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Agrarian Conflicts After the Establishment of the Land Bank Agency in Indonesia

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Abstract: The establishment of the Land Bank in Indonesia may lead to conflicts of interest and the existence of customary land may be forgotten for reasons of land stateisation. The process of acquiring customary land for reasons of stateisation may affect the legal protection of indigenous peoples' rights. This article examines agrarian conflicts after the establishment of the Land Bank Agency and the legal protection of indigenous peoples' land. This research is examined using the normative juridical method with a statutory approach. The results of the study found that the concept of the Land Bank is in contrast to agrarian reform in terms of land acquisition operations, because land can be obtained through the transfer of land ownership by the state which is intended for investment and infrastructure development. The government needs to improve the land sector Job Creation Law and the legal regulations of the Land Bank, the government must revise the rules related to the Land Bank so that this institution can maintain a balance of land utilisation for various interests fairly. The Land Bank should be a representative of the state to protect vulnerable groups of people, one of which is indigenous peoples. Then the community must be proactive in applying for a Material Test on articles that have negative potential, especially the regulation of land stateisation in the Job Creation Law and the legal rules regarding the Land Bank in an effort to consolidate guarantees and justifications for land rights over indigenous peoples.

Keywords : Legal protection; Customary Land; Land Bank

Abstrak: Pembentukan Bank Tanah di Indonesia dapat menimbulkan konflik kepentingan dan keberadaan tanah adat dapat dilupakan karena alasan negaraisasi tanah. Proses akuisisi tanah adat untuk alasan negaraisasi dapat mempengaruhi perlindungan hukum terhadap hak-hak masyarakat adat. Artikel ini mengkaji konflik agraria pasca pembentukan Badan Pertanahan Nasional dan perlindungan hukum terhadap tanah masyarakat adat. Penelitian ini dikaji dengan menggunakan metode yuridis normatif dengan pendekatan perundang-undangan. Hasil penelitian menemukan bahwa konsep Bank Tanah bertentangan dengan reforma agraria dalam hal pelaksanaan pengadaan tanah, karena tanah dapat diperoleh melalui pengalihan kepemilikan tanah oleh negara yang diperuntukkan bagi investasi dan pembangunan infrastruktur. Pemerintah perlu memperbaiki UU Cipta Kerja sektor pertanahan dan aturan hukum Bank Tanah, pemerintah harus merevisi aturan terkait Bank Tanah agar lembaga ini dapat menjaga keseimbangan pemanfaatan tanah untuk berbagai kepentingan secara adil. Bank Tanah harus menjadi representasi negara untuk melindungi kelompok masyarakat yang rentan, salah satunya masyarakat adat. Kemudian masyarakat harus pro aktif untuk mengajukan Uji Materiil terhadap pasal-pasal yang berpotensi negatif,

terutama pengaturan stateisasi tanah dalam UU Cipta Kerja dan aturan hukum mengenai Bank Tanah sebagai upaya konsolidasi jaminan dan pembenaran hak atas tanah masyarakat adat.

Kata kunci : Perlindungan Hukum; Tanah Adat; Bank Tanah

INTRODUCTION

Land is one of the studies in the discussion of agrarian law which is regulated in several laws in Indonesia in an effort to organise justice and prosperity in various aspects of community life including economic, political and socio-cultural aspects.¹ The politics of Indonesian land law expects that land utilisation can encourage the economic needs of the community without destroying the existing social and cultural order.² This has been stated in the 1945 Constitution of the Republic of Indonesia recognises the existence of customary rights as stipulated in Article 18B paragraph (2) that "the state recognises and respects the unity of customary law communities followed by their traditional rights as long as they remain alive and in line with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law". The politics of Indonesian land law as stipulated in Article 33 paragraph (3) of the 1945 Constitution that land is used for the greatest prosperity of the Indonesian people without exception.³ Law No. 5/1960 on the Basic Regulation of Agrarian Principles has considered that national agrarian law is required to be able to create the function of the earth, water, and space as for the benefit of the people.⁴ Indonesia is currently facing the availability of land in realising development in various fields that are constrained in its procurement, which is influenced by the difficulty of obtaining land that is needed at any time and development obstacles with a long time. While the land owned by the state directly is limited in number and almost non-existent, so that the way to travel that can be done by freeing land that is in the control of the people, either in the control of customary law or other rights by the government made the concept of Land Bank.⁵

The ulayat right is a right that is always attached as a typical compensation for indigenous peoples, namely rights related to land as a guarantee of the continuity of the

¹ Mira Novana Ardani, Yusriyadi Yusriyadi, and Ana Silviana, "Persoalan Tertib Administrasi Pertanahan Melalui Kegiatan Pendaftaran Tanah Yang Berkeadilan," *Jurnal Pembangunan Hukum Indonesia* 4, no. 3 (2022): 494–512, <https://doi.org/10.14710/jphi.v4i3.494-512>.

² Meiliyana Sulistio, "Politik Hukum Pertanahan Di Indonesia," *Jurnal Education and Development Institut Pendidikan Tapanuli Selatan* 8, no. 2 (2020): 105.

³ Marulak Pardede, "State's Right To Take Possession Legal Certainty On Ttitle Over Land and Land Designation," *Jurnal Penelitian Hukum De Jure* 19, no. 4 (2019): 405–20, <https://doi.org/10.30641/dejure.2019.v19.405-420>.

⁴ I Gusti Ayu Widiadnyani, "Penerapan Sistem Pemanfaatan Dan Penggunaan Tanah Dalam Perspektif Hukum Investasi Berwawasan Lingkungan Untuk Kemakmuran Rakyat," *Journal Law and Government* 1, no. 1 (2023): 72–87.

⁵ Diyan Isnaeni, "Konsep Hukum Pengadaan Tanah Untuk Pembangunan Jalan Tol Dalam Perspektif Hak Menguasai Negara," *Yurispruden* 3, no. 1 (2020): 93, <https://doi.org/10.33474/yur.v3i1.5014>.

livelihood of indigenous peoples.⁶ However, agrarian conflicts that include the rights of indigenous peoples still occur frequently due to inconsistent legal protection and recognition of indigenous peoples.⁷ One of the regulations contained in the Job Creation Law contains the existence of a Land Bank Agency, which is authorised to plan, acquire, procure, manage, utilise and distribute land. The authority is intended to ensure the availability of land as an effort for equitable economic interests.⁸ Basically, the Land Bank was formed in the government's effort to provide broad welfare, so the state took over the land.⁹ This Government Regulation serves as a control on land tenure and the determination of land boundaries by prioritising land tenure so that there is a sense of usefulness and justice for the community.

Conversely, a country's policies can sometimes influence the development of law and the creation of new rules that are considered unusual.¹⁰ Regulations that are distributed sectorally can essentially also support the protection of Masyarakat Hukum Adat, especially the image formed is the concept of "state presence" is an important thing in the form of protection of their constitutional rights. This is with the commencement of the rule of law contained in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia for the footing of the Indonesian constitution.¹¹ Government Regulation No. 64 of 2021 makes the Land Bank one of the new bodies and institutions that are given clear authority over land in Indonesia. This has been elaborated in Article 3 paragraph (3) of the 1945 Constitution that the power given over the earth, water and natural resources included therein is controlled or managed by the state, as long as the regulation is utilised to the greatest extent for the prosperity of the people.

The Land Bank is basically designed by the government in an effort to minimise the difficulties and limitations of land in its utilisation more fundamentally to support sustainable development, overcome speculators and land mafia and public interest that is needed at any time with the availability of land ready to build. This is not a bad thing, because the Land

⁶ Saryana Ervina Dwi Indriastuti, "Eksistensi Badan Pertanahan Nasional Dalam Penyelesaian Konflik Pertanahan Terhadap Tanah Hak Ulayat," *Jurnal Pro Hukum* 12, no. 1 (2023): 224–34.

⁷ Heru Saputra Lumban Gaol and , Rizky Novian Hartono, "Political Will Pemerintah Terhadap Pengelolaan Adat Sebagai Upaya Penyelesaian Konflik Agraria," *Jurnal Agraria Dan Pertanahan* 7, no. 1 (2021): 42–56, <https://doi.org/10.31292/bhumi.v7i1.468>.

⁸ Herlindah Herlindah, Moh Anas Kholish, and Andi Muhammad Galib, "Suing the Oligarchy of Ownership and Control of Agricultural Land in Indonesia: A Maqashid Sharia Review of the Land of Agrarian Reform Objects (TORA) Exceeding the Maximum Boundary," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 24, no. 2 (2022): 222–39, <https://doi.org/10.22373/jms.v24i2.12960>.

⁹ Widyarini Indriasti Wardani, "Harmonisasi Lembaga Bank Tanah Dengan Pengaturan Pengadaan Hak Atas Tanah Bagi Pembangunan Untuk Kepentingan Umum," *Spektrum Hukum* 18, no. 2 (2021), <https://doi.org/10.35973/sh.v18i2.2476>.

¹⁰ Dwi Kusumo Wardhani, "Disharmoni Antara RUU Cipta Kerja Bab Pertanahan Dengan Prinsip-Prinsip UU Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA)," *Jurnal Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha* 6, no. 2 (2020): 440–55, <https://doi.org/https://doi.org/10.23887/jkh.v6i2.28095>.

¹¹ Ilham Yuli Isdiyanto and Deslaely Putranti, "Perlindungan Hukum Atas Ekspresi Budaya Tradisional Dan Eksistensi Masyarakat Hukum Adat Kampung Pitu," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 231–56, <https://doi.org/10.30641/kebijakan.2021.v15.231-256>.

Bank institution seeks to implement various aspects of land policy and support more efficient regional development.¹² In addition, the complexity of land acquisition issues in Indonesia, such as soaring land prices, assumptions of land prices that are not necessarily and land acquisition conflicts that are not easily implemented in a short time, made the regulation of the Land Bank established to ensure the availability of land.¹³

However, even though it was established with good intentions and prioritises the public interest, in its implementation there are still problems, with communities feeling that the Land Bank does not ideally set out to resolve agrarian conflicts and organise agrarian reform programmes, but instead facilitates land acquisition for business entities and investors who are part of government projects. Communities feel that the regulation is not intended to resolve agrarian conflicts and organise agrarian reform programmes but to facilitate land acquisition for investment purposes only. The state's authority to control and manage land resources is too obvious to be used as a legal guideline through the Land Bank regulation. The concept of land stateisation needs to be a concern in the establishment of the Land Bank regulation, because this concept threatens the existence of indigenous peoples' land that cannot be proven ownership. Basically, this concept will only restore the principle of domein verklaring during the Dutch colonial period, which aimed to legally control community land. Exploitation of indigenous peoples' land can occur with the raw acceptance of the Land Bank concept and the exclusion of the interests of indigenous peoples as a form of respect for their existence. This research examines the legal protection of customary land after the issuance of government regulations on the Land Bank Agency in Indonesia

METHOD

This research uses a normative juridical approach, conducting a research based on the rules, legal principles, and legal rules owned by a legislation. The approach in this research is a statutory approach, namely an approach that is carried out based on new and/or current laws and regulations and a concept approach is an approach that is carried out based on forms and concepts that can be obtained in scholarly opinions or legal doctrines related to related legal issues. This research examines the new legal rules regarding the concept of Land Bank by taking into account the existence of indigenous peoples' land which is studied conceptually and the rule of law. Data collection is carried out by means of literature study. Types of legal materials include primary and secondary legal materials. Primary legal materials are the 1945 Constitution of the Republic of Indonesia, Law Number 6 of 2023 concerning Job Creation, Government Regulation Number 64 of 2021 concerning the Land Bank Agency. Secondary legal materials include legal literature, legal

¹² Maharani Nurdin, "Urgensi Pembentukan Bank Tanah Di Indonesia," *Gorontalo Law Review* 5, no. 2 (2022): 385–90, <https://doi.org/https://doi.org/10.32662/golrev.v5i2.2383>.

¹³ Diah Krisnaningsih Fidri Fadillah Puspita, Fitri Nur Latifah, "Urgensi Kehadiran Bank Tanah Sebagai Alternatif Memulihkan Perekonomian Di Indonesia Dalam Perspektif Hukum Islam," *Jurnal Ilmiah Ekonomi Islam* 7, no. 03 (2021): 1761–73.

journal articles, and arguments of legal experts in line with the study of the discussion

DISCUSSION

Agrarian Conflicts After the Establishment of the Land Bank Agency

The mandate conveyed by the constitution in terms of natural resource management, including land, must have a positive effect on the prosperity of the people.¹⁴ The concept of the right to control land by the state, as contained in Article 33 paragraph (3) of the 1945 Constitution, states that the management of the natural resources of the earth, water and natural resources contained therein shall be under the control of the state and shall be organised as widely as possible for the prosperity of the people. In the general explanation of the UUPA, the word "controlled" does not mean "owned" but the authority of the state as an organisation with the power of the Indonesian Nation to regulate and administer the allocation, use, supply and maintenance of rights owned by the Earth, Water and Space with the aim of achieving the widest possible prosperity for the people. If the concept of the right to control is examined in its regulation, 2 (two) important things are known to be mutually sustainable, namely the right to control the state and the control intended to create prosperity/welfare for the people. This right is clarified by Article 34 of the 1945 Constitution that the state's obligation in organising welfare in terms of care for the poor and abandoned children, the expansion of social security and health facilities and public facilities that are deemed appropriate.¹⁵

The concept of state control rights is understood as the authority to determine the use and utilisation of natural resources subject to the requirement that they not be diverted to purposes other than their intended purpose.¹⁶ As for the idea conveyed by Soepomo that the concept of the state has the basis of unity, which means that the state as the sole actor determines the interests of the state and the interests of the people, so that the state will determine where, in what period or what company will be handed over in managing the Earth, Water, and other natural resources which essentially the state controls.¹⁷

Agrarian conflict can be defined as one of the conflict models related to land. Issues over land can lead to ongoing conflicts between various parties, both people and other people and legal entities.¹⁸ The emergence of agrarian conflicts is due to the injustice of land ownership, inequality in its control and conflicts of interest of the government in forming new laws that cannot provide legal protection for the community, causing social tensions.¹⁹

¹⁴ Anna Triningsih and Zaka Firma Aditya, "Renewing of Land Rights in Indonesia's Constitutional Perspective," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 3 (2019): 329–49, <https://doi.org/10.33331/rechtsvinding.v8i3.355>.

¹⁵ Sahrina Safiuddin, "Hak Ulayat Masyarakat Hukum Adat Dan Hak Menguasai Negara Di Taman Nasional Rawa Aopa Watumohai," *Mimbar Hukum* 30, no. 1 (2018): 64–77, <https://doi.org/https://doi.org/10.22146/jmh.16681>.

¹⁶ Fifik Wiryani and Mokhammad Najih, "Konflik Agraria : Sebuah Refleksi Hak Menguasai Negara Atas Tanah," *Widya Yuridika: Jurnal Hukum* 6, no. 3 (2023): 519–34, <https://doi.org/https://doi.org/10.31328/wy.v6i3.4850>.

¹⁷ Triningsih and Aditya, "Renewing of Land Rights in Indonesia's Constitutional Perspective."

¹⁸ Soni Akhmad Nulhaqim, Muhammad Fedryansyah, and Eva Nuriyah Hidayat, "Resolusi Konflik Agraria Berbasis Komunitas Pada Masyarakat Petani Di Desa Genteng Kecamatan Sukasari Kabupaten Sumedang," *Jurnal Kolaborasi Resolusi Konflik* 1, no. 2 (2019): 70–78, <https://doi.org/10.24198/jkrk.v1i2.23235>.

¹⁹ Setiyo Utomo, "Penerapan Hukum Progresif Dalam Penyelesaian Konflik Agraria," *Volksgeist: Jurnal Ilmu*

he concept of Land Bank is basically applied in many countries in an effort to control the availability of land for development such as the Netherlands, Colombia and South Korea. Land banks are considered successful in consolidating land in order to expedite and facilitate land acquisition. This concept was then adopted in Indonesia, which is used in the management of a large amount of unused land.²⁰

The formation of the Land Bank Agency will actually have a bad impact on the agrarian system in Indonesia, based on the authority of the land bank agency which indicates the re-enactment of the domein verklaring principle.²¹ This indication arises based on the authority of the land bank on behalf of the state to take over ownership of land that has no ownership, former land rights, reclaimed land and other lands that do not have clear ownership, based on this legal basis, it will clearly make it easier for the government to take away people's rights that should be owned on a plot of land that does not have a land certificate. This will certainly threaten the Indonesian people who have not registered their land with the National Land Agency, even though someone who owns a plot of land with good intentions wants to register his land to have a valid certificate, it is feared that there will be control of the land rights, because the people do not have the power or strength to prove ownership of their plot of land.

The principles and principles of domein verklaring are contrary to the UUPA, especially with regard to the provisions in Article 2 of the UUPA that regulate "state control rights". The concept of state control rights in the 1945 Constitution and UUPA is fundamentally different from the principle of Domeinverklaring, which was established during the Dutch colonial period in the Dutch East Indies Administrative Land Law, which was later revoked with the establishment of the UUPA. This principle goes against the legal consciousness of the Indonesian people and the principle of an independent state as in the Indonesian constitution, which wants prosperity from the natural resources managed, therefore the right to control the state is limited by law in its realisation.²² Moreover, scholars have also argued against the notion of state control rights in limiting state authority in two ways: a) The restrictions imposed by the Constitution, which stipulate that it must not result in the denial of basic human rights guaranteed by the Constitution; ; b) Substantive restrictions such as Article 2 paragraph (3) of the UUPA, so that all legal regulations related to land are limited by Article 2 paragraph (2) of the UUPA. Therefore, the authority in policy formation should not be given to private organisations, because rules regarding public welfare have service requirements, and the private sector is part of the community whose interests are also represented and limit the existence of conflicts of interest.

Hukum Dan Konstitusi 3, no. 2 (2020): 33–43, <https://doi.org/10.24090/volksgeist.v3i2.3998>.

²⁰ Iwan Permadi, "Land Tenure and Utilisation Challenges of The Land Bank Concept in Indonesia," *Jurnal Hukum Dan Kenotariatan* 7, no. 3 (2023): 185–96, <https://doi.org/10.33474/hukeno.v7i3.20750>.

²¹ Iwan Permadi, "Konstitusionalitas Keberadaan Bank Tanah Dalam Pengelolaan Dan Penguasaan Atas Tanah Oleh Negara," *Jurnal USM Law Review* 6, no. 1 (2023): 291–309, <https://doi.org/http://dx.doi.org/10.26623/julr.v6i1.6678>.

²² Ni Luh Ariningsih Sari, "Konsep Hak Menguasai Negara Terhadap Tanah Dalam Hukum Tanah (UUPA) Dan Konstitusi," *Ganec Swara* 15, no. 1 (2021): 991–98, <https://doi.org/10.35327/gara.v15i1.202>.

According to Mahfud MD, the authority of the state is considered to be misinterpreted and when it is only meant to "regulate" the state does not have absolute control.²³ This misinterpretation can have a bad impact and even cause structural problems and then have an impact on the mistakes in implementing policies by the Government. The result will invite agrarian conflicts based on state domination and structural problems. Then the limited understanding of the meaning of the role of the state will result in the emergence of agrarian conflicts. Based on this explanation, the wrong interpretation will have a negative effect on the regulation of agrarian and natural resources that threatens the realisation of legal certainty and protection for the wider community.

In addition, the establishment of the Land Bank is arguably futile, which is reasonable given that Indonesia has established the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, which is authorised by law to guarantee the balanced and equitable allocation of land, which indigenous peoples are entitled to.²⁴ As for other problems that arise, setting up a new partnership concept for land utilisation that is regulated openly (without providing certain specifications) from the Land Bank to business entities, individuals, and community groups, this can create open space for abuse of power and conflicts of interest.

If you look at the distribution of concessions and land rights based on open allocations in the last 40 years, the dominance is given to large companies.²⁵ This has led the Corruption Eradication Commission to take action, where it found that the allocation of licences was conducted through illegal or corrupt mechanisms. Therefore, in order to minimise the recurrence of abuse of power and to guarantee a balanced allocation of space, affirmative policies that can provide protection for indigenous peoples are more desirable, even though such policies cannot be done instantly and easily. State administrators are required to form a special team to carefully study and determine the subjects to be allocated land, including indigenous peoples, and the various parcels of land to be allocated require mapping and need to be reviewed.

Legal Issues for Customary Land after the Establishment of the Land Bank in Indonesia

The establishment of the Land Bank in Indonesia was motivated by the need to anticipate economic liberalisation, which has caused land prices to soar due to speculators. This issue has an impact on government projects in an effort to build constrained infrastructure related to land compensation. Then there are commodities that trade in urban land that are very difficult to control, so this situation clearly complicates the provision and procurement for the public interest. The impact caused after the existence of the Land Bank, the aspect of customary land tenure that does not have a certificate will automatically be controlled by the state (domein verklaring) with the tendency to be arbitrary and detrimental

²³ Moh Mahfud MD, *Membangun Politik Hukum, Menegakan Konstitusi* (Jakarta: PT Raja Grafindo, 2007).

²⁴ Iwan Permadi and Irsyadul Muttaqin, "Potensi Sengketa Hak Atas Tanah Di Indonesia," *JUSTISI* 9, no. 2 (2023): 201, <https://doi.org/https://doi.org/10.33506/jurnaljustisi.v9i2.2345>.

²⁵ Antara Agus Bebung, "Bank Tanah Lembaga Baru Yang Mubazir Dan Mengancam Masyarakat Adat: Akademisi," *The Conversation*, 2022.

to indigenous peoples. For example, when referring to the provisions of article 7 (i) of PP 64 of 2021, which states that land where ownership is not found can be controlled by the Land Bank, this is considered vulnerable to being used as a weapon to annex indigenous peoples' land rights.

Basically, land tenure in Indonesia has been contained in Article 33 of the 1945 Constitution of the Republic of Indonesia that "The land, water, and natural resources contained therein shall be controlled by the state and shall be organised to the greatest extent for the prosperity of the people". The UUPA in Article 3 states: "That the Indonesian National Land recognises the existence of Ulayat and similar rights of customary law communities as long as in reality they still exist". In terms of terminology, the phrase hak ulayat can be referred to in the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 concerning Guidelines for Settling the Problem of Ulayat Rights of Indigenous Peoples, Article 1 Paragraph 1 reads; "Ulayat rights and similar rights of indigenous peoples are defined as: The authority which according to customary law is possessed by certain customary law communities over certain areas which constitute the living environment of their citizens to take advantage of natural resources, including the land of the area, for their survival and life, arising from outward and inward relationships which are hereditary and uninterrupted between the customary law community and the area concerned."

The constitutional guarantees and laws and regulations on the existence of indigenous peoples and their rights are generally quite strong, but this does not mean a guarantee that problems will not arise in the future, in the context of the presence of the Land Bank through the issuance of PP No. 64 of 2021, there is potential for conflicts of interest, recognition of customary land can be easily ignored under the pretext of stateisation (domein verklaring). This is certainly not justifiable if it harms indigenous peoples, because we know that even the constitution provides the highest guarantee for the recognition and protection of customary rights including customary land in it. So, if in the future PP 64 of 2021 is used as a tool to circumcise the land rights of indigenous peoples, it should be in the framework of a state of law that upholds the supremacy of law, higher laws and regulations must be prioritised to be obeyed by all parties as a form of commitment to upholding the rule of law.

As it is known that land has a strategic role and position for the development of the nation and state, therefore the basis for regulation of land has been regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In the context of development and economic improvement, the government provides convenience and smoothness in terms of land acquisition through the Job Creation Law. The existence of the Land Bank is one of the breakthroughs for the government to achieve the smoothness of these interests. The regulation of the Land Bank is regulated in Article 125 to Article 135 of the Job Creation Law, and the implementing rules of the law are contained in Government Regulation Number 64 of 2021 concerning the Land Bank Agency. The government's efforts

in realising the Land Bank are in line with the ideals of the state's objectives as contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and the UUPA, which states that the Land Bank has a very strategic role intended as an instrument in national land management, especially regarding land tenure and stewardship so that the welfare and prosperity of the Indonesian people can be realised. The regulation is expected to be able to provide a sense of justice, expediency and legal certainty to the community. Fulfilment of these values aims to create balance and equal rights among citizens. The Land Bank was established as a body that specifically carries out the management of land and conducts planning, acquisition, procurement, management, utilisation and distribution of land. So that land management in Indonesia can be an optimal strategy in developing its use.

However, the existence of the Land Bank needs to be studied more deeply. This is a form of public attention to all forms of new rules made by the government which will ultimately bind and impact all its citizens, especially indigenous land communities. As a country that adheres to the rule of law, such actions help the government in providing welfare and legal protection to the community as widely as possible. Among the articles that need to be studied more deeply in the Government Regulation on the Land Bank, one of them is related to the Land Bank which adheres to the principle of *domein verklaring* (land nationalisation).

The application of this principle can lead to abuse of control rights by the state, facilitate foreign commercial entities to control land, and take over community land which results in inequality and opens opportunities for conflict between communities over ownership of land, especially on customary land or *ulayat* land. Considering that the purpose of the land bank is a manifestation of the work copyright law, namely to open up investment market opportunities as much as possible, one of which is land acquisition for the benefit of investors, it is prone to abuse of the right to control land by the state. This stems from the assumption that land that cannot be proven ownership is considered to have no control over it, so that the land can be recognised as state land. Thus, it is feared that irregularities will occur because the state is considered to have absolute rights to land. The argumentation gives a strong signal that the Indonesian Government has recently, seriously and aggressively carried out infrastructure development in an effort to improve the economic sector in Indonesia.

The guarantees and protection provided by the state and the constitution become an anomaly when the Job Creation Law regulates the concept of Land Bank. The protection that must be given by the government to customary land should be the continuity and full control rights of indigenous peoples. The existence of customary land in Indonesia needs to be well preserved as a true Indonesian identity. Regulations that protect customary land are needed rather than state control through the Land Bank. The dependence of the Indonesian people, especially indigenous peoples, on land and forests cannot be underestimated and simple, because by utilising these natural resources the sustainability and independence of the Indonesian people can run well. The concept of the Land Bank is something that allows

Indonesian people, especially indigenous peoples, to eventually lose economic resources and lead to poverty. State policy through the Land Bank opens the door to discrimination against indigenous peoples and impoverishes the nation's children.

The form of legal protection of customary land can be done with a legal approach or legislation. Legal policy can be useful in overcoming legal conflicts in the future, namely the government and DPR together improve and re-regulate the Land Sector Job Creation Law and the Land Bank PP. The improvement can be done by removing the concept of stateisation in both the Job Creation Law and the Land Bank PP as previously removed in the UUPA and paying more attention to the concept of state control rights as referred to in Article 33 paragraph (3) of the 1945 Constitution and the interpretation of state control as referred to in the Constitutional Court Decision and accommodating the interests of indigenous peoples as a form of respect for their existence. In addition, it can also be done by amending the content material of land rights in the land cluster regarding terms, definitions, subjects, and objects, and the term of land rights as well as providing an explanation of the concept of land control by the state (nationalisation of land).

The government should harmonise and synchronise the ideology, principles, objectives, and re-regulate the object, subject, duration of rights and substance of land rights by guiding Article 33 paragraph (3) of the 1945 Constitution and not turning its back on the provisions in the UUPA. So that the government and the DPR are advised to improve the norms governing land and pay close attention to the use of norms, propositions, concepts of land rights outlined in the UUPA. So that the birth of the Job Creation Law on the Land Bank as widely as possible can produce great benefits for the prosperity of the people and provide legal protection for every individual or group as Indonesian citizens. Through the Land Bank, the government must provide legal protection to the community, must provide a guarantee of welfare for the community through optimal management of land resources, upholding the value of justice and sustainability. The Land Bank shall not neglect to align with the interests and prosperity of its people

CONCLUSION

The establishment of the Land Bank Agency, which is legitimised through Government Regulation No. 64 of 2021 concerning the Land Bank Agency, has the potential to be misused as a tool to block indigenous peoples' land rights. This potential can be seen in the provisions of Article 7 (i) of Government Regulation No. 64/2021, which states that "land that has no tenure on it" can be controlled by the Land Bank, which is considered vulnerable to being used as a weapon to annex indigenous peoples' land rights. Then the establishment of the Land Bank Agency is arguably futile, because the existence of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency can be optimised in seeking balance and justice in land distribution, including for indigenous peoples. The government should harmonise the regulations related to the Land Bank so that this institution can serve as a balance for the fair use of land for various interests. The Land Bank should be a representative of the state to protect vulnerable groups of people, one of which is

indigenous peoples. Improvements and adjustments can be made by removing the concept of stateisation in both the Job Creation Law and the Land Bank PP as it was abolished with the establishment of the UUPA and paying more attention to the concept of state control rights as referred to in Article 33 paragraph (3) of the 1945 Constitution and the interpretation of state control as referred to in the Constitutional Court Decision and supporting the interests of indigenous peoples as a configuration of respect and existence.

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