



Existence and Implication of Land Banks on the Constitutional Court's Decision on Testing of Employment Law Form

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Abstract

The research used in this research process uses type of normative law research. In order to create a constitutional law state, one of prerequisites that must be realized is by complying with the constitution, including obeying the decisions of Constitutional Court, because after all decisions of Constitutional Court are embodiment of constitution. There are several things that must be done in order to create constitutional awareness. One of them is by building a collective awareness of the constitution of all components of the nation, especially between state institutions by realizing that the decision of Constitutional Court are embodiment of spirit of constitution. And also the Government will immediately make improvements to formation of Job Creation Law within a period of two years as mandated by final and binding decision of Constitutional Court. Thus, implementation of the Land Bank function can be carried out properly. Considering that at first the government was very eager to establish this Land Bank institution.

Keywords: *Decision; Existence; Law Form*

Introduction

Currently, the institution that is being sought by government for land acquisition is through of land bank agency. The function of land bank agency or institution is as a resource manager, which can be carried out in collaboration with other agencies. The relevant agencies in question are Central Government, Regional Governments, state institutions, private parties, and so on. The cooperation between Land Bank and these agencies shows a mutually beneficial interaction in provision of land for national development in Indonesia. (*Pengelolaan Aset Bank Tanah Untuk Mewujudkan Ekonomi Berkeadilan | Jurnal Pertanahan*, n.d.)

The establishment of land bank itself is related to problems in land acquisition today due to a shift in views about land as a strategic commodity. (*Perlindungan Hak Korban Pengadaan Tanah Untuk*

Pembangunan Jalan Tol Di Kabupaten Kendal / Surono / Jurnal Penelitian Hukum De Jure, n.d.) This triggered land liberalization which resulted in land prices soaring due to the games of land speculators so that projects planned by the government in building 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 a market that is difficult to control due to the absence of effective strategies and programs in making land policies.

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

Furthermore, the Constitutional Court has decided on a judicial review of laws and regulations (PUU) related the formal review of Law no.11 of 2020 concerning Job Creation against 1945 Constitution with Decision of Constitutional Court No. 91/PUU-XVIII/2020. In decision regarding formal review, the Court on one of points contained in its decision, namely:(*Pekerjaan Rumah Pasca-Putusan MK - Kompas.Id*, n.d.) **first**, stating that establishment Job Creation Law is contrary to 1945 Constitution and doesn't have legally binding conditionalities as long as it is not interpreted as "no repairs are made within 2(two) years since this decision was pronounced". **Second**, ordering the legislators to make improvements within a maximum period of 2 (two) years after this decision was pronounced and if within that time limit no corrections are made then Law no.11 of 2020 concerning Job Creation becomes permanently unconstitutional. **Third**, it states to suspend all strategic and broad-impact actions/policies, and it is also not permissible to issue new implementing regulations related to Law no.11 of 2020 concerning Job Creation.

Point of Constitutional Court Decision No.91/PUU-XVIII/2020 especially on third point, Constitutional Court stated to suspend all legislators strategic and broad-impact actions/policies, and it is not permissible to issue new implementing regulations related for Job Creation Act, but the government as addresat (the intended party) in decision of Constitutional Court, didn't comply with decision of Constitutional Court and instead issued an implementing regulation in this case Presidential Regulation (Perpres) Number 113 of 2021 concerning the Structure and Administration of Land Bank Agency. The Presidential Regulation was promulgated on 27 December 2021 after Constitutional Court's decision forbade government to make a new implementing regulation related of Job Creation Law where the Constitutional Court's decision was read out at a plenary session for public on 25 November 2021.

Based on description above, it is interesting to study how the existence and implications of Land Bank and status of related regulations after Constitutional Court Decision No.91/PUU-XVIII/2020. Considering that Land Bank is included in the Land Procurement cluster which is included in strategic policy category and has a broad impact according to Article 4 of Law No.11 of 2020 and decision of Constitutional Court itself. As seventh point of Constitutional Court's decision, this strategic policy and has a broad impact must be suspended. 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 type of normative law research.(Soerjono Soekanto, 2012)

Research Results and Discussion

The urgency of the land bank in development is to minimize land speculators due to economic liberalization which allows land to become a commodity to gain large profits for investors, making it difficult for government in terms of procurement and distribution of land in development. (*Konstruksi Hukum Pengaturan Bank Tanah Untuk Mewujudkan Pengelolaan Aset Tanah Negara Berkeadilan* | Al-Zahra | KEADABAN, n.d.) Therefore, an institution is needed that takes care of the availability and procurement of land and distributes it in the future for development purposes or for other matters such as social, government, citizen settlements, as well as other matters stipulated by law. (Sugianto et al., 2020)

As is known, the existence Land Bank concept is also expected to be able to answer problems that arise. In terms of its function, the Land Bank has six functions that are useful for those who implement Land Bank. Six functions include: (Hari Candra, 2020) a) *land keeper*, as land collector, namely inventory and development of land databases, administration and provision of land information systems; b) *land warrant*, as land security, namely ensuring provision of land for development, guaranteeing land values and land market efficiency that is just, and securing optimal land use; c) *land purchaser*, as land controller, namely land control, land price determination related to perception of similarity of land and building tax values; d) *land valuer*, as a land appraiser, namely conducting an objective land appraisal in creating a value system in determining land values that apply to various purposes; e) *land distributor*, as a land distributor, namely ensuring a fair and fair distribution of land based on unity of land values, securing planning, provision and distribution of land; f) *land management*, as a land manager, namely carrying out land management which is part and overall asset management, conducting analysis, determining strategies and managing implementation related to land.

The granting of request for a formal review Job Creation Act by the Constitutional Court is a good precedent for life of constitutional democracy in future. (*Putusan | Mahkamah Konstitusi Republik Indonesia*, n.d.) **First** in history, the Constitutional Court finally granted the request for a formal judicial review of Constitution. The researcher summarizes that at least there are several points that the Court considers 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 override applicable standard procedures or guidelines because the objectives and methods cannot be separated in principle in affirming principles of a constitutional democratic rule of law. **Second**, the procedure for formation of Job Creation Law is not based on definite, standard, and standard methods and methods, as well as systematic formation of laws. **Third**, there have been several changes to writing of several substances after joint approval of DPR and President, so that this is contrary to principles of formation of laws and regulations. **Fourth**, where it has been obtained that there is a legal fact that procedure for formation Job Creation Law doesn't meet principles of clarity purpose and principle of clarity of formulation. **Fifth**, legislators in terms of principle of openness, in trial it was revealed the fact that legislators didn't provide maximum space for public participation.

In fact, the legislators sometimes go against what the Constitutional Court has ordered through their decisions. Constitutional Court in Decision Number 91/PUU-XVIII/2020 in case of the Formal Review of Law No.11 (2020) concerning Job Creation against 1945 Constitution. In one of its rulings, the Constitutional Court mandates the legislators to suspend all strategic and broad-impact actions or policies, and it is not permissible to issue new implementing regulations relating to Copyright Law. Work several important points that must be implemented by lawmakers, namely: a) Lawmakers are prohibited from issuing strategic and broad-impact actions; b) Legislators are prohibited from issuing policies that are strategic in nature and have a broad impact; and c) Lawmakers are prohibited from issuing new implementing regulations related to the Job Creation Law.

Then, legislator in this case, President who has stipulated Presidential Regulation (Perpres) No.113 of 2021 concerning the Structure and Operation of Land Bank Agency. This Presidential

Regulation itself is the implementing regulation of Job Creation Act and Government Regulation (PP) Number 64 of 2021 concerning Land Bank Agency. This Government Regulation is indeed not fully operational, because there are several things that must be regulated by Presidential Regulation, such as relating to committees, the supervisory board, and the implementing agency of the Land Bank. Presidential Regulation (Perpres) itself is a statutory regulation established by President to carry out orders of higher laws and regulations or in carrying out government powers. The explanation section, the function of Presidential Regulation is to carry out further regulation of the orders of Laws or Government Regulations that are expressly or indirectly ordered to be formed.

There are other irregularities regarding this Perpres, one of which is related to difficulty of public in accessing Perpres. The same thing was also expressed by Zainal Arifin Mochtar (*Pekerjaan Rumah Pasca-Putusan MK - Kompas.Id*, n.d.) who admitted that this Presidential Regulation could not be accessed by the public. Zainal wondered if this could happen, even though he thought that such a condition would undermine principle of openness and at the same time give rise to signals from a number of circles that there is an agenda of great interest behind all of this. Professor of Agrarian Law, (*Menyoal Kepatuhan Terhadap Putusan MK - Kompas.Id*, n.d.) Maria Sumardjono agrees that there are difficulties in accessing Perpres, but officials of Land Bank Agency have already been announced. Maria added that in order to eliminate chaos of Presidential Regulation and at the same time increase public trust, it is better for President as holder of authority to form Presidential Regulation to immediately revoke Perpres No. 113 of 2021 concerning Structure and Implementation of Land Bank Agency and states that Presidential Regulation is no longer valid.

A number of things that need to be corrected from the Job Creation Law and its derivative regulations regarding violations of the conception of Law No. 5 of 1960 include the granting of Business Use 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, granting of rights and extensions or extensions and renewals of rights without being limited by the provision that the registration of rights is carried out in stages. Maria Sumardjono (*Guru Besar FH UGM: UU Cipta Kerja Miliki Daya Laku, Tapi Tak Punya Daya Ikat*, n.d.) also suggested reconsidering the idea of a land bank that was 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 to issue a new Presidential Regulation regarding the Land Bank Agency in accordance with the decision of the Constitutional Court. He suggested that now is the right time to rethink the position and function of HPL with all its legal implications in accordance with Law No.5 of 1960. It is necessary to explore the possibility to make land rights only into two groups, namely property rights and use rights as proposed in the Bill on Agrarian Resources 2004.

Conclusion

In order to create a constitutional law state, one of prerequisites that must be realized is by complying with the constitution, including obeying the decisions of Constitutional Court, because after all decisions of Constitutional Court are embodiment of constitution. There are several things that must be done in order to create constitutional awareness. One of them is by building a collective awareness of the constitution of all components of the nation, especially between state institutions by realizing that the decision of Constitutional Court are embodiment of spirit of constitution. And also the Government will immediately make improvements to formation of Job Creation Law within a period of two years as mandated by *final* and *binding* decision of Constitutional Court. Thus, implementation of the Land Bank function can be carried out properly. Considering that at first the government was very eager to establish this Land Bank institution.

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