



The Existence of Land Bank Related to Law No. 11 of 2020 Concerning Employment Creation as an Alternative to Land Supply

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Abstract

Job Creation Law (Law No. 11 of 2020) establishes a special agency that manages land, namely a land bank agency, whose function is to carry out planning, acquisition, procurement, management, utilization, and distribution of land. The existence of a Land Bank is regulated by Articles 125 through 135 of the Job Creation Law. Then a formal test was carried out on the Job Creation Law by the Constitutional Court, which was in Constitutional Court Decision No. 91/PUU-XVIII/2020, which mentioned Law No. 11 of 2020 about Job Creation being declared formally disabled. In the seventh point of the Constitutional Court Decision No.91/PUU-XVIII/2020 dated 25 November 2021 it explicitly states the suspension of all government actions/policies that are strategic in nature and have broad implications, including new implementing regulations of the Job Creation Law. The government is ordered to make improvements, within a maximum period of two years, and if within that time no improvements are made, the Job Creation Law will become permanently unconstitutional. Even though the Constitutional Court's decision states that the Job Creation Law is still valid, it has no binding force. Ironically, the government issued Government Regulation No. 64 of 2021 concerning the Land Bank Agency in the context of implementing the provisions of Article 135 of the Job Creation Law and also Presidential Regulation No. 113 of 2021 concerning the Structure and Operation of a Land Bank. The method used in this study is a normative juridical approach, namely testing and tracing related to laws and regulations. The purpose of this study is to find out the existence and implications of the Land Bank institution, especially its derivative regulations related to the Constitutional Court Decision No.91/PUU-XVIII/2020 which states the conditional unconstitutionality of the Job Creation Law, including the implementation of the Land Bank which is included in the category of strategic policies and has wide-reaching impacts according to the sound Article 4 of Law No. 11 of 2020 and the Constitutional Court's decision.

Keywords: *Constitutional Court Decision; Job Creation Law; Land Bank*

Introduction

Currently, the institution that the government seeks to acquire land is through a land bank. The function of the land bank agency or institution is as a resource manager, which can be carried out through cooperation with other agencies. The related agencies in question are the Central Government, Regional

Governments, state institutions, private parties, and so on. The cooperation between the Land Bank and these agencies shows a mutually beneficial interaction in providing land for national development in Indonesia (Arnowo, 2021).

The formation of the land bank itself is related to problems in land acquisition today due to a shift in views on land as a strategic commodity. This triggered land liberalization, which resulted in land prices soaring due to land speculators' games, so that projects planned by the government to build infrastructure were constrained by land compensation issues (Amir et al., 2014). Especially in urban areas, land has turned into a commodity that is traded in markets that are difficult to control due to the absence of effective strategies and programs for making land policies. (Surono, 2017) taking inventory of problems that often occur around land acquisition for public purposes, including nominative data issues, the value of the amount of compensation, administrative errors in the stages of land acquisition, intimidation by unscrupulous land acquisition implementers, and indications of marked-up objects for compensation.

The passing of the Job Creation Law (UU. No. 11 of 2020) has opened new horizons in land acquisition in Indonesia. In this law, there are arrangements regarding land banks regulated in Articles 125 to 135. Article 125, part 4 regulates the function of the Land Bank which carries out planning, acquisition, procurement, management, utilization, and distribution of land (Latifah & Krisnaningsih, 2021). The Land Bank is one of the substances previously regulated in the Land Bill. The provisions regarding the Land Bank as stipulated in the Land Bill and the Job Creation Law have received a lot of attention from civil society circles.

Apart from that, there is a tendency to revive the domain verklaring system, namely a system originating from the Dutch colonial era that stipulated that land belonged to the state if there was no person or anyone who could prove ownership. It is feared that many lands belonging to indigenous peoples will become state property because until now many indigenous lands did not have land titles. In addition, if you look at the duties and functions of the land bank, which include providing and distributing land, this has actually been carried out by the Public Service Agency (BLU) of the State Asset Management Agency (LMAN), which is under the Ministry of Finance. Originally, LMAN was responsible for managing state-owned assets, but the agency also performed fund planning tasks, using land reserves, and paying compensation for land acquisition (Arrizal & Wulandari, 2021). As a result of this new mandate, LMAN now serves not only as a treasurer or financing provider, but also as a special land bank for land acquisition for public-interest development and national strategic projects, resulting in overlapping authority in terms of providing and distributing land, making LMAN's existence less effective.

Furthermore, the Constitutional Court has decided on cases of judicial review of statutory regulations (PUU) related to the formal testing of Law no. 11 of 2020 concerning Job Creation against UUD 1945 with the Constitutional Court Decision No. 91/PUU-XVIII/2020. In the verdict regarding the formal examination, the court is on one of the points contained in its decision, namely (ZAINAL ARIFIN MOCHTAR, 2022): first, stated that the formation of the Job Creation Law was contrary to UUD 1945 and does not have conditionally binding legal force as long as it is not interpreted as "remedies have not been made within 2 (two) years since this decision was pronounced". Second, instruct the legislators to make improvements within a maximum period of 2 (two) years from the pronouncement of this decision and if within this time period no corrections are made, then Law no. 11 of 2020 concerning Job Creation is permanently unconstitutional. Third, declaring to suspend all actions/policies that are strategic in nature and have broad impacts, and it is also not justified to issue new implementing regulations related to UU No. 11 of 2020 about Job Creation.

On the points of the Constitutional Court Decision No. 91/PUU-XVIII/2020 especially on the third point, the Constitutional Court stated to legislators to suspend all actions/policies that are strategic and

have broad implications, and it is also not justified to issue new implementing regulations relating to the Job Creation Law, but the government as addressee (addressed party) in the decision of the Constitutional Court, did not comply with the decision of the Constitutional Court and instead issued an implementing regulation in this case a Presidential Regulation (Perpres) No. 113 of 2021 concerning the Structure and Administration of the Land Bank Agency. The presidential regulation was promulgated on December 27, 2021 after the decision of the Constitutional Court prohibited the government from making new implementing regulations relating to the Job Creation Law the Constitutional Court's decision was read out at a plenary session for the public on November 25, 2021 (MARIA SW SUMARDJONO, 2022).

Based on the description above, it is interesting to examine how the existence and implications of the Land Bank and the status of related derivative regulations after the Constitutional Court Decision No. 91/PUU-XVIII/2020. Considering that the Land Bank is included in the Land Procurement cluster which is in the category of strategic policies and has broad implications according to part 4 of Law No. 11 of 2020 and the ruling of the Constitutional Court itself. As stated in the seventh point, the decision of the Constitutional Court for this strategic policy and broad impact must be postponed. In fact, it is not justified to issue new implementing regulations related to Law No. 11 of 2020.

Research Method

The research used in this research process uses a type of normative legal research (Soekanto & Mamudji, 2015). By using library materials or secondary materials that have been collected. Legal research is also a process to determine legal rules, legal principles, and legal doctrines in order to answer the legal issues faced.

Result and Discussion

The Job Creation Law, which regulates the formation of a land bank, or in full called a land bank agency, only refers to it as a special agency that manages land, whose function is to carry out planning, acquisition, procurement, management, utilization and distribution of land. The implementing regulations for the Job Creation Law are Government Regulation No. 64 of 2021 concerning Land Bank Agencies (PP Bank Tanah), which came into effect since promulgation on April 29, 2021, nor does it further stipulate the definition of this land bank, except to add that the form of this land bank is an Indonesian legal entity, domiciled in the state capital and has representatives throughout Indonesia. (Trisna & Sandela, 2021).

The urgency of the land bank in development is to minimize land speculators due to economic liberalization which allows land to become a commodity and gain large profits for investors making it difficult for the government in terms of procurement and distribution of land in development (Zahra, 2017). Therefore, an institution is needed that takes care of the availability and acquisition of land and distributes it in the future for development purposes or for other matters such as social affairs, government, citizen settlements, or other matters stipulated by law.

Juridically, the regulation of land banks in Indonesia began with the issuance of the Job Creation Law which was passed on October 5, 2020. The regulations regarding land banks in this law are contained in 10 articles, beginning with Article 125 which contains an explanation and the functions to be carried out by land banks, then Article 26 which describes the nature of a land bank that guarantees the availability of land for the community, followed by Article 27 which outlines the implementation of the duties of a land bank that is transparent, accountable and non-profit oriented, and Articles 128-129 which contain provisions on land bank wealth, management of land rights and land bank organization, while

Articles 130-135 contain an explanation of each organization in the land bank. With the enactment of the articles regarding the land bank, it is hoped that it will be effective in managing land in the country (Setiyawan & Dahani, 2020).

From a legal perspective, the effectiveness of the implementation of a land bank will also be determined by the regulations that govern it, for example the institutional form, objectives, and various implementation mechanisms. In general, the implementation of rules regarding land banks still requires government regulations accompanied by other implementing regulations at the ministerial level to reinforce the implementation process according to the mandate of the Job Creation Law so that its implementation is in accordance with the philosophical and juridical ideals contained therein. Apart from the Job Creation Law, implementing regulations related to land banks are currently regulated in the Land Bank PP. The legal consequence of establishing a land bank through the ratification of the Job Creation Law is the formation of a new agency that specifically manages land. This has increased the government's authority in the land sector which was originally a regulator in the land sector through the National Land Agency which was formed based on Presidential Regulation Number 20 of 2015, coupled with the provisions of Article 125 paragraph 2 of the Job Creation Law concerning the establishment of a land bank that functions as a land manager.

The granting of a request for a formal test related to the Job Creation Law by the Constitutional Court is a good precedent for the life of constitutional democracy in the future. First in history, the Constitutional Court finally granted the request for a formal review of the law against the Constitution. The researcher summarizes that there are at least a number of points that were considered by the Court as to why the Job Creation Law is categorized as a law that is formally flawed. **First**, legislators in the name of accelerating investment and expanding employment opportunities in Indonesia overrule the standard procedures or guidelines that apply because objectives and methods cannot be separated in principle in upholding the principles of a constitutional democratic and legal state. **Second**, the procedure for forming the Job Creation Law is not based on a definite, standardized method and method, as well as a systematic law formulation. **Third**, there were several changes in the writing of several substances after the joint approval of the DPR and the President, so that this is contrary to the principles of forming statutory regulations. **Fourth**, where it has been obtained that there are legal facts that the procedure for establishing the Job Creation Law does not meet the principle of clarity of purpose and the principle of clarity of formulation. **Fifth**, legislators in terms of the principle of openness, in the trial it was revealed that the legislators did not provide maximum space for public participation.

In fact, legislators are sometimes in the opposite direction to what was ordered by the Constitutional Court through its decisions. The Constitutional Court in Decision No. 91/PUU-XVIII/2020 in the case of the Formal Review of Law No. 11 of 2020 concerning Job Creation against the 1945 Constitution. In one of its rulings, the Constitutional Court mandated legislators to suspend all actions or policies that are strategic in nature and have far-reaching implications, and it is not justified to issue new implementing regulations related to the Copyright Law Work. several important points that must be implemented by legislators, namely: a) legislators are prohibited from issuing actions that are strategic and have wide-reaching impacts; b) Legislators are prohibited from issuing policies that are strategic in nature and have broad impacts; and c) Legislators are prohibited from issuing new implementing regulations relating to the Job Creation Law.

Then the legislator, in this case, is the President who has issued a Presidential Regulation (Perpres) No. 113 of 2021 concerning the Structure and Implementation of the Land Bank Agency. This Presidential Regulation itself is an implementing regulation of the Job Creation Law and Government Regulations (PP) No. 64 of 2021 regarding the Land Bank Agency. This Government Regulation is indeed not fully operational, because there are several things that must be regulated by a Presidential Decree, such as those relating to the committee, supervisory board, or implementing agency of the Land

Bank. Presidential decree (Perpres) Law itself is a Legislative Regulation stipulated by the President to carry out orders of a higher Legislative Regulation or in carrying out governmental powers. In the elucidation section, the function of the Presidential Decree is to carry out further arrangements for Laws or Government Regulations, expressly or indirectly ordered to be issued.

A number of things need to be corrected from the Job Creation Law and its derivative regulations regarding violations of the conception of Law No. 5 of 1960, including the granting of Cultivation Rights (HGU) over Management Rights (HPL); granting ownership rights to flats (HMRS) to foreign nationals whose land status is with building use rights (HGB); determination of HPL for customary law communities. Then the granting of rights and the extension or extension and renewal of rights without being limited by the provision that the registration of rights is carried out in stages. Maria Sumardjono (Ady Thea DA, 2021) also proposed reconsidering the idea of a Land Bank that had been problematic from the start. It is better to focus on the goal of achieving a socially just economy. The enactment of PP No. 64 of 2021 concerning the Land Bank Agency must be suspended first and not issue a new Perpres regarding the Land Bank Agency in accordance with the ruling of the Constitutional Court. He suggested that now is the right time to think again about the position and function of HPL with all its legal implications according to Law No. 5 of 1960. It is necessary to explore the possibility of making land rights only in two groups, namely property rights and use rights as previously proposed in Bill on Agrarian Resources of 2004.

Conclusion

In order to create a constitutional law state, one of the prerequisites that must be realized is by complying with the constitution, including complying with the decisions of the Constitutional Court, because after all the decisions of the Constitutional Court are the embodiment of the constitution. There are several things that must be done in order to create constitutional awareness. One of them is by building constitutional collective awareness of all components of the nation, especially between state institutions by realizing that the decisions of the Constitutional Court are the embodiment of the spirit of the constitution. The oversight mechanism for the land bank in the Job Creation Law will provide preventive measures in minimizing the authority over the land bank which will be abused in the future. It is hoped that the institution and supervisory authority of the land bank through the supervisory board organ, as referred to in the Job Creation Law, will encourage the performance and operationalization of land banks in accordance with their roles and functions. It's just that the relationship between the land bank and the supervisory board with organs and supervision in the field of land and banks that also exist in other institutions or bodies, especially those that have been going on so far, namely BPN and OJK, also requires further clarity regarding the authority and mechanism. Thus, the implementation of the functions of the Land Bank can be carried out properly. Given that at first the government was very passionate about establishing this Land Bank institution.

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