economic justice, within the framework of the interests of the general, the interests of social, interest development, equitable economy, consolidation of land, as well as agrarian reform and land justice. Establishment of a bank of land in accordance with the constitution of 1945 Article 33 paragraph (3) and BAL, as well as based on the laws that will be formed (Draft Bill of Land and the Draft Bill of Job Creation). Therefore, so land bank has the authority to perform the functions as a collector of land (land keeper), security of land (land warrantee), controlling possession of land (land purchaser), Assessor land (and value), the distribution of

land (land distributor) and management land (land management). Through the authority which owned land bank can play a role as an institution that serves to carry out the prevention of disputes and conflicts land bank.

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