

# ANALYSIS OF THE POSITION OF THE LAND BANK AGENCY AS REGULATOR OF LAND AVAILABILITY FOR PUBLIC INTEREST: STUDY OF LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION

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**Abstract:** Establishing a Land Bank through Law Number 11 of 2020 concerning Job Creation can guarantee the availability of land in the framework of a just economy. Once the land is available at the Land Bank, distribution to various sectors requires regulation. The Land Bank, based on the Job Creation Law, has the function of carrying out the planning, acquisition, procurement, management, utilization, and distribution of land. This research was conducted using a normative approach combined with a qualitative descriptive approach and, in general, is a type of literature research. This study aims to examine the position of the Land Bank Agency in relation to land supply arrangements in Indonesia. The ideal governance of a Land Bank is to reconcile between a non-profit orientation and a profit orientation, similar to corporate management but not commercially oriented. Management of land assets is to be utilized in collaboration with other parties and for the distribution of land assets. The main distribution of land assets is for the public interest, social interest, development interest, economic equity, land consolidation, and agrarian reform. To distribute these assets, the Land Bank requires a legal umbrella and procedures to regulate the distribution of land assets and land valuation before land distribution.

**Keywords:** land bank, public interest, land distribution, government policy, job creation law

## 1. Introduction

One of the issues regulated in Job Creation Law Number 11 of 2020, or the Omnibus Law, is land, specifically discussed in Part Four of the Job Creation Law. This law

regulates the state's authority in determining land allotment, use, and management. The rules regarding land are based on Law Number 5 of 1960 concerning Agrarian Principles (UUPA). Article 1 UUPA states that the entire earth, air, and space, including the natural wealth contained therein within the territory of the Republic of Indonesia, is national wealth. The relationship between the Indonesian people and the earth, air, and space is thus eternal because God Almighty sourced and bestowed all this wealth.

The state, as the supreme power organization of the people, has the right to rule. The right to control the state is the authority of the state to regulate and administer the allotment, use, supply, and maintenance of the earth, air, and space, determine and regulate the legal relationship between people and the earth, air, and space and determine and regulate legal relations between people. -person and legal actions regarding the earth, air, and space. Functionally the state authority is carried out by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN).

Demands for economic growth and population pressure have caused the need for lands to increase, such as infrastructure development and various sectoral development plans such as Agrarian Reform, perpetual food land, industrial zones, and others. Another problem with land availability is the imbalance in land tenure as measured by the Gini Index to see the level of inequality in the distribution of land tenure and ownership in an area. The Gini index of land distribution in Indonesia in 2013, according to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, was 0.58 (Angkoso et al., 2020). As a result, the land is traded as a commodity by land speculators, resulting in an uncontrollable increase in land prices and an impact on a high-cost economy, hindering national development, and hindering economic growth, and absorption of employment.

The urgency of implementing land management is, among others, triggered by the continued increase in the world's population, so static land must be able to provide the basic needs of its inhabitants. As an illustration of the rapid growth of the world's population, we can see from World Bank data that the world's population in 1963 was recorded at 3,195 billion people, increasing to 7,125 billion people in 2013. Another reference that describes the rapid growth of the world's population can be seen in the report published by the Headquarters of The United Nations in New York entitled "Prospects for World Population: Revision 2012," which states that the world's population will increase to 8.1 billion people in 2025 from approximately 7.2 billion people at this time, it is estimated that the world's population will reach 9, 6 billion people in 2050 (Surkana, 2015).

In order to summarize the laws and regulations in order to realize these strategic goals, in 2020, the Government issued Law Number 11 of 2020 concerning Job Creation, in which, in the Fourth Part of Land Affairs, a special body was formed to deal with land issues called the Bank Agency. Land. With the formation of the Land Bank Agency, it is hoped that the state's need for land will find a solution. The Land Bank Agency is a special agency that manages land and functions to carry out land planning, procurement,

management, utilization, and distribution. The form of Land Bank Agency is intended to ensure the availability of land in the context of public interests, social interests, national development interests, economic equity, land consolidation, and agrarian reform. The Land Bank Agency is expected to be able to bridge the country's needs to meet the need for land, such as for the development of national strategic projects in the form of toll roads, reservoirs, dams, or other infrastructure developments that concern the public interest.

The issuance of the Job Creation Law is also in the framework of creating a quality business and investment climate for businesspeople, including MSMEs and foreign investors. In Part Four, Paragraph 1 of the Job Creation Law, it is stated that the Land Bank Agency as the holder of Management Rights, is given the authority to carry out the preparation of a master plan, assist in facilitating work permits/approvals, carry out land acquisition and determine service rates, so it is hoped that the existence of a Land Bank in the licensing process business and investment becomes simpler.

The basis for establishing a Land Bank in Indonesia is stated in Article 125-135 of Law Number 11 of 2020 concerning Job Creation, while for its implementation, Land Banks require derivative regulations such as Government Regulations, Presidential Regulations, and Ministerial Regulations. Based on Article 1 (1) PP No. 64 of 2021 concerning the Land Bank Agency, the Land Bank is a special agency (*sui generis*) established by the Government. The specificity of the position of the Land Bank, according to the UUCK, is related to the management of institutional assets of the Land Bank as separate state assets and the management of land assets for the benefit of a just economy. Equitable economic interests are listed in Article 126 of the Job Creation Law, namely: (1) Public interest; (2) Social intelligence; (3) national development interests; (4) Economic equity; (5) Land Consolidation; and (6) Agrarian Reform. According to Article 3 Paragraph (1) of Government Regulation Number 64 of 2021 concerning Land Banks, the Land Bank's function is to plan, procure, manage, use, and distribute land. The land acquired by the landbank will be managed for distribution to meet the needs of various sectors.

According to Al-Zahra (2017), the distribution of land assets by the Land Bank must be guided by clear and measurable assessments, which include: (1) Determination of the location and area of land assets to be distributed; (2) defending which parties will receive land distribution and for what activities; (3) Percentage of land assets that can be distributed with the number of available land assets; and (4) Mechanism of land distribution. Meanwhile, according to Tenrisau (2020), the sources of land objects that can be obtained and managed by the Land Bank come from (1) State General Reserve Land; (2) Abandoned Lands; (3) Release Land Forest Areas; (4) Arise, Grown Land, or Former Mining; (5) Processed land from direct procurement; (6) Land affected by spatial planning policies; (7) Land Grants, exchanges, results of Land Consolidation and other legal acquisition of land. In addition, the source of the Agrarian Reform object is included

in the scope of the Land Bank object. Considering that the Land Bank is required to provide the land needed for development, the Land Bank may obtain land from the public or the private sector through provisions of laws and regulations. This is also an anticipatory measure to prevent land mafia practices that cause land price increases out of control.

The objectives of this study related to the position of the Land Bank in the Job Creation Law are to examine the position and governance system of the Land Bank contextually; to Conceptualize the management of land assets by the Land Bank; formulate the concept of division of land assets; and formulate the role of the Land Bank in realizing a just economy.

## **2. Methods**

This research is a combination of normative juridical research and qualitative descriptive. First, the author examines the norms of written legal products related to the main issues. Researchers use a statutory approach which is useful for reviewing the legal basis underlying the main issues and then conducting an analysis related to its application in Indonesia (Sonata, 2014). The data used in this study is secondary data not obtained directly from the field but through a search of related literature. The data analysis method used in processing data related to this research is qualitative because data processing is not done by measuring related secondary data but by analyzing the data descriptively (Hermawan & Amirullah, 2010). The reference data above will be analyzed qualitatively to find conclusive answers to the problems studied.

## **3. Literature Review**

### *3.1. Land Bank Concept*

Although many countries have implemented Land Banks, this term is still being defined by experts or authorities related to Land Banks in different ways. In the Netherlands, for example, which utilizes the Land Bank for supporting activities in the agricultural sector, at least two public institutions provide a different understanding of the Land Bank. Dienst Landdelijk Gebied (DLG) defines land banking as the "Structural acquisition and temporary management of land in rural areas by an impartial state agency with the aim of redistributing and/or leasing this land with a view to improving agricultural structures and/or reallocating land for other purposes in the public interest". Meanwhile, Domeinen mentioned the Land Bank as strategic land management in the form of "holding of land for strategic purposes like infrastructure and city extension." (Sungkana, 2015). As for the case of the United States, Alexander (2005) defines Land Banks as "A Guide for the Creation and Operation of Land Banks, stating that land banks are government entities that focus on the conversion of abandoned properties and tax arrears into productive use" (Sungkana, 2015).

This different understanding of Land banks has the same substance as the

definition of land bank formulated by Maria S.W Soemardjono in the Indonesian context. Sumardjono (2005) describes the Land Bank as any government activity providing land for future isolated use. To that end, the Land Bank has several functions, including (1) Land collector or land reserve (land keeper); (2) Land security for various development needs in the future (land guarantor); (3) Land controllers (land buyers); and (4) Distribution of land for various development purposes (land distributor).

Referring to the definitions and explanations above, Mochtar (2013) explains in more detail that the Land Bank collects land from the community, especially abandoned and unused state land, then these lands are collected, developed, and redistributed according to the land use plan. The Land Bank is also a means of land management in the context of utilizing and using land to make it more productive by acquiring land before there is a need so that land prices remain cheap. Thus, the land bank is the systematic acquisition of land (land acquisition) for land that has not been developed, abandoned, or abandoned land and is considered to have the potential for development. Government land acquisition by the land bank is held for future use and within the framework of implementing public land policies.

For example, at a practical level, through the Land Bank, the Government will be more flexible in fulfilling its obligations to provide land for its people, whether by providing productive agricultural land or housing to pay the people a low price. When this need is so urgent, the available land can be reviewed and submitted through an independent and professional agency, not intervened by other interests, especially the political interests of certain parties.

The Land Bank's institutional philosophy is a resource management tool that plays an important role in developing and increasing the capacity of land or land use. One of the procedures that the Land Bank can use is controlling the market and stabilizing land owned by the local market. The city that first introduced Land Bank was Amsterdam, the Netherlands, in 1890, followed by other European cities, and in the 1970s, it began to be implemented in the United States, China, and Singapore (Noegroho, 2012). Thus, the Land Bank aims to guarantee the availability of land or land for infrastructure development or public interest. While from a juridical perspective, the existence of a Land Bank is in the framework of creating justice, certainty, and benefit in law.

Limjong (2013) argues that the Land Bank is a means of land governance to increase land use to make it more usable and to provide guarantees for the availability of land or land for various types of infrastructure needs. The existence of the Land Bank is also expected to be able to control the adverse effects of land liberalization, reduce various problems in the land abortion process and increase the efficiency of the state/regional budget.

From these various definitions, the Land Bank is a strategy that can be functioned by Government or private institutions or agencies to provide land and maximize land productivity so that it can be used to build public infrastructure in the future. In addition, the Land Bank also has a strategic role in controlling land values to be stable and not determined by market liberalization, controlling the occurrence of agrarian problems,

maximizing the absorption of the government budget within the framework of public interest, and preparing land availability before it is urgently needed in the future.

### *3.2. Types of Land Banks*

Based on the type, Flechner (1974) divides land banks into two, namely public land banks and private/private land banks:

#### *Public Land Bank*

Public Land Bank is a land bank whose operation is carried out or involves public institutions. This land bank can be run by a public agency or institution or several public agencies or institutions, an independent body with a pure duty as a public service provider where the full responsibility rests with the Government. Based on its purpose, Public Land Banks can be divided into two, namely: (1) General Land Banks (general land banking), or activities carried out by government agencies to acquire land that has not been developed or is still abandoned, inventorying land for provision, preparation, and sale of land for all types of land use, both public and private. Public Land Banks can also be used for the development needs of public interest in the future, even though at the time of land acquisition or during the land inventory, the future use of the land has yet to be determined; (b) Special Land Bank, or land bank activities for special purposes, for example for urban planning or renewal purposes, industrial development, housing development (whether medium, simple, or very simple level), development of various public facilities, and provision of land for green open spaces. Because of its predetermined designation, this land bank is then also referred to as a project land bank or land use for public interest where the time of use has been planned within a certain period, either short, medium, or long term. Because of the specific objectives, project financing is usually prepared carefully before the project starts.

#### *Private/Private Land Bank*

Private institutions or legal entities run Private Land Banks as land bank shareholders or funders. Although contextually, private land banks are not widely known in Indonesia, factually, the practice of land management by the private sector has been widely practiced in Indonesia, both by local and international private companies. Limbong (2011) explains that investors who need land for their investment purposes (property, offices, entertainment centers, shopping centers, housing, recreational vehicles, apartments, and so on) must go through a land-clearing mechanism through a system of buying and selling or swapping, or purchase land through an auction from the Office of State Assets Services and Auctions.

However, to control land market liberalization, the state must focus more on implementing Public Land Banks rather than Private Land Banks. This goal is in line with the mandate of the 1945 Constitution, in particular Article 33 Paragraph 3, which is further explained in Article 2 Paragraph 2 of the UUPA, which states that: The state's right to control authorizes the Government to (1) maintain and maintain the allotment, use,

maintenance, and maintenance of the earth, air, and space; (2) Establish and regulate legal relations between people and the earth, air, and space; and (3) Establish and regulate legal relations between people and legal actions concerning earth, air, and space (Harsono, 1999).

To protect the public interest, it should be if the Land Bank Agency is a public legal entity. At the level of its implementation, the Constitutional Court has provided protection regarding the right of control of the state over the land, air, space, and natural resources contained therein by the state, among other things that it is not in the sense that the state must own, but that the state only formulates policies (beleid), make arrangements (regelendaad), manage (bestuurrdaad), manage (beheerdaad), and supervise (toezichhoudendaad) (Bakri, 2011). Development in the public interest framework is aimed at increasing the general welfare and is not aimed at seeking profit or profit. In addition, public interest also means the interests of the nation and state, public services for the wider community, the people at large, and development.

However, referring to the opinion of Sutedi (2007), the public interest must be explained further because not all government interests can be classified as public interests, for example, the construction of various infrastructures carried out and managed by BUMN which are more profit-oriented than providing benefits to the people. Law No. 2 of 2012 concerning Land Procurement for development in the public interest stated that public interest is the interest of the nation, state, and society, which must be realized by the Government and used as much as possible for the prosperity of the people. Article 1, paragraph 6 in this provision states that development within the public interest framework must contain three elements: (1) The Government owns the development activity. Individuals or the private sector cannot own public interest activities. In other words, the private sector and individuals cannot have activities in the public interest that require land mystery, both private land and state land; (2) The Government carries out the development activities. This element indicates that the Government can only implement and manage activity for the public interest, and (3) the development activity is not for profit (non-profit). In other words, there are limits to the function of an activity in the framework of the public interest, which must be completely different from the private interest, which aims to seek profit, so that the qualification of an activity in the context of public interest is in the framework of the public interest and not in the context of seeking profit.

Referring to the description above, a Public Land Bank is thus a breakthrough step for land acquisition in the framework of guaranteeing public interest and ensuring that development activities for the public interest can be carried out effectively, efficiently, and sustainably. This is in line with one of the goals of the Land Bank Agency as a means of land management to ensure the availability of land for certain purposes. Limbong (2013) provides an interesting interpretation of the strategic role of the Land Bank Agency within the framework of public interest, namely: (1) Land acquisition for the relocation of communities affected by natural disasters, fires, and conflicts; (2) Land acquisition for urban edges and low banks; (3) Land acquisition to replace land for owners/holders of land rights in land acquisition/land acquisition projects; (4) Land

bank for city safety belts, namely areas around cities that function to restrain the rate of urban expansion, especially the uncontrolled conversion of agricultural land to housing and industry, which also acts as an air catchment area and a green open area to prevent natural disasters.

## **4. Result**

### *4.1. Land Bank Juridical Basis*

The establishment of the Unitary State of the Republic of Indonesia (NKRI) is in the framework of realizing welfare and prosperity for all Indonesian people, as stated in the mandate of the opening of the 1945 Constitution. This means that the state is obliged to fulfill the basic rights of its citizens, such as work, a decent livelihood, a place to live, and food sources for the environment. sufficient life. One of the resources that can realize this goal is the productive and optimal use of land for the benefit of all people.

The Constitution of the Unitary State of the Republic of Indonesia, especially Article 33 paragraph (3), carries a vision for the nation's welfare. Further elaboration of the provisions of article 33 of the 1945 Constitution is emphasized in article 2 paragraph (2) of the 1960 UUPA, that the state regulates: (1) maintains and administers the allotment, use, supply of land, or its maintenance; (2) Determine and regulate the rights that can be owned or (part of) the earth, air, and space; and (3) Determining and regulating legal relations between people and legal actions regarding the earth, air, space, and everything to achieve the maximum prosperity of the people in a just and prosperous society.

The mandate of Article 2, paragraph (2) of the UUPA is also often referred to as the State Controlling Right (HMN). HMN is not synonymous with the right to own. The state does not own land because the state exists after the people exist. HMN is the right of the people at the state level as the highest organization. Therefore, the state needs the authority to sell or mortgage land. In other words, even though the state gives authority to control land, it does not mean that the state owns the land as reserves that can be used at any time for various purposes. The land is still owned by the people or through a process of determining if the land is free state land. Ownership of land by the state to be used as an asset must go through existing mechanisms and regulations related to its acquisition.

The existence of the Land Bank is thus seen as being able to carry out what has been mandated by the 1945 Constitution and the 1960 UUPA. Authority to control according to HMN in the context of land inventory which will become a source of permanent Land Bank assets through the land burning process. State control is not instantaneous; even though the state has the authority to control land, in its procurement, it still pays attention to and respects existing community rights through the land acquisition mechanism according to Law No. 2 of 2012. The Government's HMN authority is currently carried out by the Ministry of Agrarian Spatial Planning/National Land Agency. The tasks and functions carried out so far include the powers mentioned in Article 2, paragraph (2) of the UUPA. Under the specifications of the Land Bank



institution, the Ministry of ATR/BPN has the authority to regulate and administer land inventories. Preparing land is a familiar task in ATR/BPN procurement, not in the context of land reserved for the Land Bank, but in land acquisition activities for development in the public interest. That is, Banks.

Land provides land that will illuminate its future use, which is directed directly at improving people's welfare.

One of the targets of the 2005-2025 National Long-Term Development Plan (RPJPN) is infrastructure development to achieve optimal public service conditions. In the 2015-2019 RPJMN, the Government clearly stated the need to detain land banks in Indonesia. Arrangements related to the Land Bank in the Job Creation Law are contained in Chapter VIII concerning Land Acquisition, Part Four concerning Land according to Articles 125-135. The concept of the Land Bank collects land from the community, especially those that have been neglected and state land that has not been used; then, these lands are collected, developed, and redistributed according to the land use plan. So the Land Bank is also a land management strategy in the context of utilizing and using land to make it more productive by acquiring land before there is a need so that land prices can be controlled. Thus, the Land Bank is the systematic acquisition of land for land that has not been developed, abandoned, or abandoned land and is considered to have the potential for development. Government land acquisition by the Land Bank is thus held for future use and in the context of implementing public land policies.

#### *4.2. Land Bank object*

Referring to Article 2 of the Basic Agrarian Law, land sources that can be used as land bank objects can be obtained from land rights, including layout land rights and land controlled by the state. Land that can be used as a Land Bank object includes (1) Abandoned land. Based on Article 1 paragraph (6) Regulation of the Head of BPN RI No. 4 of 2010 concerning Procedures for Controlling Abandoned Land, what is meant by abandoned land is land that has been granted rights by the state in the form of ownership rights, usufructuary rights, building use rights, usufructuary rights, management rights, or basic tenure over land that is not cultivated. Not used or not utilized following the circumstances or the nature and purpose of the transfer of rights or basis of control; (2) Former erfpacht land, former private land; (3) BUMN/BUMD asset land that has not been used up; (4) Land owned by ministries/non-ministerial/local government agencies that have not been used; (5) State land originating from the revocation of land rights; (6) Land for social facilities/public facilities handed over by the developer; (7) Land for social facilities/public facilities resulting from land consolidation; (8) State land originating from land peace; and (9) absentee land or land far from where the owner lives.

Lands that are objects of the Land Bank in Indonesia can be used for development needs, including (1) Land Bank for public purposes; (2) Land bank for infrastructure; (3) Land Bank for Urban Development; (4) Land Bank for village modernization and food security; (5) Land bank for industrial area; (6) Land Bank for business properties; and (7) Land Bank for natural disaster prevention (Mochtar, 2013).

### 4.3. *Structure, Functions, and Authorities of the Land Bank*

Article 134 of the Copyright Law states that the Land Bank Agency has 3 elements: the Committee, the Supervisory Board, and the Implementing Body. The Committee is chaired by the minister administering government affairs in the land sector (Ministry of ATR-BPN) and consists of ministers and related heads appointed by the President. The Ministers for Finance, Public Works, and Public Housing are members of the current Committee. The Supervisory Board established by the Land Bank Committee also has a role in supervising and providing policy recommendations. The maximum number is 7 people consisting of 4 professional elements representing the community or stakeholders in the land sector and 3 people chosen by the Central Government. The Land Bank Committee also determines the Implementing Body. The structure of this body consists of a head and a deputy. The Chair of the Committee determines the number of deputies. The head and deputy are appointed and dismissed by the Chair of the Committee, but the Supervisory Board also has the right to revoke the proposed revocation and dismissal.

Limbong (2013) mentions several functions owned by the Land Bank, including (1) As a collector of land. The activity of the Land Bank is to carry out an inventory of the land that will be used as the object of the Land Bank. In addition, land collection activities also include collecting and providing complete, accurate, integrated, and up-to-date land data; (2) As land security (land warranty). The Land Bank, in carrying out its activities, bases itself on a spatial layout plan that has passed both the allotment and utilization of the land must be based on the land use plan, which is an integral part of the spatial layout plan. In the spatial layout that has been determined, the Land Bank carries out its activities starting from its planning, utilization, and control; (3) As the controller of land tenure. The Land Bank can exercise control over land tenure so that certain groups of people cannot exercise it; (4) As a land manager. The Land Bank conducts analysis, determines strategy, and implements land-related management so that the existence of the Land Bank can direct the development of land use; (5) As a land appraisal. The Land Bank can carry out objective land judgments in creating a value system for purchasing land values for various purposes. Thus, the Land Bank can regulate and control the price and value of the land; (6) As a distributor of land. The Land Bank must be able to guarantee the distribution of land fairly and fairly based on land values. Likewise, the Land Bank secures the planning, supply, and distribution of land following its use and designation to those entitled to the land by the local spatial layout plan.

In Government Regulation Number 64 of 2021 concerning the Land Bank Agency, it is stated that the functions and authorities of the Land Bank include: (1) Planning. Planning is divided into 3, namely long-term plans, medium-term plans, and annual plans. The long-term plan is planning activities for 25 years. The medium-term plan is an activity plan for 5 years and planning for 1-year activity is an annual term plan; (2) Land Acquisition. Land cover activities focus on two sources: land determined by the Government and land from other parties. Land resulting from government forest stipulation consists of formerly entitled land, abandoned areas, and lands, area ownership lands, emerging lands, reclaimed lands, ex-mining lands, small islands lands,

lands affected by spatial planning change policies, and lands that have no tenure, on it, and another land. The land from other parties consists of the central Government, regional governments, BUMN, BUMD, BUMDes, Business Entities, Legal Entities, and the Community. Land from other parties can be obtained through buying and selling, grants/donations or the like, exchanging, and purchasing rights; (3) Land Procurement. Land acquisition can be done through a land acquisition settlement mechanism for development in the public interest or direct land acquisition as stipulated in Law no. 2 of 2012; (4) Land Management. Land management activities consist of land development, maintenance and security, and control of land; (5) Land Utilization. Land utilization can be carried out by the Land Bank and utilization cooperation with other parties. In carrying out land use, the Land Bank continues to pay attention to the principle of benefit and the principle of priority; (6) Distribution of Land. Land distribution is in the form of providing and distributing land to other parties.

The authority of the Land Bank is to make a master plan, assist in facilitating business licensing/approval of conducting land acquisition, and determine service rates. In assisting in facilitating business licensing/approval, the Land Bank provides licensing facilitation assistance in the land and spatial planning sector.

#### *4.4. Land Bank Implementation*

Many countries have implemented the Land Bank concept as a mechanism to ensure the availability of land for development purposes. Several countries that have proven to be effective in implementing Land Banks include the United States, Switzerland, Sweden, the Netherlands, and Australia. The relevance of the Land Bank's existence is very clear, namely the condition of the Government, which will always need land for the development of public interest (non-profit) and economic/investment interests (profit). Sumardjono (2005) formulated some objectives for establishing a Land Bank, including (1) Guaranteeing the objectives and interests formulated in the 1945 Constitution of the Republic of Indonesia, especially Article 33 and its amendments; (2) Supporting sustainable, just, and equitable national development for the benefit of the people at large; (3) Able to control regional development efficiently and effectively; (4) Capable control the tenure and use of land fairly and reasonably in carrying out development.

Pamungkas and Winarso (2018) mention several Land Banks models that can be implemented, including (1) A comprehensive public law development model. This model assumes that the Government carries out the Land Bank by acquiring as much land as possible to build infrastructure and property. The aim is to confirm the spatial plan and obtain several replacement costs for infrastructure development. However, this Land Bank model requires large capital; (2) Public land development model. In this model, the Land Bank only works until infrastructure and land preparation are provided. In this maturation process, the Government sells the land to the private sector, adding enough profit to cover the development costs. The private sector will then carry out land or property development; (3) the Private market land development model. The private

sector carries out the Land Bank model by collecting land for some time to be developed later.

In the Indonesian context, which refers to the Job Creation Law, the Land Bank model is used not only for profit-oriented development but also within the framework of supporting programs of social interest and non-profit agrarian reform. On the one hand, the Government realizes people's welfare through job creation, but on the other hand, the Government also provides land directly to people who do not own land as residential land or for business land in the perspective of agrarian reform. The agrarian reform program, which requires a minimum of 30 percent of the land from the assets of the Land Bank, urgently needs to be pursued and prioritized to reduce inequality in land ownership in Indonesia so that there is no impression that the establishment of a Land Bank is only for investment purposes.

Trisna and Sandela (2021) argue that in the Indonesian context, many benefits can be obtained from the existence of a land bank, including (1) the availability of time for development so that government and private development plans are not hampered; (2) Availability of land always for development purposes will attract investors; (3) Efficiency. So far, land acquisition activities are often constrained and require a long time due to problems with the value of compensation. Land prices in an area increase dramatically when land acquisition is carried out; (4) The Land Bank can maintain the stability of land prices. The price of land in an area usually increases immediately when the Government plans to develop an area. This development plan will be equipped with supporting infrastructure to become a new economic growth area. Of course, with the existence of a land bank that has reserved land from various sources, an increase in the price of land at a certain location when needed does not experience a high increase in price; (5) The Land Bank can provide land for social purposes, especially in certain conditions, such as relocation during a disaster.

For Indonesia, several land objects can be reserved as Land Bank objects. Some of the features that can be used as land bank objects include ex-HGU land, abandoned land, land with special facilities or social facilities that have been handed over by the developer, IBRA asset land, unused land owned by departments/non-departmental/local government agencies, state land originating from revocation rights, state land originates from the disclosure of land and land owned by BUMN/BUMD (Tisna & Sandela, 2021).

Institutionally, the Land Bank Agency is a special agency (*sui generis*) that differs from the public service agency (BLU) and state-owned companies in the following respects: (1) The land bank is different from the BLU because the land bank's assets or assets are separated from state assets so that financial management does not use the Administrative System. Governance (SAP). As for payment, Land Banks do not seek profit, as is explained in Article 127 UUCK (Land Banks: in carrying out their duties and authorities, must be transparent, accountable, and non-profit); (2) Land Banks are different from BUMNs, namely that in carrying out their duties and authorities they are not profit-oriented. While the seller is the property of the land bank, separated from state

assets, its financial management is subject to the provisions of the Financial Accounting Standards (SAK).

#### 4.5. *Distribution of Land Bank Assets*

The distribution of land assets owned by the Land Bank moves between the provision and distribution of land. The provision of land is an allocation for public needs, social needs, economic equity activities, infrastructure needs, land consolidation needs, and agrarian reform. The definition of land distribution is the redistribution of land to residents by adjusting statutory regulations. The targets for land distribution are institutions or legal entities, local governments, organizations within the social and religious sphere, and residents selected and determined by the Central Government (Puspita et al., 2021).

The distribution of land for public purposes must consider the applicable legal regulations and sufficient knowledge of the recipient party so that commercial interests do not limit the distribution of land. Procedurally, the provision of land for public and private interests is the same. However, the central Government also hopes that the presence of the Land Bank can also support investment growth in Indonesia.

Articles 125-126 of the Job Creation Law regulate the position of the Land Bank as an official institution that has the function of "carrying out planning, procurement, management, utilization and distribution of land." Article 129 states that to support investment, the Land Bank as the holder of management rights, is given 4 authorities, (1) to prepare a master plan, (2) to provide permits or approvals for convenience, (3) to conduct land acquisition, and (4) Determination of service rates. Still, in the same article, land managed by The Land Bank provides management rights that can be granted to third parties, usufructuary rights, building use rights, and usufructuary rights. As a follow-up to the position of the Land Bank in the Job Creation Law, the Government then issued PP No. 64 of 2021 concerning Land Banks and regulations related to Land Banks through PP No. 20 of 2021 concerning Controlling Abandoned Areas and Lands. Through government regulations through the Land Bank, the holder categorizes and determines land and areas as "abandoned", which are then managed, consolidated, and distributed for various purposes. In addition to agrarian reform, the land distribution agenda is also in the framework of public, social, development, and economic interests. The distribution of land in the context of economic equity ensures land availability for strategic pioneering, opening up of remote areas, infrastructure for people's markets, development of residential areas that relieve residents, and other programs (Hakim, 2019).

Although the Land Bank does not reject the profit orientation, the use of land by the Land Bank to obtain profit is different from that carried out by State-Owned Enterprises or private companies. The difference can be seen from the benefits obtained in the two legal institutions. If in a State-owned enterprise (BUMN) or private company, the profits are converted into dividends and distributed according to the regulations governing them, then the profits obtained by the Land Bank will be included as capital which will then be used to acquire new land or manage land.

Lands that are objects of the Land Bank in Indonesia can be used for development needs, including (1) Land Bank for public purposes; (2) Land bank for infrastructure; (3) Land Bank for Urban Development; (4) Land Bank for village modernization and food security; (5) Land bank for industrial area; (6) Land Bank for business properties; and (7) Land Bank for natural disaster prevention (Mochtar, 2013).

Land management is directed to be utilized through cooperation with other parties and distributed to specified parties. Lands managed by the Land Bank are granted Management Rights. Furthermore, the land with Management Rights can be utilized through cooperation with other parties and given a Building Use Right, Business Use Right, or Use right. According to Arnowo (2022), the land management systems that need to be considered are (1) Management by providing added value by conducting land preparation (Land Value Capture) so that it is ready to cooperate with other parties with higher land prices; (2) Management in the form of direct cooperation with other parties; (3) Management without giving any treatment because it will be used for the benefit of development and society.

The several considerations related to management cooperation on Management Rights land are as follows: (1) Cooperation with the private sector for the area of land above Management Rights so as not to sacrifice the interests of the people's land through the Agrarian Reform program. This is a consideration because one of the reasons for establishing a land bank is to provide land for development programs; (2) Cooperation with the private sector for commercial activities over Management Rights so as not to change the orientation of the Land Bank from originally providing land for development activities to becoming a profit-seeking agency; (3) In addition to having assets to manage, the Land Bank also receives state land objects from various sources, both in the form of Agrarian Reform Object Land (TORA) and non-TORA. If the Land Bank receives land sourced from TORA, it cannot be managed commercially but must comply with the provisions of Presidential Regulation Number 86 of 2018 concerning Agrarian Reform. In contrast, land that does not come from TORA can be in the form of state land handed over to the Land Bank due to the implementation of statutory regulation and efforts to provide land for development in the public interest. The two-state land objects are managed by the Land Bank to be distributed for strategic development programs and the needs of the National Strategic Project (PSN), which are generally for development infrastructure (Arnowo, 2022).

## **5. Conclusion**

The Land Bank institution has a strong philosophical and juridical foundation and aligns with the NKRI constitution. Constitutionally, the state must fulfill the basic rights of its citizens, such as work, decent living, shelter, food sources, and an adequate living environment. One of the resources that can be used to realize this goal is the productive and optimal use of land throughout the territory of the Unitary State of the Republic of Indonesia. The Land Bank is a productive-oriented land use strategy aimed at the prosperity and welfare of all Indonesian people. This follows the provisions in the

opening mandate and Article 33 of the 1945 Constitution.

One of the obstacles to difficulties in overcoming the problem of land acquisition for development purposes is the implementation of a Land Bank, which functions as a land collector, and as a safeguard for land in order to secure the supply and allotment, and utilization of land according to the approved spatial plan. In addition, the function of the Land Bank is also as a land controller, as a land appraiser who can suppress the emergence of land speculators, and as land distribution according to development programs and spatial plans for certain areas. The concept of a land bank is very suitable to be implemented in Indonesia in the form of a public land bank considering the provisions of Article 33, paragraph 3 of the 1945 Constitution, and Article 2 of the UUPA potentially state that the state has an important role in the implementation of land banks.

More specifically, the existence of a Land Bank is regulated in Law No. 11 of 2020 concerning Job Creation in Chapter VIII concerning Land Acquisition, Part Four regarding Land by Articles 125-135, which among other things, explains the duties and functions of the Land Bank, the authority of the Land Bank, land rights, resources the wealth of the Land Bank, the structure/institution of the land bank, and the guarantee of land availability.

The purpose of institutionalizing the Land Bank is not only for profit-oriented development but also within the framework of supporting programs of social interest and non-profit agrarian reform. The Government can use the balance between non-profit organizations and profits as an alternative. On the one hand, the Government realizes people's welfare through job creation, but on the other hand, it also provides land directly to people who do not own land for residence and productive businesses to support the agrarian reform program in Indonesia.

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