

Legal Comparison of Land Bank in Indonesia and the United States

Sunardi¹, Lina Alfiana²

¹Master of Notarial Universitas Islam Malang, Email : sunardi_mkn@unisma.ac.id

²Master of Notarial Universitas Islam Malang Email : linaalfiana25@gmail.com

Abstract: Land is a basic human need that becomes a strategic capital for life. Today, Indonesia has a lot of agendas with agrarian reform. The question of land will never end. With the pattern of land acquisition for development in the public interest along with other land problems, a new body was presented. This body is known as the Land Bank. Land Bank is a special agency (*sui generis*) which is an Indonesian legal entity established by the central government that is given special authority to manage land. The purpose of the land bank is to create a just economy. As a country of law, there are legals that binding on the subject of land banks. Which legal hierarchy about the land bank. Then this land bank is a new one in Indonesia. Certainly a lot to learn and evaluate the performance of the Land bank agency. The new land bank was established in 2021. Therefore, it is felt to help manage the land bank of Indonesia by making comparisons with other countries, namely the United States. Then the formulation of the problem to be discussed is : (1) How is the arrangement of the establishment of land bank in Indonesia? (2) What are the similarities and differences between land banks in Indonesia and the United States?. Research methods in writing this thesis using the type of normative juridical research, meaning that the problems raised, discussed and described in this study focused on applying the rules or norms in positive law. Approach the problem using the legal approach, conceptual approach, comparative approach to legal materials consisting of primary legal materials, secondary and non-legal materials. The results of this thesis research, first, the regulation of land banks in Indonesia is regulated in the Constitution of Republic Indonesia 1945, UUPA, land procurement law for development for the public interest, job creation law, Government Regulation Number 64 of 2021 on Land Bank, Presidential Regulation Number 113 of 2021 on the structure and Organization of Land Bank. Second, the comparison between land banks in Indonesia and the United States certainly has similarities and differences. The equation is in terms of centralized regulation and the location of the land bank. Differences with the United States lie in regulations, types of land banks, parties to land banks, mechanisms for organizing land banks, and objectives.

Keywords: Land bank, comparasion, legal

1. Introduction

The Republic of Indonesia is a state of law. The law in question is based on Pancasila and the Constitution of the Republic of Indonesia in 1945 that ensures the certainty of Law, Order, Justice, and legal protection for every citizen. In the Preamble to the Constitution of the Republic of Indonesia in 1945, the fourth paragraph mandates that Negara the Republic of Indonesia aims to protect the entire nation and all Indonesian blood, promote the general welfare, educate the life of the nation and participate in maintaining world order. For this reason, it is emphasized in Article 27 paragraph 2 that all states are basically obliged to be able to fulfill basic rights for their citizens such as, shelter, decent work, adequate food and adequate environment so that the state is required to make optimal use of every inch of its land.

Land is a basic human need that becomes a strategic capital for life. During this time humans tried to find their livelihood through farming, gardening, and raising livestock on the land. In addition, humans carry out all aspects of their lives on the ground as well. Humans build houses on the ground to shelter and build a variety of needs. Various kinds of natural resources are used to build a variety of purposes. Various kinds of natural resources are used in such a way that is used by humans is also a lot of buried in the ground.¹ It is certain that human life cannot be separated from the ground. Therefore, to ensure the certainty and governance of human life in Land Management, the state then contributes to regulating the land within the territory of the state of Indonesia. Thus in accordance with the mandate of the Constitution, as stated in Article 33 paragraph 3 of the Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which reads : *"Earth, Water and Natural Resources contained therein are controlled by the state and used for the greatest prosperity of the people"*. In Article 33 paragraph 3 of the 1945 Indonesian constitution, the formation of Law No. 5 of 1960 on the Basic Rules of Agrarian principles or often known as the Constitution.

The conception of land that presents control over the land to the community as an effort to run their lives, the community feels the need to understand the control of land over its holdings, especially in terms of Land Management. Indonesia itself in land affairs is experiencing quite a lot of problems. This becomes the main points of the government's formulation to review the regulations that need to be changed to form a system of rules on land for good land governance.

The importance of land management activities for a variety of areas that certainly require the arrangement of asset management properly. Based on Article 2 Paragraph 1 of Government Regulation Number 64 of 2021, the Land Bank agency is a legal entity and assets obtained and separated from state-owned assets. The view in the regulation is that there is movement space used for operational activities by land banks to be more flexible as well as responsif. Thus, there are consequences that must be prepared by the government which will later provide a legal standing regarding business processes in the land bank. Then the government must take decisions related to land management that will be applied.²

The insistence related to land management in Indonesia with the increasing population in Indonesia every year increases resulting in the need for land management or land as the main benchmark of people's livelihood. If you look at countries outside Indonesia in the face of a big explosion that occurred in the world population makes some countries such as Europe, America, Africa, and Asia should take a stand that is by implementing or establishing a Land Bank for media management of land.³ The land bank system is used as an alternative to existing Land Management in some countries. One of the main instruments in Land Management is the land bank as a system of improvement

¹ Adrian Sutedi, *Implementasi Prinsip Kepentingan Umum dalam Pengadaan Tanah Untuk Pembangunan*, (Jakarta: Sinar Grafika, 2008), 45

² Fidri Fadillah Puspita, dkk, "Urgensi Kehadiran Bank Tanah Sebagai Alternatif Memulihkan Perekonomian di Indonesia Dalam Perspektif Hukum Islam", *Jurnal Ilmiah Ekonomi Islam* 7 No. 3 (2021), 2

³ Arnowo, H. "Pengelolaan Aset Bank Tanah untuk Mewujudkan Ekonomi Berkeadilan", *Jurnal Pertanahan* 11 No. 1 (2021), 92

from those used by these countries. However, the country specializes in mapping management patterns for agricultural lands.

Pada Initially using *land consolidation* the concept of land consolidation in agricultural sector implemented by European countries, but in fact *land banking* is also one of the land management that is commonly applied for the benefit of such as, land spatial consolidation, controlling the fluctuation of land value, land management efficiency, preventing the occurrence of utilizationan carried out not maximally, especially in the implementation of New Urban Area Management Development. Therefore, if high-ranking officials who apply the concept of land consolidation on agricultural land, it is generally carried out by the government itself while, on *the concept of land banking*, the founder can be from the government or can also be private.⁴

The presence of the Land Bank agency is functioned with special authority, namely to ensure the availability of land in the framework of a just economy in the form of: public interests, social interests, national development interests, economic equity, land consolidation, and/or agrarian reform, planning, land acquisition, land acquisition, land utilization, and land distribution. The implementation of the functions of the Land Bank can be carried out in the form of cooperation with other parties. The parties in question are the Central Government, Local Governments, state institutions, state-owned enterprises, regional-owned enterprises, business entities, state-owned legal entities, private legal entities, communities, cooperatives, and/or other legal parties. The cooperation of the Land Bank with these parties is a form of mutually beneficial relationship including receiving land for cultivation. This form of cooperation shows that land banks can move agile (*agile*) to obtain land to be managed so as to bring profits and at the same time provide the availability of land for development.

The existence of This Land Bank is one of the government's breakthroughs in its efforts to provide land for the public interest and the interests of people who need land, especially for the public interest, the Land Bank is functioned to obtain land that will be built for public facilities such as roads, infrastructure, hospitals, government offices, and soon. This body if it is implemented properly will reduce the case of objections to the value of land compensation for the public interest or often known as consignment in court. Especially in terms of land procurement for public purposes such as infrastructure development, public facilities, and others where now the price of land is increasing every year and the availability of land for the implementation of the land procurement. The existence of a Land Bank will realize the principle of efficiency in the acquisition of land for the public interest because without involving the court, which generally occurs the process of objection and = payment of compensation/consignment.

Nevertheless, the government's high hopes for the presence of the land bank Agency through the creation of Law Number 11 of 2020 on job creation need to be given special attention to be studied further by legal researchers to achieve legal goals. The fundamental thing of the land bank body is the structure and pattern of the organization that is carried out. As the Land bank agency that will be formed requires yang a clear formulation, structured, systematic, and massive. In addition, it must also review the regulations of the Land bank agency Indonesia and compare the similarities and

⁴ N. A, *Mengenal Bank Tanah/Land Banking Sebagai Alternatif Manajemen Pertanahan*, (artikel DJKN, 2015)

differences between the land bank Agency and the United States. Given the formation of the land bank in Indonesia also refers to other countries, one of which is the United States.

In this case the researcher examines further with the title **“Legal Comparison of Land Bank in Indonesia and the United States”** with the formulation and Limitation of the problem as follows; How is the regulation of the establishment badan bank of Land bank agency in Indonesia?, and what are the similarities and differences between land banks in Indonesia and the United States?. The purpose of writing this article is to analyze the arrangement of the establishment of the Land bank agency in Indonesia and analyze the similarities and differences of land banks in Indonesia with the United States. And is expected to be an additional literature or scientific insight that can be used to conduct studies and subsequent research in the field of notary law on the regulation of land banks in Indonesia and the comparison of land banks in Indonesia with the United States.

2. Method

The type of normative legal research is research focused on *law in books* as written in legislation. According to Hans Kelsen normative legal research is a study of legal norms in the nature of normativity, namely research on norms as a necessity (*sollen*) and not research on norms as applied (*sein*).⁵

The main characteristic of normative legal research is that its main sources are legal materials containing rules. Researchers continue to refer to legislation, legal principles and legal theories. Written positive law refers to legislation, one of which is the Civil Code, Law Number 5 of 1960 on agrarian Rights, Law Number 11 of 2020 on job creation, and other legislation related to research.

The type of approach used in this study is the approach of legislation, legal concepts, and comparison. The approach of legislation is research into legal products. This legislative approach is carried out to examine all laws and regulations related to the research to be studied. While the approach to the concept of law is an approach using the views and doctrines that develop in the science of law. Finally, the comparative approach is the approach taken to compare the laws of one country with the laws of another country. In this case using the method of comparative law to examine the comparison of Land bank agency in Indonesia with the United States.

3. Setting up Land Bank in Indonesia

In recent years, national development in Indonesia has increased significantly. National development is focused on all areas that become patterns of government sustainability in Indonesia, in order to support the adequacy of life and welfare of the community. The high intensity of national development, which is *planning* a major state planning, certainly cannot be separated from the need for land. Land has a dual function, namely as capital assets and social assets. In capital assets, land becomes capital for national development. Meanwhile, in social assets, land becomes a social binding container between *stakeholders* related stakeholders to live on the land. Over time and epochs, land developed into a scale of symbolic importance of wealth and authority of society. That there is a belief, communities that have more land, generally get a place at a certain level in society.

⁵ Bahdar Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2008), 86

Therefore, institutions and communities are currently competing to get as much land as possible, the use and utilization of land is experiencing competition. Hal This raises the problem of type a state requiring the availability of land for development for the state. Such as, the slowdown in national development due to the government does not have land reserves that can be utilized at any time. Or the occurrence Hak of human rights violations against communities affected by development such as loss of jobs and income.

Procurement of land for the availability of land in addition to having the support of the government should also get the participation of landowners. Thus, it is expected that the government and landowners openly to collaborate provide land for development. Not only that, the need for land in Indonesia is not the specificity of the government alone, but people who need land as well. Presented by the government through the land bank.

It is explained more broadly with respect to the juridical foundation of the land bank as follows. One of the goals of the Unitary State of the Republic of Indonesia (NKRI) is to realize welfare and prosperity for all Indonesian people. This is clearly stated in the preamble to the 1945 Constitution. The state must be present and obliged to be able to fulfill basic rights for its citizens such as employment, decent living, shelter, food sources to an adequate environment. One of the resources that can realize this goal through the use of land in a productive and optimal throughout the territory of the Republic of Indonesia.⁶

In the context of Indonesia, the Land bank agency is based on Article 33 of the 1945 Constitution and Law Number 5 of 1960 on basic agrarian regulation (UUPA). Article 33 should be understood as a single whole. Paragraph (3) is a logical consequence of Paragraph (1) on the structure of the economy based on the principle of kindship, while paragraph (2) on the role of the state both by the government and state enterprises (BUMN/BUMD) to manage economic activities related to the livelihood of all Indonesian people.

The mandate of the Constitution is very clear. The first order, the state is given the authority to control all agrarian resources in the territory of the Republic of Indonesia. The second order, domination by the state is aimed at the prosperity of the people. This constitutional order is a derivative of the basic mandate of the state in the 5th precept of Pancasila, social justice for all Indonesian people.

Pancasila is the ideal foundation and soul of the Indonesian nation state towards a vision and as a spirit that moves the struggle and the pace of development. The 1945 Constitution became the basic benchmark in guiding state power towards the expected development. Article 33 of the 1945 Constitution became the foundation of the state to control and regulate the use of land and Natural Resources called the right to control the state (HMN) which aims to maximize the prosperity of the people.⁷

Referring to the constitutional foundation that has been stipulated in the Constitution of the Republic of Indonesia in Article 33 paragraph (3) which has a vision aimed at the welfare of the nation's life. Further elaboration of the provisions of Article

⁶ Nila Trisna dan Ilka Sandela, "Eksistensi Bank Tanah Dalam Hukum Agraria di Indonesia", *Jurnal Ius Civile* 5 No. 1 (2021), 191

⁷ *Ibid.*

33 of the 1945 Constitution has been clearly affirmed in Article 2 Paragraph (2) of the 1960 constitution, that the state has the authority:

- a. Organize and maintain the allotment, use, inventory of land, or maintenance
- b. Determine and regulate the rights that can be owned or (part of) the earth, water, and space.
- c. Determine and regulate the legal relations between people and the legal acts concerning the earth, water, and space, all with the aim of achieving the greatest possible prosperity of the people in a just and prosperous society.

The mandate of this constitution is very clear. The first command, the state is given the authority to control all agrarian resources in the territory of the Republic of Indonesia. The second commandment is that domination by the state aims at the prosperity of the people. This constitutional order is a derivative of the basic mandate of the state in the 5th precept of Pancasila, social justice for all Indonesian people.⁸

In another sense, although the state is given the authority to control the land, but it does not mean the state has the land as a reserve land that can be directly used at any time for various purposes. Land remains owned by the people or through the process of designation when the land is free state land. Ownership of land by the state to be used as fixed assets through existing mechanisms and regulations related to its acquisition. The authority of the land inventory can be extended from the land acquisition agency to the Land bank agency.

The existence of land banks can carry out what has been mandated by the NRI Constitution of 1945 and the 1960 UUPA . The authority controls according to HMN in the framework of land inventory which will be a source of fixed land bank assets through the land acquisition process. State control does not necessarily mean that although the state has the authority to control land, in its acquisition it still pays attention to and respects the rights of existing communities through land acquisition mechanisms according to Law No. 2 of 2012, government determination, buying and selling, exchange and other forms.⁹

However, explicitly, the land bank is regulated in Law Number 2 of 2012 concerning land procurement for development for the Public Interest, Government Regulation Number 64 of 2021 concerning the Land Bank Agency and Presidential Regulation number 113 of 2021 concerning the structure and Organization of the Land Bank Agency. In Article 1 Paragraph 2 of Law No. 2 of 2012 on Land Acquisition for development for the public interest, States :

“Land acquisition is the activity of providing land by giving yang decent and fair compensation to the entitled parties.”

Also in Article 1 Paragraph 6 of Law No. 2 of 2012 on Land Acquisition for development for the public interest, States :

“Public interest is the interest of the nation, state, and society that must be realized by the government and used as much as possible for the prosperity of the people.”

In order to actualize the procurement of land for the public interest, other elements are needed that help the realization. By seeing other countries that they use

⁸ *Ibid.*, Hlm. 192

⁹ *Ibid.*

the Land bank agency to implement it, then Indonesia is trying to do anyway. Seeing in other countries that the land bank can run well, the initiative is well done Indonesia.

One of the targets of the National Long-Term Development Plan (RPJPN) in 2005-2025 to be achieved is the development of infrastructure to achieve optimal state service conditions. The existence of land banks in developed countries has been widely practiced. In the RPJMN 2015-2019, the government expressly implemented the need to establish a land bank in Indonesia. Some of the notes in the substance of the job creation law relating to the establishment of land banks include The Land Bank Agency as a special state-owned agency with separated state property. This means that the Land Bank agency is in the form of a legal entity or limited liability company that performs its functions autonomously /independently.¹⁰

Job creation law (UUCK) is a form of omnibus law applied in Indonesia. Omnibus law is the concept of simplifying various legal products into one comprehensive legal product. The regulation related to the Land Bank agency in the job creation law is contained in Chapter VIII on Land Acquisition, the fourth part on land in accordance with articles 125-135.¹¹

Government Regulation Number 64 of 2021 concerning Land Bank Agency has come down. This regulation specifically regulates land banks. In Article 1 paragraph 1, Government Regulation Number 64 of 2021 concerning Land Bank Bodies states:

"The Land Bank agency, here in after referred to as the Land Bank, is a special agency (sui generis) which is an Indonesian legal entity formed by the central government with special authority to manage land."

The purpose of the land bank is regulated in Article 2 Paragraph 2, Government Regulation Number 64 of 2021 concerning the Land Bank Agency states :

"The Land Bank as meant in Paragraph (1) is given special authority to ensure the availability of land in the framework of economic justice, for: a. public interest; b. Social Security; c. national interest; d. economic growth; e. land consolidation; and f. agrarian reform"

The function of the land bank is also mentioned in Article 3 Paragraph 1 of Government Regulation Number 64 of 2021 concerning the Land Bank Agency stating :

"The Land Bank has functions: a. Planning; b. the land; c. land management; d. land use; and e. distribution of land."

One of the functions of the land bank is land acquisition. As the ideals and objectives of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest.

The concept of a land bank launched by the government through the agrarian reform system and process, Indonesia has a big task to try to make it a reality. The constituendum is an aspired law. It is Indonesia's task to actualize the constituendum towards the constitutum. Through this, Government Regulation Number 64 of 2021 concerning the Land Bank Agency was presented as a form of further efficiency regarding land management and function through land banks. Get to know the land bank as one of the government programs, especially the ATR / BPN ministry. Land banks are simply known as banks that hold land in Indonesia.

¹⁰ *Ibid.*, Hlm. 193

¹¹ *Ibid.*

Before that, Indonesia had made Law Number 11 of 2020 on job creation. This law is the legal basis for the establishment of a new state institution in Indonesia, namely the Land Bank itself. It is further stipulated that the presence of this regulation is to realize a better Indonesia. Most closely related to land. But the job creation law has not explicitly regulated. Only regulated in Pasal 125 to Pasal 135 of the job creation law.¹² Land Bank is a specialized agency that manages land, and serves to carry out planning, acquisition, procurement, management, utilization, and distribution of land. Then it is further regulated in Government Regulation Number 64 of 2021 concerning the Land Bank Agency.

Trying to review Government Regulation Number 64 of 2021 concerning the Land Bank Agency is an interesting thing. Because the land bank is a new idea that is deliberately designed and presented in the country of Indonesia. As a form of devotion to the state to harmonize human values and the welfare of its people. According to Article 1 PP above, the Land Bank Agency, here in after referred to as the Land Bank, is a special agency (*sui generis*) which is an Indonesian legal entity formed by the central government with special authority to manage land. furthermore, what is meant by the wealth of the Land Bank is all the wealth controlled by the land Bank, either tangible or intangible, which is valuable or valuable due to events in the past that provide benefits in the future. There is also a Land Bank committee, meaning the committee tasked with determining the strategic policy of the Land Bank. In addition, the land bank also has a supervisory board and implementing agency. Then assisted by elements of the government, ranging from the central government, local governments, and ministers.

In Article 2 Paragraph 2 of Government Regulation Number 64 of 2021, the purpose of forming a land bank is :

"given special authority to ensure the availability of land in the framework of economic justice, for: public interest; social interests; national development interests; economic equity; land consolidation; and Agrarian Reform."

The function of the land bank according to PP number 64 of 2021, in Article 3, namely planning, land acquisition, land procurement, land management, land utilization and land distribution.

In carrying out its functions, it certainly needs to be encouraged with the duties and authorities that become the main duties of the land bank, therefore the land bank has the following tasks :

- a. conduct long-term, medium-term and annual planning of activities;
- b. to acquire land that can be sourced from the determination of the government and other parties;
- c. to procure land for development in the public interest or direct land clearing;
- d. conducting land management of development, maintenance and security activities, and land control;
- e. make use of the land through cooperation with other parties; and

¹² Suhaiela Bahfein, *Mengenal Bank Tanah Versi UU Cipta Kerja, Apa Fungsi dan Perannya?*, <https://properti.kompas.com/read/2020/10/06/105518921/mengenal-bank-tanah-versi-uu-cipta-kerja-apa-fungsi-dan-perannya?page=all> (diakses pada 20 Desember 2022)

f. conducting land distribution by conducting land provision and distribution activities.

The lands acquired and / or included in the land bank in accordance with PP Article 7 are land with criteria such as former rights land, areas and wastelands, forest area release land, arising land, reclaimed land, former mining land, small islands land, land affected by the governance change policy space and land that no mastery over it.

Nevertheless, the land obtained can come from the central government, local governments, state-owned enterprises, regional-owned enterprises, business entities, legal entities, and the community. Acquisition from these parties through various processes such as purchase, receipt of grants/donations or similar, exchange, waiver and acquisition of other legal forms.

The Land Bank in PP 64 of 2021 concerning the Land Bank Agency has the function of Agrarian Reform. Agrarian reform is known as the restructuring of the structure of control, ownership, use, and utilization of land more equitable through the arrangement of assets and accompanied by the arrangement of access to the prosperity of the people of Indonesia. The Land Bank conducts land distribution. Land bank-style land distribution in Government Regulation Number 64 of 2021 concerning the Land Bank Agency is the implementation of the tasks of the Land Bank in order to fulfill the availability of land for public interests, social interests, national development interests, economic equality, land consolidation and Agrarian Reform. Land distribution carried out by the Land Bank is different from land redistribution which is the distribution of land directly to people or entities by the ministry that organizes government affairs in the agrarian/land and spatial areas.

Supported by that, it was continued by presenting Presidential Regulation (PERPRES) Number 113 of 2021 concerning the Structure and Implementation of Land Bank Bodies. This is an effort to complement, clarify over the previous land bank regulations. This Presidential Regulation explains the structure and operation of the land bank body. The Government Regulation only discusses land banks in general, while this PERPRES explains the structural procedures and patterns of implementing land banks more specifically.

Article 2, states that the land bank is domiciled in the National Capital. Land banks can have representative offices throughout the territory of the Unitary State of the Republic of Indonesia. Article 3 concerning the structure of the Indonesian land bank, which consists of a Committee, a Supervisory Board and an Implementing Agency. All three have their own duties and authorities. Land banks are different from other banks. The rural structure is different. There is specificity in who fills the structural as above. It was also discussed related to appointment, tenure requirements, decision-making procedures, supporting organs, and even dismissal of positions. Then the human resources of the land bank (Article 36), consisting of Land Bank Structural Officers and Land Bank Employees.

In the implementation of the Land bank referring to Article 38 (1), the implementing agency must implement good governance consistently and sustainably within the Land Bank. Application of good governance consistently and sustainably on the Land Bank. The above actualization is defined as (Article 38 paragraph 3) planning, acquisition and procurement of land, asset management, utilization and cooperation,

implementation of risk management, compliance, human resources, finance, investment, formation of regulations/decisions, Information Systems, audit and procurement of goods and services.

The land Bank is also supported by work plans and master plans. The work plan is accompanied by an annual budget. This annual work plan and budget is implemented by the Implementing Agency which is then submitted by the committee. Meanwhile, the master plan is the planning of the Land Bank area and becomes the basis for the allocation of space and land utilization in the area and/or land assets of the Land Bank.

In Article 42 of President Regulation Number 113 of 2021, there are 3 (three) types of land bank assets, namely current assets, fixed assets, and other assets. Land acquired by the Land Bank is an inventory asset that is part of current assets. Land acquisition originating from government determination is a Land Bank inventory asset which is a separate state wealth and/or is not state property.

In order to develop business, land banks can conduct their own business or cooperation with other parties. Cooperation is also done by agreement. For example, buying and selling, renting, buying and selling, exchanging, and others. The land Bank may accept payment for land use with other parties in the form of cash, installments, exchanges, temporary capital participation/shares, and/or other forms agreed by the parties.

So it can be concluded that there is harmony with the principle of Lex superior derogate Lex inferiori can be interpreted that regulatory legislation that has degree more a lower degree in the hierarchy regulation of legislation should not conflict with the higher. even with thought Hans Kelsen's thought in his theory stufenbeuauteorie, namely Stufenbeautheorie states that must there must be synchronization and contradiction between the rule of law more above and the rule of law below it and vice versa. Also compounded that the land bank is regulated in :

1. Constitution of the Republic of Indonesia 1945, Article 33 paragraph 3;
2. Law No. 5 of 1960 on the basic rules of Agrarian principles or known as the UUPA;
3. Law No. 2 of 2012 on Land Acquisition for development for Public Benefit;
4. Law Number 11 of 2020 on job creation (hereinafter referred to as the job creation law);
5. Government regulation Number 64 of 2021 concerning the Land Bank Agency.
6. President Regulation (PERPRES) Number 113 of 2021 concerning the structure and Organization of Land Bank bodies.

4. Similarities and differences between land banks in Indonesia and the United States.

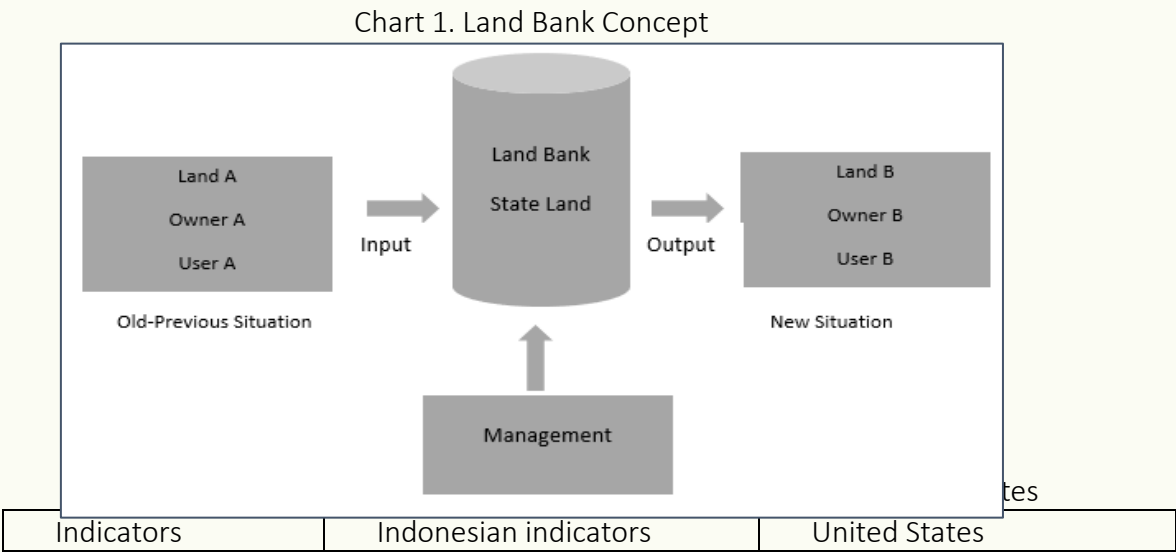
Land bank comes from 2 terms, namely land banking and land banks. Land banking is generally translated into Indonesian into as "land banking", which is used to describe activities related to land banks. While the term land banks is used to describe the existence of institutions or cooperation between institutions engaged in the field procurement of land acquisition. Land Bank is a policy land policy in which the state through a government agency or an independent agency appointed by the government,

is authorized to (1) make acquisitions of land abandoned or problematic land that is considered to have potential for development; (2) manage and regulate while it is temporarily; then (3) distribute it return to the interests of the public interest in accordance with government programs, both short-term and long-term programs.

The form of Land Bank activities according to Sri Susyanti Nur is the provision of land, land maturation and land distribution. Land banks can provide land by way of land acquisition, sale, and exchange. In land maturation activities, the Land Bank prepares facilities and infrastructure as well as supporting facilities. Then at the distribution stage, the land is distributed in accordance with the plan for its designation. Land banks allow the purchase of land for public use at relatively low prices and provide tools to influence development patterns in accordance with overall planning objectives.¹³

From the existing state regulation of the United States can be taken the meaning that the existence of a Land Bank will ensure the availability of land in the framework of economic justice in the public interest, social interest, national development interest, economic equity, land consolidation, and agrarian reform in Indonesia and in the Netherlands. From the existing Land Bank between these two countries, both aim to arrange the room by doing spatial planning, space utilization, and control of space utilization. Especially the United States uses the land bank as an alternative to the governance of Housing and homes there.

Directly proportional to other countries related to the establishment and implementation of land banks, Indonesia also adopted or reflected on countries in the world. The concept of land bank has been known since the 20th century. However, the concept applied in different countries is different from one another. This happens because of differences in the background of the emergence of land banks in each country.



¹³ Roby Guntoro dan Meysita Arum Nugroho, 2022, *Konsep Formulasi Bank Tanah untuk Reforma Agraria dalam Perspektif Perbandingan Hukum*, Jurnal Kewarganegaraan, Vol. 6 No. 3, Hlm. 6365

regulations	Both regulate land banks in a major regulation in the form of policies from the central government which is a legal umbrella for various regulations under it.
Location of the Land Bank	Both centrally located and local or regional

Source: secondary Data, processed December 2022

The equation of the Land bank agency in Indonesia with the United States is studied thoroughly, including the following :

- In terms of law, the United States and Indonesia regulate land banks in a major regulation in the form of policies from the central government which is the legal umbrella for various regulations below.
- In terms of land bank locations, the United States and Indonesia are centrally located and locally or regionally.¹⁴

In this case take the United States as a comparison because based on research conducted, that the two countries have the concept of a perfect land bank with a complete arrangement compared to other countries. The comparison is done by looking at how the concept of the United States over the arrangement and implementation of the land bank. Thus being able to become a common reference for the implementation of existing land banks in Indonesia.

Chart 2. Differences between the Indonesian Land Bank and the United States

Indicators	Indonesian indicators	United States
Regulation	<ol style="list-style-type: none"> 1. Law Number 5 of 1960 on basic agrarian principles or known as the UUPA; 2. Law Number 2 of 2012 on Land Acquisition for development for the Public Interest; 3. Law Number 11 of 2020 on job creation (hereinafter referred to as the job creation law); 4. Government regulation Number 64 of 2021 concerning the Land Bank Agency. 5. President Regulation Number (PERPRES) number 113 of 2021 concerning the structure and Organization of the Land Bank Agency. 	<p>Central regulation, is:</p> <ul style="list-style-type: none"> • <i>Housing and Economic Recovery Act/HERA, 2008</i> • <i>American Recovery and Reinvestment Act (ARRA), 2009, change some of the substances regulated in HERA..</i> <p>State regulations, is:</p> <ul style="list-style-type: none"> • <i>the Michigan Land Bank Fast Track Authority Statue</i> • <i>The Ohio Land Banking Legislation</i>
Types of land banks	Land banks public	Public land banks and Mixed land banks

¹⁴ Fatimah Al Zahra, *op.cit*, Hlm. 96

Parties in the land bank	to government land banks, which may cooperate with central authorities, regional authorities, state agencies, state-owned enterprises, regional effort bodies, effort bodies, state-owned legal bodies, private law bodies, citizens, cooperatives, and or other legal parties	(1) independent Land bank bodies established by the law; (2) institutions resulting from cooperation between departments in Government; (3) activities land bank activities as part of the land scale program national.
Mechanism of Land Bank	1. planning; 2. land acquisition; 3. land acquisition;Land 4. Management; land 5. utilization; and 6. land distribution.	1. collection 2. management 3. reuse
The purpose	Acquisition of land for development in the public interest	managing property and houses abandoned houses

Source: secondary Data, processed December 2022

Comparison of the concept of land bank between the states of the United States is reviewed through 4 indicators, namely regulation, type, parties and implementation mechanism. The following can be seen in Table 1.

1. Land Bank Regulation

Looking at Table 1 Above, the first indicator shows a comparison of regulations regarding land banks in the United States. The United States is a country of comparison. This country, which is famous for being a federal state of several states, has a different form of bank land bank arrangement than other countries. The United States regulates the land bank in a major regulation in the form of a policy of the central government which is a legal standing for the regulations under it, which is applied in each state.

The general regulation in question is the Housing and Economic Recovery Act (HERA) passed in 2008, which then has some substance changed with new regulations in *American Recovery and Reinvestment Act (ARRA)* which was passed in 2009. *Title III : EMERGENCY ASSISTANCE FOR THE REDEVELOPMENT OF ABANDONED AND FORECLOSED HOMES* pada *Housing and Economic Recovery Act/HERA, 2008* dalam Sec 2301 C3 : *establish land banks for homes that have been foreclosed upon* (set up a land bank for houses that have been confiscated). With aweld that is the economic recovery of 2008 that took place in America through the improvement of homes and properties. There is a division of the number of houses that get recovery facilities. With the number of houses to be restored and their distribution, this rule provides advice on establishing a land

bank for houses that have been confiscated. Then it will be redistributed. Pada *American Recovery and Reinvestment Act (ARRA), 2009 pada TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS* part *COMMUNITY PLANNING AND DEVELOPMENT COMMUNITY DEVELOPMENT FUND*. On the grounds that it is further regulated based on 2301 C3 HERA 2008, *Provided further, That section 2301(c)(3)(C) of the Act is amended to read “establish and operate land banks for homes and residential properties that have been foreclosed upon : (establishing and operating land banks for houses and residential properties that have been confiscated). In this rule it is clarified from the previous rule, by adding the word “..... and residential properties”.*

In such conditions, it certainly gives freedom to each state to formulate its own regulations regarding land banks in accordance with what is needed by each state, such as *The Michigan Land Bank Fast Track Authority Statue* dan *The Ohio Land Banking Legislation*. While Indonesia is regulated in Law No. 5 of 1960 on basic agrarian principles or known as the UUPA, Law No. 2 of 2012 on Land Acquisition for development for the Public Interest, Law No. 11 of 2020 on job creation (here in after referred to as the job creation law), regulations Government number 64 of 2021 concerning the Land Bank agency, Presidential Regulation Number (PERPRES) number 113 of 2021 concerning the structure and Organization of the Land Bank Agency.

Therefore, it can be concluded that the United States uses 2 regulations, namely Central regulations and state regulations. While Indonesia is focused on one central regulation only.

2. Types Of Land Banks

Based on practice for many years, land banks in the United States consist of 2 (two) types, namely:¹⁵

- a. Public Land Bank; which consists of elements of the government, both independent and in collaboration with other departments.
- b. Mixed land Bank; is the result of government cooperation with the private sector.

While Indonesia is only centered in the capital city with the type of public land bank. As stated in Article 2 paragraphs 1 and 2 of PERPRES Number 113 of 2021, that the Land Bank is domiciled in the Capital City of the Unitary State of the Republic of Indonesia and the Land Bank can have representative offices throughout the territory of the Unitary State of the Republic of Indonesia. As a land bank center in the capital city to collect land that is included in the criteria for land bank management. Then in the end it will be distributed according to the needs of the Indonesian state. It was therefore concluded that the United States uses public banks and mixed banks. While Indonesia is only one type, namely public banks.

3. Institutional parties in the Land Bank

The table above shows the parties to the United States land bank. The United States as a federal state that implements land banks, they are more diverse bank

¹⁵ Frank S. Alexander, *Land Banks and Land Banking*, (Washington Center for Community Progress 2011), 18-19

land bank practices in several states that allow there are 2 types of land banks, namely public land banks and mixed land banks. The parties involved in the governance of land banks are categorized as follows:¹⁶

1. Public Land Bank, in the form of an attributable land bank agency, based on the Law, a land bank agency resulting from cooperation between government departments, and land bank activities as part of a national-scale government land program
2. Mixed Land Bank, in the form of a land bank body in collaboration with the government with private parties or investors or with community institutions whose orientation is non-profit

Indonesia itself in the implementation of the land bank is supported by related parties, namely the independent Land bank agency established by law, the institution of cooperation between departments in the government, both central and local governments. There are also other parties who take part in the organization of the land bank as a subject of cooperation, such as Negara, Badan Usaha as state-owned enterprises, regional-owned enterprises, legal entities, business entities, and the community. The United States uses public banks and mixed banks. While Indonesia is only one type, namely public banks. It is therefore concluded that the United States is made up of separate parties between the center and the states. While Indonesia is centered on parties that are structured through the government.

4. Land Bank Maintenance Mechanism

The organization of land banks in the United States is indicated for the use of abandoned property or property that is the object of tax confiscation. The implementation mechanism consists of 3 (three) stages, namely the collection stage, management stage, and reuse stage.¹⁷

a. Stages of collection/takeover

In the form of identification of abandoned land followed by confiscation of the object of taxation or voluntary gift of property by the landowner.

b. Stages Of Management

In the form of financing for property maintenance activities, ranging from sales, rentals, tax collection, cleaning to the destruction of abandoned property or subject to tax confiscation.

c. Reuse

There is distribution through the marketing of public auction property or buying and selling directly between land bank institutions and the private or private sector. This distribution is strictly regulated in a special policy, distribution recipients are selected very strictly.

While the mechanism of land bank in Indonesia is not just 3 stages like the United States. Unless there are several stages :

a. Planning Stage

In the planning stage there are 3 plans, namely long-term plans, medium-term plans, and annual plans.

¹⁶ *Ibid.*, Hlm 20-21

¹⁷ Frank S. Alexander, *op.cit.*, Hlm. 18

- b. Land acquisition stages
Land acquisition comes from land determined by the government such as former rights, abandoned areas and lands, land released from forest areas, arising land, reclaimed land, former mining land, small island land, land affected by spatial change policies, and, land that has no control over it. Meanwhile, land from other parties such as comes from the Central Government, Regional Government, state-owned enterprises, regional-owned enterprises, business entities, legal entities, and communities.
- c. Stages of land acquisition
The stage is carried out through the mechanism of land acquisition stages for development for the public interest or land acquisition directly.
- d. Stages of soil management
In the land management phase consists of land development activities, maintenance and security of land, and land control.
- e. Stages of land use
In the land utilization stage , it is carried out through utilization cooperation with other parties. This form of cooperation such as buying and selling, renting, business cooperation, grants, exchanges, and other forms agreed with other parties.
- f. Stage of land distribution.
In the land distribution stage in the form of land provision and distribution activities. At least this distribution is directed to ministries/institutions, local governments, social and religious organizations, and/or communities determined by the Central Government.

However, the description of the land bank concept practiced in the United States should not be formulated directly to be applied in Indonesia. The formulation of the concept of a land bank to be constructed through a legal instrument must first be adapted to national law, especially with regard to agrarian affairs. This is considered necessary as a form of avoiding disharmonization and counter-concepts between laws and regulations in the agrarian law system that are interconnected with one another. Based on Article 33 paragraph 3 of the 1945 NRI Constitution which does not authorize the private sector to take part in controlling land in Indonesian territory, if traced, examined properly and conceptually the type of land bank that can be applied in Indonesia is a public type land bank.

From several previous exposures and have seen the comparison of Indonesia and other countries, it is clear how the land bank has a strategic role as an instrument of National Land Management, especially related to the control and stewardship of land so as to realize the greatest prosperity of the people. This is also reinforced by factual evidence that land banks have been successfully applied in various developed countries to deal with various land problems systematically, such as the use of undeveloped land, abandoned land, or abandoned land and are considered to have the potential for development to turn into more productive. Land Bank refers to the process of acquiring

undeveloped or unproductive community land for later management with the aim of future development.¹⁸

The effectiveness of the application of the land bank concept largely depends on the regulations governing its purpose, institutional form and mechanism of implementation. Therefore, the regulation or set of laws and regulations regarding land banks must be able to identify the purpose, institutional form, and mechanism of organizing land banks clearly and in detail. Regulatory clarity will have significant implications for the effectiveness of the implementation of the land bank concept, which will automatically determine the successful implementation of the land bank concept in Indonesia.

To achieve the goals and benefit from the activities of the land bank to the maximum, it takes the form of the availability of regulations or sets of laws and regulations in the near future. The regulation to be made must be able to describe various legal aspects needed to achieve the goal of establishing Land bank agency. The formulation of the land bank policy is a policy that regulates and controls various aspects of the activities of the Land bank agency. With adequate regulatory support and strong management, the land bank can certainly perform its functions properly.

The implementation of the land bank will be successful if it is carried out consistently based on the goals to be achieved. Therefore, the purpose of the existence of land banks in Indonesia must be arranged in such a way that the implementation can run effectively and optimally. The purpose of forming a land bank in Indonesia is solely for the management of state land assets and not for profit, so the most appropriate type of bank to be formed is a public land bank which is a government institution. The type of land bank formed is closely related to the source of financing that will be used for the maintenance of the land bank. The effectiveness of the implementation of the land bank is highly dependent on a stable and sustainable source of funds. Learning from the United States that implements the funding collaboration model between private banks and government grants, Indonesia can follow the financing scheme that has been implemented in the United States with the source of land bank operational financing entirely derived from funding collaboration between private banks and government grants.¹⁹

Departing from the experience of other countries, where the land bank regulation allows the government (both central and/or local) to create a land bank, either by utilizing existing institutions or forming new institutions. In general, the parties that must be involved in the implementation of land banks in Indonesia also include local governments. Local governments need to be involved in supporting land banks to take over abandoned lands in their regions. Local governments must monitor the local land use regulations with a complete and valid system, so as to facilitate data collection on the lands in their area, especially wastelands.

The city or district government should integrate the city or district planning authority under its authority into the land bank implementation mechanism by also preparing a plan for the land bank in question. Cooperation between the city/regency

¹⁸ Fatimah Al Zahra, "Konstruksi Hukum Pengaturan Bank Tanah Untuk Mewujudkan Pengelolaan Aset Tanah Negara Berkeadilan", *Jurnal Arena Hukum* 10 No. 3 (2017), 31

¹⁹ Ibid. Hlm. 42

government and the land bank can bring benefits to more precise and effective urban planning in the future. Such things as consideration of the pattern of land banks in Indonesia by looking in the mirror or comparing with land banks in the United States and the Netherlands.

5. Conclusion

The arrangement of land banks has a long history in the making. Nevertheless, as a government that continues to build the country's civilization and economy as well as national development through land banks. Then binding rules on land banks are deemed necessary. Therefore, land banks are regulated in various laws and regulations, namely the Constitution of the Republic of Indonesia 1945, Article 33 paragraph 3; Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or known as UUPA; Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest; Law Number 11 of 2020 concerning Job Creation (here in after referred to as the Job Creation Law); Government Regulation Number 64 of 2021 concerning Land Bank and Presidential Regulation (PERPRES) Number 113 of 2021 concerning the Structure and Implementation of Land Bank Bodies.

In relation to the equality of land banks in Indonesia with the United States, it has been explained that both have similarities in the regulation of land banks. Equality in regulation is equally centered on the government as the main regulation. Both also have similarities in the location of the land bank that both establish land banks in the central and local or regional. The difference between the land bank Agency and the United States is explained as follows :

1. From the regulations, the United States uses 2 regulations, namely central regulations and state regulations. The Housing and Economic Recovery Act (HERA) of 2008 and the American Recovery and Reinvestment Act (ARRA) of 2009 change some of the substance of HERA. Then state regulations, namely The Michigan Land Bank Fast Track Authority Statue and The Ohio Land Banking Legislation. Meanwhile, Indonesia focuses on only one regulation, namely Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles or known as UUPA, Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law), Government Regulation Number 64 of 2021 concerning the Land Bank Agency, and Presidential Regulation (PERPRES) Number 113 of 2021 concerning the Structure and Implementation of Land Bank
2. Of the types of banks, the United States uses public banks and mixed banks. While Indonesia is only one type, namely public banks.
3. Of the parties, the United States consists of parties separated between the center and the states. While Indonesia is centered on parties that are structured through the government.
4. From the organizing mechanism of the Land bank, America through the mechanism of collection, management, reuse. While Indonesia through the mechanism of Planning, Land Acquisition, land, acquisition, Land, Management, land utilization, and land distribution.
5. Of the objectives, America aims to manage abandoned properties and homes. While Indonesia aims to procure land for development in the public interest.

References

- Alexander, Frank S. *Land Banks and Land Banking*, Washington Center for Community Progress, 2011.
- Nasution, Bahdar Johan, *Metode Penelitian Ilmu Hukum*, Bandung: Mandar Maju, 2008.
- Sutedi, Adrian, *Implementasi Prinsip Kepentingan Umum dalam Pengadaan Tanah Untuk Pembangunan*, Jakarta: Sinar Grafika, 2008.
- N. A, *Mengenal Bank Tanah/Land Banking Sebagai Alternatif Manajemen Pertanahan*, artikel DJKN, 2015.
- Arnowo, H. *Pengelolaan Aset Bank Tanah untuk Mewujudkan Ekonomi Berkeadilan*, Jurnal Pertanahan, Vol. 11 No. 1 (2021) : 92
- Fidri Fadillah Puspita, dkk, 2021, "Urgensi Kehadiran Bank Tanah Sebagai Alternatif Memulihkan Perekonomian di Indonesia Dalam Perspektif Hukum Islam", *Jurnal Ilmiah Ekonomi Islam*, Vol. 7 No. 3 (2021) : 2
- Nila Trisna dan Ilka Sandela, "Eksistensi Bank Tanah Dalam Hukum Agraria di Indonesia", *Jurnal Ius Civile*, Vol. 5 No. 1 (2021) : 191
- Peraturan Pemerintah Nomor 64 Tahun 2021 tentang Badan Bank Tanah.
- Peraturan Presiden Nomor (PERPRES) Nomor 113 Tahun 2021 tentang Struktur dan Penyelenggaraan Badan Bank Tanah
- Roby Guntoro dan Meysita Arum Nugroho, "Konsep Formulasi Bank Tanah untuk Reforma Agraria dalam Perspektif Perbandingan Hukum", *Jurnal Kewarganegaraan*, Vol. 6 No. 3, (2022) : 6365
- Zahra, Fatimah Al. "Konstruksi Hukum Pengaturan Bank Tanah Untuk Mewujudkan Pengelolaan Aset Tanah Negara Berkeadilan", *Jurnal Arena Hukum* Vol. 10 No. 3 (2017) : 96
- Suhailea Bahfein, *Mengenal Bank Tanah Versi UU Cipta Kerja, Apa Fungsi dan Perannya?*, <https://properti.kompas.com/read/2020/10/06/105518921/mengenal-bank-tanah-versi-uu-cipta-kerja-apa-fungsi-dan-perannya?page=all> (diakses pada 20 Desember 2022)
- Undang-Undang Dasar 1945
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria atau yang dikenal dengan nama UUPA
- Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum
- Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (selanjutnya disebut UU Cipta Kerja)

Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

Copyright: © Jurnal Hukum dan Kenotariatan. This is an open access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

Jurnal Hukum dan kenotariatan is an open access and peer-reviewed journal published by Master Of Notarial, Universitas Islam Malang, Indonesia.

Open Access 