

Land Grabbing Potential: Land Bank Policy Towards Land Rights Of Indonesian Indigenous People

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Abstract. This study analyzes the regulations of the Land Bank Agency as stipulated in Law Number 6 of 2023 and Government Regulation Number 64 of 2021, and the implications of the Land Bank Agency's policies on indigenous peoples' land rights to land grabbing practices. The research method used is normative legal research with a statutory approach and a conceptual approach. The results of the study show that the Land Bank Agency has a function in planning, acquiring, procuring, managing, utilizing, and distributing land, including granting land use rights, building use rights, and use rights for a certain period of time. Land that can be controlled by the state through the Land Bank Agency includes various types of land, ranging from former land rights, abandoned areas, to land affected by changes in spatial planning. The impacts of the Land Bank Agency's policies on indigenous peoples include the loss of traditional rights to land, conflicts with the authorities, reduced sources of indigenous life, and providing convenience for foreign company investment. The conclusion in this study is that there is concern that the implementation of the Land Bank Agency Government Regulation can result in land grabbing practices that are detrimental to indigenous peoples. The inconsistency of the 1945 Constitution of the Republic of Indonesia, MPR Decree Number IX/MPR/2001, the Job Creation Law, and the Land Bank Agency Government Regulation indicates a conflict of norms that are detrimental to the public interest and public welfare. Therefore, reformulation of the Land Bank Agency PP policy is needed to pay attention to the rights of indigenous peoples and ensure fair benefits for all levels of society.

Keywords: Land Grabbing, Land Bank Agency, Indigenous Peoples

Abstrak. Penelitian ini menganalisis regulasi Badan Bank Tanah sebagaimana diatur dalam Undang-Undang Nomor 6 Tahun 2023 dan Peraturan Pemerintah Nomor 64 Tahun 2021, serta implikasi kebijakan Badan Bank Tanah terhadap hak atas tanah masyarakat adat terhadap praktik perampasan tanah. Metode penelitian yang digunakan adalah hukum normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Hasil penelitian menunjukkan bahwa Badan Bank Tanah memiliki fungsi dalam merencanakan, memperoleh, mengadakan, mengelola, memanfaatkan, dan mendistribusikan tanah, termasuk memberikan hak guna usaha, hak guna bangunan, dan hak pakai untuk jangka waktu tertentu. Tanah yang dapat dikuasai oleh negara melalui Badan Bank Tanah meliputi berbagai jenis tanah, mulai dari tanah bekas hak, tanah terlantar, hingga tanah yang terkena perubahan tata ruang. Dampak kebijakan Badan Bank Tanah terhadap masyarakat adat antara lain hilangnya hak ulayat atas tanah, konflik dengan penguasa, berkurangnya sumber kehidupan masyarakat adat, dan memberikan kemudahan bagi investasi perusahaan asing. Kesimpulan dalam penelitian ini adalah adanya kekhawatiran bahwa penerapan Peraturan Pemerintah Badan Bank Tanah dapat mengakibatkan praktik perampasan tanah yang merugikan masyarakat hukum adat. Ketidakkonsistenan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Ketetapan MPR Nomor IX/MPR/2001, UU Cipta Kerja, dan Peraturan Pemerintah Badan Bank Tanah mengindikasikan adanya pertentangan norma yang merugikan kepentingan umum dan kesejahteraan masyarakat. Oleh karena itu, reformulasi kebijakan PP Badan Bank Tanah diperlukan untuk memperhatikan hak-hak masyarakat hukum adat dan memastikan manfaat yang adil bagi seluruh lapisan masyarakat.

Kata Kunci: Perampasan Tanah, Badan Bank Tanah, Masyarakat Adat

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INTRODUCTION

The development of human distribution continues to increase every year, followed by the need for land for housing which depends on natural resources in the form of land.¹ Human needs for land are not limited to building houses as a place to live, but also the use of land as a place for farming and a place for humans to carry out their activities to work.² The use of land evenly between land used by the government and land used for community needs is a concept of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) to create a just and prosperous country.³ This is expressly regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the natural resources of the earth and water are controlled by the state for the prosperity of the people by providing the greatest possible benefits.⁴ One of them is the land use rights of indigenous peoples as part of Indonesian society are guaranteed and respected under the law in accordance with Article 18B paragraph 2 of the 1945 Constitution of the Republic of Indonesia.⁵ Fulfillment of indigenous peoples' land rights has been guaranteed by the government based on statutory regulations as part of fulfilling the constitution, however, land management and control of indigenous peoples' land is often used to fulfill land needs related to investment which triggers land grabbing.⁶

Based on records from the Customary Territory Registration Agency (BRWA) in 2023, there were 1,336 registered customary territories, only 219 of which were recognized by the government and there were 23.17 hectares of customary territories that had not

¹ Eny Rochaida, "Dampak Pertumbuhan Penduduk Terhadap Pertumbuhan Ekonomi Dan Keluarga Sejahtera Di Provinsi Kalimantan Timur," *Forum Ekonomi* 18, no. 1 (2016): 14–24.

² Ibid

³ Miranda Nissa Hilal Liani dan Atik Winanti, "Hak Masyarakat Hukum Adat Dalam Pelaksanaan Pengadaan Tanah Ulayat Bagi Pembangunan Untuk Kepentingan Umum," *SALAM: Jurnal Sosial dan Budaya Syar-i* 8, no. 1 (26 Januari 2021): 159–72, <https://doi.org/10.15408/sjsbs.v8i1.19395>.

⁴ Pasal 33 ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

⁵ I Gusti Nyoman Guntur, "Ragam pengakuan formal terhadap penguasaan tanah adat di Indonesia," *Tunas Agraria* 6, no. 2 (11 Mei 2023): 93–109, <https://doi.org/10.31292/jta.v6i2.215>.

⁶ Dian Cahyaningrum et al., "Hak Pengelolaan Tanah Ulayat Masyarakat Hukum Adat untuk Kepentingan Investasi," <https://www.kompas.com/tren/>.

been recognized by the local government.⁷ According to the records of the Aliansi Masyarakat Adat Nusantara (AMAN) in 2021, as many as 3.1 million hectares of indigenous areas were affected by land grabbing by the government with various permits.⁸ Meanwhile, data from the Indonesian Environmental Forum (WALHI) in 2021, there were 11,466,923 hectares affected by land grabbing as a National Strategy Project. In the records of the Agrarian Law Reform Consortium, there were 4009 agrarian conflicts with an area of 11.4 million hectares in the last seventeen years.⁹ The government's efforts in agrarian law reform include Law Number 6 of 2023 concerning Job Creation (hereinafter referred to as the Job Creation Law) with derivative regulations in the form of Government Regulation Number 64 of 2021 concerning the Land Bank Agency (hereinafter referred to as the PP on the Land Bank Agency). The functions of the Land Bank Agency in Article 3 paragraph (1) of the PP on the Land Bank Agency include planning, acquisition, procurement, management, utilization, and distribution of land.¹⁰ However, the existence of the Land Bank Agency can threaten the management and control of indigenous peoples' land in Indonesia. This is explained in Article 19 of the PP on the Land Bank Agency, which states that the Land Bank Agency supports economic growth and investment in Indonesia. Article 7 letter (i) of the PP on the Land Bank Agency contains elements of the principle of *domein verklaring* because the elements of this article explain that land that has no control is land whose management and control becomes state land.¹¹ Although the Land Bank Agency can make a positive contribution to strengthening the economy by encouraging investment, its existence also has the potential for land

⁷ Supriyadi Supriyadi, Diah Sulistyani Ratna Sediati, dan Nafis Dardiri, "Implementasi Pengaturan Pendaftaran Tanah dalam Pembatalan Peralihan Hak," *JURNAL USM LAW REVIEW* 6, no. 2 (20 Agustus 2023): 554, <https://doi.org/10.26623/julr.v6i2.7223>.

⁸ Apriadi Gunawan, "Masyarakat Adat Masih Termarginalisasi," <https://www.aman.or.id/news/read/masyarakat-adat-masih-termarginalisasi>, n.d.

⁹ Wahana Lingkungan Hidup Indonesia (WALHI), "Tegakkan Konstitusionalisme Agraria untuk Kedaulatan dan Keselamatan Rakyat, Hentikan Perampasan Tanah, Jalankan Reforma Agraria Sejati," <https://www.walhi.or.id/tegakkan-konstitusionalisme-agraria-untuk-kedaulatan-dan-keselamatan-rakyathentikan-perampasan-tanah-jalankan-reforma-agraria-sejati>.

¹⁰ Pasal 3 Peraturan Pemerintah Nomor 64 Tahun 2021 tentang Badan Bank Tanah.

¹¹ Rahadiyan Veda Mahardika dan Gatot Suyanto, "Kedudukan Hukum Badan Bank Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum," *Jurnal Ilmu Kenotariatan* 3, no. 2 (20 Desember 2022): 58, <https://doi.org/10.19184/jik.v3i2.36432>.

grabbing which threatens the ownership status of customary land that does not have an ownership certificate.¹²

Land management carried out by the Land Bank must be carried out in a fair land settlement manner to reduce various inequalities in land ownership, as well as the impact of land disputes arising from land liberalism in Indonesia.¹³ The existence of indigenous people's land must be truly pursued as a step for government protection as a fulfillment of the rights of the Indonesian people which are protected by the constitution.¹⁴ Changes in the political pattern of power regarding the direction of law in Indonesia should not discriminate against the rights of indigenous peoples to control the land they own.¹⁵ This will result in the government taking control of indigenous peoples' land as part of the government's political development which is directed towards increasing the country's wealth.¹⁶ The compensation for land grabbing by indigenous people is not comparable to the loss of customary land that they have guarded and preserved for years as part of the development of their lives.¹⁷

Based on previous research conducted by Mochammad Rafi Pravidjayanto, Nuraida Khoirun Nisa, Muhammad Alvin Nashir, and Mega Ayu Ningtyas entitled "The Role of Land Banks in Overcoming Land Acquisition Problems for Public Interest". The study explains that land banks are regulated in Articles 125-135 of the Job Creation Law as a special institution that has the main responsibility for managing land with assets separate from state assets. Land banks have greater authority and freedom in carrying out their activities. Flexibility, efficiency, and effectiveness are the main focuses in organizing activities by land banks. Land assets managed by land banks can be utilized in various forms, such as land use rights, building use rights, and use

¹² Supriyadi, Ratna Sediati, dan Dardiri, "Implementasi Pengaturan Pendaftaran Tanah dalam Pembatalan Peralihan Hak."

¹³ Felishella Earlene dan Benny Djaja, "Implikasi kebijakan reforma agraria terhadap ketidaksetaraan kepemilikan tanah melalui lensa hak asasi manusia," *Tunas Agraria* 6, no. 2 (26 Juni 2023): 152–70, <https://doi.org/10.31292/jta.v6i2.223>.

¹⁴ Wismar Harianto, "Eksistensi Masyarakat Adat Dalam Mempertahankan Hak Atas Tanah Ulayat (Studi Masyarakat Adat Kebatinan Muara Sakal Kabupaten Pelalawan)," *Juni*, vol. 3, 2021.

¹⁵ Nadifa Keyla Ismail et al., "Kepastian Hukum dan Upaya Pertanggungjawaban Pemerintah Terhadap Perlindungan Hak Tanah Ulayat di Pulau Rempang" 2, no. 2 (2024): 6, <https://doi.org/10.51903/jaksa.v2i2.1635>.

¹⁶ Made Oka Cahyadi Wiguna, "Pemikiran Hukum Progresif untuk Perlindungan Hukum dan Kesejahteraan Masyarakat Hukum Adat," *Jurnal Konstitusi* 18, no. 1 (27 Mei 2021): 112–37, <https://doi.org/10.31078/jk1816>.

¹⁷ Ibid

rights, which can then be given to other parties.¹⁸ This provides an opportunity for land banks to optimize the use of their land assets, so that they can provide maximum benefits to various stakeholders. The main purpose of land asset utilization by land banks is to obtain income to accumulate capital. By utilizing land assets optimally, land banks can generate income that can be used to further develop infrastructure or other profitable projects. The income obtained can be capital for land banks to continue to grow and develop and carry out their functions effectively in managing land.¹⁹ Previous research conducted by Muhamad Rafly and Abdul Halim entitled "Legal Protection of Indigenous Peoples against the Principle of Domein Verklaring in Laws and Regulations on Land Banks". The study revealed that the principle of determining clear ownership rights, as regulated in land banking regulations, such as Law Number 6 of 2023 and the Government Regulation on Land Banks, has a significant impact on areas inhabited by indigenous peoples. Through this land bank institution, there is great potential that areas that include customary land, traditional settlements, customary forest areas, rivers, and lakes that are an integral part of the lives of indigenous peoples, can be seized or controlled by land banks. Misinterpretation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in regulations related to land banks has turned land banks into a serious threat to the survival of indigenous peoples. This raises concerns that the implementation of inappropriate land bank regulations could result in the elimination or misuse of customary areas that are vital to the sustainability of the culture and life of indigenous peoples.²⁰

Based on the background and previous research that has been described, this study will focus on the land bank policy on land grabbing in Indonesia with the land rights of indigenous peoples. The reason the author chose this research title is because until now no one has studied the problem regarding the problem of the land bank agency

¹⁸ Mochammad Rafi Pravidjayanto et al., "Peran Bank Tanah Dalam Mengatasi Problematika Pengadaan Tanah Untuk Kepentingan Umum," *Ma'mal: Jurnal Laboratorium Syariah dan Hukum* 4, no. 2 (2023): 98–117, <https://doi.org/10.15642/mal.v4i2.209>.

¹⁹ Ibid

²⁰ Muhamad Rafly dan Abdul Halim, "Perlindungan Hukum Masyarakat Adat terhadap Asas Domain Verklaring dalam Peraturan Perundang-Undangan Tentang Bank Tanah," *JURNAL USM LAW REVIEW* 6, no. 3 (4 Desember 2023): 1136, <https://doi.org/10.26623/julr.v6i3.7351>.

policy on the potential for land grabbing of indigenous peoples' land rights in Indonesia. This study aims to analyze and describe the implications of the land bank agency policy in overcoming land grabbing of indigenous peoples' land rights and whether the policy of the Land Bank Agency is in accordance with the principles adopted by indigenous peoples. Therefore, to limit the discussion, the author uses the formulation of the problem, first, how is the regulation of the land bank agency policy in Indonesia?; second, what are the implications of the land bank agency policy on the potential for land grabbing of indigenous peoples' land rights in Indonesia?

METHODOLOGY

This study uses a normative legal approach supported by a statute approach and a conceptual approach. The statutory approach in this study examines the 1945 Constitution of the Republic of Indonesia, MPR Decree Number IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management, the Job Creation Law, and the Government Regulation of the Land Bank Agency. The conceptual approach in this study examines the implications of the Land Bank Agency's policy that has the potential for land grabbing on the land rights of indigenous peoples. In this study is based on secondary data, including laws and regulations as primary legal materials, as well as library sources such as books, scientific articles, and journals as secondary legal materials. Data collection was carried out through document studies relevant to the research topic to obtain theories and information that support the analysis. The data collection method applied is a study of relevant documents related to the research topic to obtain theories and information that support the analysis. After the data was successfully collected, a qualitative analysis was carried out by presenting it descriptively, referring to legal literature, theories from legal experts, and primary legal documents as the main support in this study..²¹

²¹ P D M Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017)

RESULTS AND DISCUSSION

Regulation of Land Bank Agency Policy in Indonesia

The policy of Article 33 paragraph (3) of the 1945 Constitution explains that the state can control the entire contents of the earth and natural resources in order to improve the welfare of the community. Agrarian Law Reform in Indonesia is stated in Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA). The enactment of UUPA contains two substantive meanings by revoking UUPA containing colonial elements and establishing UUPA in accordance with national law. The formation of UUPA is based on the authority of the state in its control over all natural resources and their contents with a guarantee as the prosperity of the Indonesian people. Article 2 of UUPA implicitly contains the principle of *domein verklaring* that natural resources can be controlled by the state as the holder of the highest power that can be delegated to certain parties and is needed for the national interest based on the provisions of Government Regulations. The interests of the government as mandated in Article 2 of UUPA are based on the prosperity of the people which provides a guarantee of happiness, welfare, and freedom for a sovereign, just, and prosperous society.²² This is the basis for the formation of agrarian reform as a form of strengthening agrarian regulations in realizing the rights of the community as a whole.²³ Then, the agrarian reform policy is also stated in the MPR Decree Number IX/MPR/2001 concerning Agrarian Reform and Management of Natural Resources which is the actualization of Article 33 paragraph (3) of the 1945 Constitution which is then explained in the UUPA. Agrarian reform aims to reduce poverty levels, improve the reach of people's economic resources, especially land, and restructure disparities in land control and ownership. One of the principles in managing agrarian resources that must be implemented is protecting the rights of indigenous peoples as stated in Article 4 letter (j) of MPR Decree IX/MPR/2001.

²² Ria Fitri, "Hukum Agraria Bidang Pertanahan Setelah Otonomi Daerah," *Kanun Jurnal Ilmu Hukum* 20, no. 3 (13 Desember 2018): 421–38, <https://doi.org/10.24815/kanun.v20i3.11380>.

²³ Roma Tua Situngkir dan Nur Adhim, "Perbandingan Bank Tanah dengan Manajemen Aset Negara Terkait Pertanahan," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 2 (29 Agustus 2023): 1471–84, <https://doi.org/10.37680/almanhaj.v5i2.3075>.

Agrarian reform is further contained in the Job Creation Law which contains the renewal of the birth of an institution known as the Land Bank Agency. The birth of the Land Bank Agency as a land manager is continuous with the PP on the Land Bank Agency.

The Land Bank Agency was established by the government with a special function to manage natural resources in Indonesia in the form of land based on Article 125 paragraph (2) of the Job Creation Law. In the Job Creation Law, the assets referred to are separated between state assets and assets of the Land Bank Agency which are specifically separated. The Land Bank Agency is mandated to carry out a number of key functions related to planning, acquisition, procurement, management, utilization, and distribution of land. One of the main functions of the Land Bank Agency is planning, which aims to address various challenges faced by the government in terms of regional spatial planning, national and regional development, and in preparing strategic plans and work plans for each agency that requires land. By having a strong planning function, the Land Bank Agency can become a strategic partner for the government in managing land resources effectively and efficiently. Through careful planning, the Land Bank Agency can help ensure that land use is based on appropriate needs and takes into account various aspects, such as environmental sustainability, infrastructure development, and the needs of the local community. The role of the Land Bank Agency in planning is not only limited to administrative arrangements, but also includes strategic aspects that are important in sustainable development.²⁴

The Land Bank will conduct land acquisition to assist the government in conducting land mapping carried out in order to fulfill public interests. The Land Bank will manage the land that has been collected and utilized in land distribution as a means for the government to provide facilities to the community for social interests.²⁵ Social interests implemented in the Job Creation Law are based on Article 129 of the Job Creation Law explaining that land banks are managed by the Land Bank Agency

²⁴ Ibid

²⁵ Fatimah Al Zahra, "Gagasan Pengaturan Bank Tanah untuk Mewujudkan Pengelolaan Aset Tanah Negara yang Berkeadilan," *Jurnal Ilmiah Administrasi Publik* 3, no. 2 (1 Mei 2017): 92–101, <https://doi.org/10.21776/ub.jiap.2017.003.02.2>.

which is authorized to manage land rights by providing business use rights, building use rights, and use rights for a certain period of time. Land management by the Land Bank Agency carries the concept of management rights status whose use is given to third parties.²⁶ The policy implemented by the Land Bank to address unilateral claims regarding land ownership control which is the cause of land conflicts in Indonesia is contained in Article 129 of the Job Creation Law.²⁷ In this case, the government through the Land Bank Agency will supervise and control land management in accordance with the land rights management process.

The authority of the Land Bank Agency in Government regulation Number 64 of 2021 is carried out to collect land availability management that prioritizes public interests, social interests, national development interests, equality, consolidation, and agrarian reform that guarantees the realization of a just economy.²⁸ The Land Bank Agency has a major responsibility in managing various types of land which are state assets controlled by the government. The types of land managed include former rights land, abandoned areas, land resulting from the release of forest areas, emerging land, reclaimed land, ex-mining land, land on small islands, land affected by changes in spatial planning, and land that is not controlled by any party. These lands have their own characteristics, such as former rights land previously owned by individuals or other entities, abandoned areas that are not utilized, and reclaimed land that is recreated from areas that were previously flooded or submerged by the sea. The Land Bank Agency aims to manage these lands optimally in accordance with the needs and policies of the government, in order to provide maximum benefits to the community and national development.²⁹ Land managed by the Land Bank is allocated for national development by including the principle of public interest in the creation of residential housing areas, urban rejuvenation, integrated area development, land consolidation, infrastructure development, development of facilities and infrastructure, land preparation to prepare land for the management of the Land Bank business, and

²⁶ Sulasi P Rongiyati et al., "Pemanfaatan Hak Pengelolaan Atas Tanah Oleh Pihak Ketiga,".

²⁷ Yagus Suyadi et al., "Pengelolaan Tanah oleh Badan Bank Tanah Demi Kesejahteraan Masyarakat dalam Perspektif Islam," *The Indonesian Journal of Islamic Law and Civil Law*, vol. 4, 2023.

²⁸ Pasal 2 Peraturan Pemerintah Nomor 64 Tahun 2021 tentang Badan Bank Tanah.

²⁹ Pasal 7 Peraturan Pemerintah Nomor 64 Tahun 2021 tentang Badan Bank Tanah.

development of national strategic projects.³⁰ Land development carried out is used to support changes and improvements in strategic economic areas that support investment growth in Indonesia. Utilization of investments made with the Land Bank is carried out through buying and selling, renting, business cooperation, grants, exchanges in collaboration with third parties with land ownership status in the form of business use rights, building use rights, use rights. This is in line with the theory of power carried out by the Land Bank Agency in accordance with *rechtsmacht* (legal power) as the function that has been determined.

Implications of Land Bank Agency Policy on Land Grabbing of Indigenous Peoples' Land Rights in Indonesia

The land acquisition process policy prioritizes the principles contained in the 1945 Constitution of the Republic of Indonesia and the UUPA as the basic foundation for national land law based on the philosophical values of the Indonesian nation.³¹ The state can control the earth, water, and natural resources for the prosperity of the Indonesian people as explained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The state's control over the earth, water, and natural resources does not automatically become a right owned by the state, but rather the control carried out by the state in the form of the right to formulate policies (*beleid*), regulate (*regelendaad*), manage (*bestuurdaad*), process (*beheersdaad*), and supervise (*toezicht houndedaad*) in accordance with the mandate of Article 2 paragraph (2) of the UUPA. The rights guaranteed by the state are intended as part of achieving happiness, welfare and freedom of the community which are intended as part of the government in realizing the prosperity of the community. The implementation of these rights in Article 2 paragraph (4) of the UUPA can be guaranteed to customary law communities that do not conflict with interests in accordance with the principle of the state's right to control.³²

³⁰ Pasal 11 Peraturan Pemerintah Nomor 64 Tahun 2021 tentang Badan Bank Tanah.

³¹ Ranitya Ganindha, "Urgensi Pembentukan Kelembagaan Bank Tanah Sebagai Alternatif Penyediaan Tanah Bagi Masyarakat Untuk Kepentingan Umum," *Arena Hukum* 9, no. 3 (1 Desember 2016): 442–62, <https://doi.org/10.21776/ub.arenahukum.2016.00903.8>.

³² HAYATUL ISMI, "Hak Atas Tanah Dalam Pengelolaan Sumber Daya Alam Mineral Dan Batubara," *Jurnal Ilmu Hukum* 5, no. 2 (13 Agustus 2015): 180, <https://doi.org/10.30652/jih.v4i2.2792>.

One of the rights of indigenous peoples is the right to control and enjoy the earth, water and natural resources as agrarian objects that must be respected.³³ The natural wealth that is crucial for indigenous communities is customary land which is part of the life of indigenous communities in community, earning a living, habitat and is considered sacred land as a place where ancestors reside.³⁴ In customary law, land is an important cosmological part because it is connected to ancestors, women, and traditional houses which mean fertility for the earth.³⁵ The characteristics of indigenous peoples' rights, especially those related to land, are the basis for consideration as a basic source of law for the creation of land legislation in Indonesia.³⁶ However, in the Land Bank Agency's policies, both in the Job Creation Law and the Land Bank Agency's PP regarding land acquisition for indigenous peoples, there are no specific regulations regarding the land acquisition mechanism for indigenous land or customary land.³⁷ The Land Bank Agency regulated in the Job Creation Law provides broad functions and authority in managing state land. However, seen through the PP on the Land Bank Agency, there are concerns that the formulation of its articles tends to contain the principle of *domein verklaring* which can harm Indigenous peoples, especially regarding land control.³⁸ The principle of domain *verklaring* is a concept that often gives the state the power to claim land without considering the traditional or customary rights of its inhabitants.³⁹ The concrete impact of the principle of *domein verklaring* in the Government Regulation of Land Bank Agency on Indigenous peoples in Indonesia is the potential for *land grabbing*, which is the practice of forcibly or unfairly expropriating land by parties who have greater power or economic capital with the aim of development.⁴⁰ Land grabbing can cause a variety of serious social, economic and ecological impacts on indigenous

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Kadek Novi Darmayanti, "Peran Hukum Adat Dalam Perkembangan Hukum Agraria Di Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha*, vol. 8, 2020, <https://ejournal.undiksha.ac.id/index.php/JJPP>.

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ Amin Tohari, "Land Grabbing Dan Potensi Internal Displacement Persons (IDP) Dalam Merauke Integrated Food And Energy Estate (MIFEE) di Papua," n.d.

communities, including loss of livelihoods, loss of traditional rights to land, and potential conflict with parties trying to control the land.⁴¹ In addition, this practice can also damage the social and cultural ties of indigenous communities and threaten environmental sustainability in the affected areas.⁴²

The potential for land grabbing of indigenous peoples' land can be a very sensitive and complex issue. This can be related to the interpretation of Article 6 letter (a) and Article 7 letter (i) of the PP on the Land Bank Agency. Article 6 letter (a) of the PP on the Land Bank Agency explains that the acquisition of land by the agency comes from land determined by the government.⁴³ Meanwhile, Article 7 letter (i) of the PP of the Land Bank Agency states that land determined by the government originates from land over which the government has no control.⁴⁴ However, the understanding of the concept of "land determined by the government" can be subject to various interpretations, especially in the case of land inhabited or owned by indigenous peoples. Indigenous peoples' land is often not officially registered in the formal legal system, but has value and significance in the lives and cultures of these peoples.⁴⁵ Therefore, the interpretation of Article 6 letter (a) and Article 7 letter (i) of the PP of the Land Bank Agency must be carried out carefully and pay attention to the traditional rights and ecological and social sustainability of the indigenous peoples concerned. The application of Article 6 letter (a) and Article 7 letter (i) of the PP of the Land Bank Agency without considering the rights of indigenous peoples has the potential to become land grabbing, namely the illegal or unfair takeover of land that can result in social, economic, and environmental losses for indigenous peoples. This can happen if the agency uses its authority to acquire indigenous peoples' land without considering proper consultation, appropriate consent, or fair compensation to the affected indigenous peoples.

⁴¹ M.A.M.E.S. Dr. Siska Lis Sulistiani, *Hukum Adat di Indonesia* (Sinar Grafika, 2021)

⁴² Didimus Dedi Dhosa, "Land Acquisition, Peasant Exclusion, and People Resistance Advocacy at Bolok Industrial Area in Kupang, East Nusa Tenggara, Indonesia," *Sodality: Jurnal Sosiologi Pedesaan* 7, no. 3 (31 Desember 2019): 167–81, <https://doi.org/10.22500/sodality.v7i3.27169>.

⁴³ Pasal 6 huruf (a) Peraturan Pemerintah Nomor 64 Tahun 2021

⁴⁴ Pasal 7 huruf (i) Peraturan Pemerintah Nomor 64 Tahun 2021

⁴⁵ Muhammad Ilham Arisaputra, dan Wildan Ainun Mardiah, "Kedudukan Hukum Tanah Adat dalam Pengembangan Administrasi Pertanahan di Indonesia: Studi Komparatif," *Amanna Gappa* 27, no. 2 (2019).

Meanwhile, Article 11 of the Government Regulations on the Land Bank Agency outlines the role of the Land Bank Agency in land development to improve efficient land use. This includes housing and supporting infrastructure development, urban rejuvenation, integrated area development, land consolidation, infrastructure development, economic and social facilities development, land maturation, and participation in national strategic projects such as large infrastructure development.⁴⁶ This action aims to meet housing needs, improve quality of life, create a sustainable environment, and support overall national development.⁴⁷ Article 17 explains the support provided to guarantee the availability of land by the Land Bank Agency for public interest.⁴⁸ This support can cover a variety of general and vital needs for the development and functioning of society, including national defense and security, transportation infrastructure such as public roads, toll roads, railways, as well as ports, airports and terminals..⁴⁹ In addition, it also includes the construction of irrigation facilities, water supply, water channels, and sanitation for the benefit of agriculture and public health. Energy infrastructure such as power plants, transmission, and distribution of electricity are also part of this support, as are telecommunications and informatics networks that are very important in this digital era. Furthermore, landfills, waste management, and the construction of clean water production are also included in the scope of this support.

Based on Article 19 of the PP, the Land Bank Agency provides a comprehensive explanation regarding the support and guarantee of land availability by the Land Bank Agency. The article confirms that the Land Bank Agency acts as an institution that provides guarantees for the provision of land for development purposes carried out by the Central Government and Regional Governments..⁵⁰ The main purpose of this guarantee is to support and facilitate economic growth and investment. The

⁴⁶ Zainul Akmal, "Eksistensi Masyarakat Adat dalam Undang-Undang Terkait Lingkungan Hidup," *JIP (Jurnal Industri dan Perkotaan)* 17, no. 1 (2021): 27, <https://doi.org/10.31258/jip.17.1.27-35>.

⁴⁷ Pasal 11 Peraturan Pemerintah Nomor 64 Tahun 2021

⁴⁸ Pasal 17 Peraturan Pemerintah Nomor 64 Tahun 2021

⁴⁹ Belinda Sigarlaki, Roosie Lasut, dan Roy Lembong, "Analisis Terhadap Pengaturan Kewenangan Pemerintah Dalam Pengambilalihan Hak Atas Tanah Bagi Pembangunan Untuk Kepentingan Umum," *Lex Privatum Vol.XI/No.2/Mar/2023* XI, no. 2 (2023).

⁵⁰ Pasal 19 Peraturan Pemerintah Nomor 64 Tahun 2021

guarantee provided by the Land Bank Agency covers various aspects related to land availability. This includes ensuring that land needed for development projects is available sufficiently and on time.⁵¹ The Land Bank Agency also plays a role in ensuring that the land acquisition process is carried out transparently, fairly, and by applicable regulations. The Land Bank Agency is responsible for identifying, managing, and providing land that is by development needs set by the Central Government and Regional Governments.⁵² In addition, the Land Bank Agency can also act as a mediator between parties involved in the land acquisition process, such as land owners, developers, and the government. The Land Bank Agency's efforts to facilitate the availability of land for development aim to create a conducive environment for economic growth and investment. By ensuring adequate land availability, the Central Government and Regional Governments can implement various development projects efficiently and effectively, which in turn is expected to encourage economic growth and investment in various sectors.

The Land Bank Agency's policy through the Land Bank Agency PP has the potential to provide convenience to foreign companies in making investments in Indonesia, which is considered a positive policy in supporting economic and investment needs.⁵³ However, the policy should be in line with the principles of protecting indigenous peoples' land rights. The PP on the Land Bank Agency does not show adequate support for the fulfillment of indigenous peoples' land rights. The fulfillment of indigenous peoples' land rights cannot be seen as trivial because land has crucial economic, social, and cultural values in the lives of indigenous peoples.⁵⁴ Customary land rights include customary land rights that have been recognized for generations

⁵¹ Bening Tyas Wijayanti, Arief Rahman, dan Wiwiek Wahyuningsih, "Jurnal Private Law Fakultas Hukum Universitas Mataram Eksistensi Bank Tanah Sebagai Lembaga Pengelolaan Tanah Negara THE EXISTENCE OF THE LAND BANK AS A STATE LAND," *Jurnal Private Law Fakultas Hukum Universitas Mataram* 3, no. 2 (2023).

⁵² Rosdalina Bukido, Hasyim Sofyan Lahilote, dan Irwansyah Irwansyah, "Pengawasan terhadap Bank Tanah: Urgensi, Kewenangan, dan Mekanisme," *Undang: Jurnal Hukum* 4, no. 1 (2021): 191–211, <https://doi.org/10.22437/ujh.4.1.191-211>.

⁵³ Ria Maya Sari, "Potensi Perampasan Wilayah Masyarakat Hukum Adat dalam Undang-undang Nomor 11 Tahun 2020 tentang Cipta Kerja," *Mulawarman Law Review* 6, no. 1 (2021): 1–14, <https://doi.org/10.30872/mulrev.v6i1.506>.

⁵⁴ Muhammad Risky Surya Pratama, Arum Ayu Lestari, dan Rimas Intan Katari, "Pemenuhan Hak Bagi Masyarakat Adat Oleh Negara Di Bidang Hutan Adat," *Jurnal Hukum Ius Quia Iustum* 29, no. 1 (2022): 189–210, <https://doi.org/10.20885/iustum.vol29.iss1.art9>.

and are legally owned by local communities. When the Land Bank does not effectively support the fulfillment of these rights, various problems such as land conflicts, exploitation of natural resources, and economic inequality can occur.⁵⁵ Without adequate protection of indigenous peoples' land rights, foreign investment by foreign companies may ignore the social and environmental impacts of their activities.⁵⁶ This can result in unfair exploitation of local communities, as well as harm the environment and the sustainability of the surrounding ecosystem.

Investments using customary lands in Indonesia often face complex challenges and conflicts with customary land owners. These obstacles arise due to differences in understanding, interests, and rights related to customary land.⁵⁷ This kind of conflict can hamper economic development and development in the region.⁵⁸ This shows that investment in customary land is a serious and complex issue. In addressing this challenge, it is important to strike a balance between the interests of local communities who have claims to customary land and the interests of investors.⁵⁹ Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia is the legal basis that mandates the government to regulate the utilization of natural and economic resources fairly and evenly for the welfare of the people. Therefore, in terms of investment in customary land, there needs to be a policy that pays attention to the rights and interests of customary communities and ensures that the benefits of the investment are also felt by them.⁶⁰

Conflicts of norms are often a serious problem in the legal system because they can cause inconsistencies between applicable regulations. In this case, a comparison between Article 6 letter (a) and Article 7 letter (i) of the PP of the Land Bank Agency

⁵⁵ Monika Suhayati, "Rekonstruksi Regulasi Eksplorasi dan Eksploitasi Sumber Daya Alam Pada Landas Kontinen," *Kajian* 27, no. 1 (2022): 13–29, https://www.un.org/depts/los/clcs_new/.

⁵⁶ Bhakti Eko Nugroho, "Perlindungan Hak Masyarakat Adat Dalam Pemindahan Ibukota Negara," *JISIP UNJA (Jurnal Ilmu Sosial Ilmu Politik Universitas Jambi)* 6, no. 1 (2022): 83–97, <https://doi.org/10.22437/jisipunja.v6i1.17417>.

⁵⁷ Yuldiana Zesa Azis, "Esensi Pelepasan Tanah Adat Untuk Kepentingan Investasi," *Jurisprudentie* 2, no. 2 (2015): 65–77.

⁵⁸ I Gede et al., "Akibat Hukum Penggunaan Tanah Desa Adat Untuk Kegiatan Investasi Pariwisata Di Desa Adat Kerobokan," *Jurnal Hukum Saraswati (JHS)*, 2022, <https://doi.org/10.36733/jhshs.v2i2>.

⁵⁹ Emi Triani, Nabila Fahira Nasution, dan Andi Nisa Magello, "Kedudukan Hak Atas Tanah Masyarakat Adat di Pulau Rempang Dalam Pembangunan Rempang Eco City," *Jurnal Kajian Agraria dan Kedaulatan Pangan (JKAKP)* 2, no. 2 (2023): 20–26, <https://doi.org/10.32734/jkakp.v2i2.14048>.

⁶⁰ Ibid

with Article 33 paragraph (3) of the 1945 NRI Constitution shows a fundamental inconsistency. Article 6 letter (a) and Article 7 letter (i) of the PP of the Land Bank Agency indicate that land resulting from government determination is considered state property. However, Article 33 paragraph (3) of the 1945 NRI Constitution emphasizes that land control by the state is for the public interest and must be used as efficiently as possible for the welfare of the people. This inconsistency lies in the understanding of the status of the land, where the PP of the Land Bank Agency considers it state property, while the 1945 NRI Constitution states that land control by the state. This inconsistency gives rise to conflicts of norms due to differences in the interpretation and application of laws related to the status and use of land.⁶¹ These conflicting articles violate the state's right to control as mandated in the Constitution, where state control of land should be for the public interest and welfare of the people, not merely as state property.⁶² This shows the need for harmonization between applicable regulations so that there is no conflict of norms that could harm the public interest and public welfare.

The intended harmonization of regulations is the harmony between the underlying regulations and the regulations created so that there is no conflict with the norms contained therein. In the *stufenbau* legal theory put forward by Hans Kelsen, the form of the legal system is like a ladder that is tiered from the highest rule as a guideline for the formation of the legal rules below it.⁶³ The lowest legal rules must adhere to higher norms, conversely higher laws adhere to fundamental laws.⁶⁴ In this case, the formation of the Job Creation Law and its derivative regulations, the PP on the Land Bank Agency, should not conflict with the 1945 Constitution of the Republic of Indonesia, TAP MPR IX/MPR/2001, and UUPA as the basis for the formation of agrarian reform that guarantees the prosperity of the community as part of the

⁶¹ Made Kalidna dan Ratna Putri, "Kekuatan Hukum Sertipikat Tanah Ulayat Milik Masyarakat Adat Yang Diklaim Penguasaannya Oleh Subjek Hukum Perorangan Di Desa Timpag , Kabupaten Tabanan Bali" 4 (2022).

⁶² Riska Putri Wardani dan Sunny Ummul Firdaus, "Analisis Undang-Undang Cipta Kerja dalam Korehensi Teori Pembentukan Undang-Undang," *Sovereignty : Jurnal Demokrasi dan Ketahanan Nasional* 1, no. 4 (2022): 1–10.

⁶³ Prof. Dr. Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Sinar Grafika, 2021)

⁶⁴ A.S.R.S. R dan A K Muzakkir, *Perundang-Undangan Indonesia: Kajian Mengenai Ilmu dan Teori Perundang-Undangan serta Pembentukannya* (CV. Social Politic Genius (SIGn), 2020)

constitution.⁶⁵ The aim of establishing the PP on the Land Bank Agency which is more directed towards investment interests and economic development has the potential to weaken the recognition and protection of the interests of indigenous communities.⁶⁶ In this case, there needs to be a policy reformulation of the Job Creation Law and the PP on the Land Bank Agency to return to the goal of establishing agrarian reform for land management that realizes community prosperity. The establishment of the Reformulation of the Job Creation Law and the Government Regulations on the Land Bank Agency is expected to be able to truly care about the prosperity of the community, especially customary law communities who often experience criminalization of their rights, especially in managing land used as investment. The reformulation will also have an impact on the effectiveness of the Land Bank Agency in preventing land disputes between customary law communities and parties carrying out land procurement.⁶⁷

CONCLUSION

The Land Bank Agency policy, as stipulated in the PP of the Land Bank Agency, has the potential to support investment and economic growth in Indonesia. However, the policy must be in line with the principles of protection of indigenous peoples' land rights guaranteed by the 1945 Constitution of the Republic of Indonesia and the applicable agrarian principles. Although the PP of the Land Bank Agency provides support for land acquisition for the public interest, there are concerns that its interpretation and implementation tend to contain the principle of *domein verklaring* which can be detrimental to indigenous peoples. This can result in land-grabbing practices, where indigenous peoples' lands can be taken over unfairly or by force by parties with greater economic power, especially for investment purposes. The inconsistency between Article 6 letter (a) and Article 7 letter (i) of the PP of the Land

⁶⁵ Iwan Permadi, "Konstitusionalitas Keberadaan Bank Tanah dalam Pengelolaan dan Penguasaan atas Tanah oleh Negara," *Jurnal Usm Law Review* 6, no. 1 (2023): 291, <https://doi.org/10.26623/julr.v6i1.6678>.

⁶⁶ Masayu Dewi Puspa Lestari, "Bank Tanah Sebagai Upaya Menjamin Ketersediaan Tanah Dalam Rangka Ekonomi Berkeadilan Berdasarkan Undang Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Lex Lata*, 2020, 181–97.

⁶⁷ M T NASUTION dan B A K MS, *Reformulasi Kebijakan Haluan Negara: Antara Realita Dan Cita-Cita* (Penerbit EnamMedia, 2020).

Bank Agency with the principles contained in the 1945 Constitution of the Republic of Indonesia indicates a conflict of norms that can be detrimental to the public interest and public welfare. Harmonization between existing regulations is important to ensure that there is no conflict of norms that can endanger the rights of indigenous peoples and the agrarian principles that should be protected.

Based on this, the reformulation of the Government Regulations policy of the Land Bank Agency is an urgent need to pay attention to the rights of indigenous peoples and ensure that investment and economic growth driven by the Land Bank Agency also provide fair and equitable benefits for all levels of society. This reformulation is expected to create a legal environment that is conducive to sustainable economic growth, without sacrificing the traditional rights and environmental sustainability of indigenous peoples. Thus, the implementation of the new Government Regulations of the Land Bank Agency can be an effective instrument in achieving inclusive and sustainable development goals for all Indonesian people.

CONFLICT OF INTEREST

This research was designed and conducted independently without external intervention or influence.

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Undang-Undang Nomor 6 Tahun 2023 Tentang Cipta Kerja

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