

LAND BANKS AND RESTRICTIONS ON OWNERSHIP OF LAND RIGHTS IN INDONESIA

WIDYARINI INDRIASTI WARDANI

Universitas 17 Agustus 1945 (UNTAG) Semarang

Email : widyarini.indriasti@gmail.com

ABSTRACT

The Land Bank is an institution that regulates the planning, acquisition, utilization, allocation and distribution of land for the benefit of the community. The implementation of the Land Bank is closely related to the restriction of ownership of individual land rights for both persons and Legal Entities. The purpose of this writing is to find out the factors limiting land ownership in Indonesia. Methode uses a normative juridical approach. The existence of the Land Bank in Indonesia is expected to improve the community's economy by fairly distributing land to the community by the state. The relationship between the Land Bank and the regulation of the Restriction of Land Rights is very influential and related to the equitable distribution of community interests. The influence of the Land Bank and restrictions on ownership of land rights need to be addressed as soon as possible through effective arrangements limiting ownership of land rights.

Keywords: Land Bank, Restrictions, Ownership, Land Rights.

INTRODUCTION

Indonesia is a very vast country consisting of many islands both large and small so it is called an archipelagic country, from the Geopasial Information Agency, the area of Indonesia is 5,180,053 square kilometers.

The balance between land area and population is related to ownership of land rights. Government interests including community interests related to land requires comprehensive arrangements to realize national goals. One of the important objectives of the Indonesian nation as stated in the Preamble to the 1945 Constitution is to promote general welfare. General welfare is a condition or state of well-being that is felt and enjoyed by people (society) in general. General welfare consists of mental welfare and social welfare, one of the realization of general welfare can provide a guarantee of a decent life. General welfare in people's lives is something that a country must pursue. Decent community livelihood can be achieved through a balanced policy of land rights ownership arrangements between the government and the community and between individuals with one another.¹

Regulation by regulating the balance in control, ownership, utilization of allocation and use of land rights' by the government and citizens as legal subjects is a manifestation of state rights' internal authority. Article 33 paragraph 3 of the 1945 Constitution which was later derived in Article 2 paragraph 1 of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulation in principle stipulates that all earth, water and all natural resources contained therein are controlled by the state and as much as possible for the prosperity of the people. People's prosperity is the ultimate goal of the Indonesian nation with indicators of the Indonesian people fulfilled clothing, food, shelter, and education. The prosperity of the people is expected to be felt by every Indonesian citizen who lives in Indonesian nature.

The Government of Indonesia through various forms of policies seeks to realize these national goals, one of which is by organizing a Land Bank with the promulgation of Law Number 6 of 2023 about Determination of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law concerning and one of its implementing regulations, namely Implementing Regulation Number 64 of 2021 concerning the Land Bank Agency. The Land Bank Institution's establishment aims

¹ [https:// kumparan.com, news](https://kumparan.com, news) Current January, 26, 2023

to balance government needs related to land and individual needs with land. Based on Articles 125 to 135 of Law No. 6 of 2023 concerning Job Creation, the Land Bank is an institution that is expected to regulate the planning, acquisition, use or utilization, allocation and distribution of land for the benefit of the community. The Land Bank institution will be able to provide justice and welfare for the community in its implementation related to several regulations and one related to the Land Bank is regarding "Restrictions on ownership of land rights" for every citizen and Legal Entity

Law Number 5 of 1960 concerning Basic Agrarian Principles Regulation regulates the ownership of land rights consisting of three legal subjects as holders of land rights related to the control of state land rights, namely:

a. The nation's right to land (public relations) is natural, land is a gift of God Almighty which is inherent with the dignity and dignity of the nation and state. Article 33 paragraph 3 of the 1945 Constitution states that the nation's right to land is a gift of God Almighty, the fundamental right of the nation as long as the Indonesian nation exists, the relationship between the Indonesian nation and land is natural

b. State Rights as the relationship between land and the state. Land is a right controlled by the State as an account for outgoing and inward existence. Existence inward, the government has the right and authority to regulate, manage, and supervise the balance between land rights owned by Indonesia's individuals, communities/nations. Existence out, the government must protect and defend the territory of the Indonesian state from outsiders.

c. Individual Rights is the legal relationship between individuals and land. According to civil law, legal subjects as land rights holders include individuals and legal entities. The type of land rights that can be owned is determined according to the designation and development planning.²

About the three legal relationships between land tenure by the nation, state and individual land tenure, it is necessary to regulate and apply restrictions on the ownership of individual land rights (individuals and legal entities). Restrictions on ownership of land rights for individuals and legal entities consist of two types of land, including agricultural and non-agricultural land. The regulation limiting the ownership of land rights for agricultural land has been regulated in Law Number 56 Government Regulation in Lieu of Law of 1960 concerning the Determination of Agricultural Land Area (hereafter abbreviated Regulation of Law Number 56 of 1960) although it is no longer effective to be applied at this time, the regulation still needs to be validated. The Regulation of Restrictions on the ownership of non-agricultural land rights has not been regulated either for the ownership of land rights for individuals or Legal Entities.

The importance of regulating restrictions on ownership of land rights with the existence of the Land Bank is related to the equitable distribution of land, both for individuals, legal entities and communities. The land bank institution is held as an institution that balances the interests of individuals, legal entities and the community/general in the allocation, use and utilization of land so that justice is expected to be realized if the regulation of restrictions on ownership of land rights for both agricultural and non-agricultural land has been regulated comprehensively and implemented properly. The arrangement of restrictions on ownership of individual land rights must be regulated and applied before the government implements the Land Bank Institution to establish a Land Bank to provide welfare to the community.

Related to the above problem, the author provides the following problem formulation:

1. What are the restrictions on land rights in Indonesia and their application?
2. How important is the restriction of ownership of individual land rights with implementing the Land Bank?

Research Method

Discussion on: Land Bank and Restrictions on Land Rights Ownership in Indonesia using the normative juridical approach method, namely discussions taken from material or materials from

² Wardani, Widyarini Indriasti, *Harmonization Land Bank Institution with Settings Land Rights For Building To Interests Common*, Spektrum Law Journal, Untag Semarang, Vo2, No2, 2021 p. 2

literature including journals, related literature and laws and regulations. The specification of writing the discussion is descriptive analytical, data sources are taken from secondary data with qualitative data analysis.

Discussion

A. Regulation of Restriction of Ownership of Individual Land Rights. in Indonesia.

The regulation limiting ownership of land rights is expressly stated in article 7 of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulation which states, that relating to "not to harm the public interest, all matters of ownership and control of land that exceed the limit are not allowed". The article explains that ownership and control are different, namely that those who control land rights are not necessarily landowners, control over land rights is usually given for temporary or secundar land rights such as customary liens, lease rights or hitchhiking. Understanding ownership of land rights means that individuals with land rights control land rights simultaneously. The authority of the owner of land rights is broader, namely in addition to controlling the rights to the land, he can also transfer land rights or bequeath his land rights to his heirs.

Restrictions on ownership of land rights are intended in the context of balanced distribution to every citizen of Indonesian society. On the other hand, restrictions on ownership of land rights also balance the interests of individuals/legal entities with the public interests/government/nation and state of Indonesia. Arrangements Restrictions on ownership of land rights include:

1. Restriction of rights to agricultural land and,
2. Restriction of non-agricultural land rights

Restrictions on ownership of agricultural land rights have been regulated since 1960. However, if implemented, it is less effective. While restrictions on non-agricultural land rights have not been regulated comprehensively and are still implied in several government regulations, in detail can be stated as follows:

1. Restrictions on ownership of rights to agricultural land.

Regulation of restrictions on ownership of agricultural land rights has been regulated in Law Number 56 of 1960. Then Government Regulation Number 224 of 1961 concerning the Implementation of Land Division and Compensation was also stipulated. Still, it was amended and added to Law Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning the Implementation of Land Division and the provision of compensation. Regulation of Law Number 56 that Regulates the restriction of agricultural land ownership through the division of non-dense, less dense, moderately dense and very dense areas with agricultural land ownership limits: 15 hectares and 20 hectares for paddy fields and moorland, 10 hectares and 12 hectares for paddy fields and moorland, 7.5 hectares and 9 hectares for paddy fields and moor land and for very dense areas of 5 ha and 6 ha for rice fields and land moor. Restrictions on agricultural land ownership were issued and imposed since 1960 with a population of 60 million and the number of agricultural land that has been much reduced, at this time the population has reached 270 million with agricultural land of 10.66 million hectares.

The implementation of agricultural land restrictions cannot be carried out as expected in laws and regulations due to several factors according to L.Meir Friedmann's³ theory in Systems Theory that affect the working of law, including:

a. Factors Legal structure.

Law enforcement related to restrictions on agricultural land ownership has not been effectively implemented because the authorities related to ownership of agricultural individual land rights have yet to be implemented consistently. One of the obstacles faced is the need for more state financial value to compensate for excess land owned by individuals. On the other hand, factors related to

³ Friedmann, Lawrence Meir, *Legal system, A Social Science Perspective*, Russel Sage Foundation, New York, 1969.

human resources as government officials who have yet to carry out maximum supervision related to restrictions on ownership of agricultural land rights.

b. Legal Substance

The substance factor of the law, that the regulation limiting ownership of agricultural land rights was regulated in 1960 with a population of around 60 million, while the population at this time has reached 270 million with the amount of land that does not encroach, while the number of farmers certainly increased. If the laws and regulations do not change, factual and conditionally, they can no longer be implemented effectively.

c. Legal Culture

Legal culture is related to habitual factors carried out by society related to behavior that is carried out repeatedly. Facts called laws are facts that occur repeatedly that then form the same pattern of behavior. The pattern is binding and burdens the obligations of the person who carries it out. The behavior patterns of people in the same place and a certain period will form a culture. Regarding the ownership of land rights, it is distinguished from Javanese society, which is denser and relatively more developed, so that it is more economic and individual, and communities outside Java such as Papua, Nusa Tenggara, Kalimantan with strong customs tend to be more non-economic communal. Both individual and communal community systems in their legal culture influence law enforcement limiting ownership of land rights, especially agricultural land. In communities that are already individual, ownership of land rights tends to be fragmented through inheritance or transfer of grants or sale and purchase, so the minimum limit of ownership of agricultural land rights of 2 hectare is difficult to meet. In communal communities, on the other hand, agricultural land which is the source of family life tends not to be fragmented and is still controlled by the main heir holder (can be a boy or a girl, adjusted to the kinship system of each legal community), so that the amount of agricultural land owned by the main heir can exceed the maximum amount of agricultural land that can be owned by individuals, namely for rice fields 10 hectares and moor land 12 hectares for territory which is less dense, as well as 15 hectares for rice fields, 20 hectares for moor land for non-dense areas.

Based on the three factors mentioned above, regulating restrictions on ownership of agricultural land rights requires rearrangement. This is related to the increasingly narrow agricultural land and the population is increasing with the understanding that the number of farmers is also increasing. The regulation of restrictions on agricultural land ownership is important, relating to the unequal and balanced ownership of agricultural land rights in the community. Regulatory and supervisory factors affect land distribution, especially agricultural land, if implementing the Land Bank will benefit community welfare.

2. **Restriction of Ownership of non-agricultural Land rights.**

Regulation of ownership of non-agricultural land rights has yet to be regulated comprehensively or in the form of laws and regulations. Initially, it was regulated in Decree Number 59/DDA/1970 concerning the simplification of licensing regulations for transferring land rights, which was an amendment from the provisions of the Minister of Agrarian Affairs Regulation Number 14 of 1961. It is not a special and comprehensive regulation limiting non-agricultural ownership because it regulates land with several other rights. The regulation is a limiting regulation because Article 2 paragraph 2 of SK Number 59/DDA/1970 stipulates that if a person can only own 5 (five) plots of land and also regulates if he wants the 6th (six) plot of land by asking permission from the Land Office. The purpose of Decree Number 59/DDA/Year 1970 was to provide restrictions on monopoly land ownership, but it turns out that it is possible to have more than 5 (five) land rights through the permission of the Head of the Land Office. This creates contradictions in the regulation of restrictions on land rights. Finally, the provisions of Decree Number 59/DDA/Year 1970 are no longer applied, based on Article 196 Minister of Agrarian Regulations Number 3 of 1997 concerning the regulation of the Implementing Government Regulation Number 24 of 1997, which regulates Land Registration.

In connection with the invalidity of Decree Number 59/DDA/Year 1970, the government regulates the limitation of ownership of non-agricultural land bag rights in regulations for residential occupancy regulated in the form of Decree of the Minister of Agrarian State/Head of the National Land Agency Number 6 of 1998 concerning the granting of Land Ownership Rights for Residential Houses, not yet

in the form of a Law. Regulation in the form of law is needed to provide more legal certainty and equal ownership of non-agricultural land rights.

Decree of the Minister of Agrarian State/Head of the National Land Agency Number 6 of 1998 stipulates that the ownership or acquisition of property rights over land for residential houses by individuals cannot exceed 5 plots of land in which the total land area must not exceed 5,000 square meters. However, the regulation of the Agrarian Decree 6P/1998 needs to explain the restriction of land ownership for residential houses owned by legal entities. Regulations on restrictions on ownership of land rights for legal entities have also yet to be regulated comprehensively, resulting in no legal certainty. Legal Entities as legal subjects regarding the ownership of land rights are only regulated regarding their status and function. In principle, they can only have Building Use Rights and be used to erect buildings. Legal entities as legal subjects that are assumed to have a strong economy cannot have Property Rights, but related to restrictions on ownership have yet to be regulated. Such conditions will result in an imbalance in land ownership.

Arrangements for Foreign Nationals who want to own a residential house that is not on freehold land but the right of use, according to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights The limitation of land area for residential houses for foreign nationals is 1 plot of land per person/family and the land is at most 2,000 square meters. The regulation can be saved if the foreign national can make a positive contribution to Indonesia both economically and socially, namely being able to own a house of more than 1 plot of land and have a land area of more than 2,000 square meters through the permission of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency. Government policy regarding the ownership of land rights for foreign nationals by providing dispensation for the amount of land area, both regarding their parcels and land area, must be addressed positively through close supervision. Supervision of definite and clear criteria that foreigners have a positive impact in the economic and social fields for the Indonesian state, which has not been expressly regulated, for example:

1. These foreigners carry out economic activities that can increase people's economic income.
2. These foreigners carry out activities that can increase employment opportunities for the people of Indonesia.
3. These foreigners carry out activities that can improve individuals' and communities' public health.
4. These foreigners carry out activities that can provide a healthy and safe environment for the community.

The provision of these criteria is important so that the dispensation for foreign nationals is only used within the predetermined criteria to the detriment of Indonesian citizens, in addition to supervision is also needed. According to Government Regulations Number 18 of 2021 also gives foreign nationals the Right to Use the Building for Flats which points to the building space owned, not a shared land certificate.

B. The importance of limiting ownership of land rights of individuals/legal entities related to implementing land banks.

According to Soemardjono, the Land Bank is any government activity to provide land that will be allocated for use in the future. Provide land for all government activities, including, among others: housing, agriculture, animal husbandry, fishing, mining, industry, infrastructure, and various other government activities, which are basically for the benefit of the community.⁴

Indonesia implements the Land Bank to improve community welfare through control, control, and provision of land to benefit development and economic equity. Equitable development and economic equity by controlling, providing land/collecting, reserving, securing, and distributing land. The application of the land bank requires various physical and non-physical aspects as well as regulations to be able to support the achievement of economic equality and equitable development. The physical

⁴ Soemardjono, Maria SW, *Soil Deep Perspective Economic Rights Social And Culture*, Kompas, Jakarta, 2008, p 231

aspect includes identifying natural resources, especially land, which is national wealth to be controlled and utilized by the people. Non-physical aspects are human resources that can identify correctly and objectively, in addition to strict supervision related to land. Regulation is important, as a legal umbrella for comprehensive land law politics, especially regarding the implementation of land banks, especially regarding land distribution. Land distribution to the community is one of the implementations of the Land Bank in Indonesia that requires accuracy, objectivity, honesty, and wisdom. Regarding land distribution by land banks, it is inseparable from determining land bank assets regulated in articles 6,7, and 8 of Government Regulations Number 64 of 2021 juncto Government Regulations 18 of 2021 concerning Management Rights, units of units of flats and Land Registration juncto Government Regulations Number 20 of 2021 concerning Issuance of Areas and Abandoned Land, includes:

1. Land Determined by the Government is regulated in Article 7 of Government Regulations Number 64 of 2021;

Includes several types of soil, namely:

- a. Former Right land, namely: Former Right to Use Land and Former Right to Use land;
- b. Ex-Mining Land;
- c. Areas of wasteland and wasteland;
- d. Land of small islands;
- e. Land Release Forest Area;
- f. Land affected by the Spatial change policy;
- g. Embossed Soil
- h. Reclaimed Land;
- i. Land that has no control over it.

2. Land from Other Parties is regulated in Article 8 paragraphs 1 and 2 of Government Regulations Number 64 of 2021.

- a. Central Government;
- b. Local government;
- c. State-Owned Enterprises;
- d. Regionally Owned Enterprises;
- e. Enterprises;
- f. Legal Entity;
- g. Community.

Based on the regulation on Land Bank Assets mentioned above, it can be analyzed that land bank assets are so comprehensive that even "land that has no control over it" is included as Land Bank assets. This raises the thought related to the existence of state land, that the state that has the authority to control internal and external land no longer has land rights.

As for wasteland, several meanings can be interpreted:

a. Freehold land that is intentionally not used, not utilized, and/or not maintained so that the land:

- Controlled by the community and became a village area;
- Controlled by other parties continuously for 20 (twenty) years without any legal relationship with the right holder; or
- The social function of land rights still exists or no longer exists.

b. Right to Build Land, Right to Use Land, Right to Management Land that is intentionally not used, not used, and/or not maintained starting from 2 (two) years from the issuance of the right.

c. Business Use Rights that are intentionally not cultivated, not used, and/or not utilized as of 2 (two) years from the issuance of the rights;

d. Land acquired under the Land Control Policy, if intentionally not cultivated, not used, not utilized and not maintained starting from 2 (two) years from the issuance of the Land Tenure Policy.

Abandoned land areas include: Mining areas, plantation areas, industrial estates, tourism areas; Large-scale/integrated residential/residential areas, or other areas whose exploitation, use and

utilization are based on permits/concessions/permits related to the use of land and space that: - no/have not attached land rights;

- have a business permit/concession/license;
- Intentionally not cultivated, not used, and not utilized.

The government has determined the land that is the Bank's asset of land, including several types of land parcels that are not land rights. Land rights that are not assets of the Land Bank include all fields that already have control over land rights either certified or uncertified but can be proven/strengthened their control both socially and through evidence of old rights (before the issuance of the 1960 Law, under the umbrella of Government Regulations Number 24 of 1960 concerning Land Registration). This is important as a follow-up in the implementation of the Land Bank, and other factors so that the objectives of the establishment of the Land Bank can be realized.

Some factors that greatly affect the implementation of land banks related to the distribution of land evenly carefully, fairly, and honestly are:

- a. Regulatory factors identifying land that is not land rights and land rights.;
- b. Regulatory factors of identification of wastelands;
- c. Regulatory factors of land reclamation;
- d. Regulatory factors Restriction of Land Rights Ownership;
- e. Human resource factors as a support for an equitable economy;

Five factors influence one of the factors of the purpose of establishing the Land Bank Institution is the distribution of the land, all of which have significance. Each factor supports and greatly impacts implementing the Land Bank Institution to provide welfare for the community.

The land bank institution regulated in Government Regulation Number 64 of 2021 has a general goal to be able to provide welfare for the people of Indonesia. Welfare for the Indonesian people with the Land Bank can be realized according to Sumarjono, through Just economic development is building based on truth, fair/proportional, and alignment with vulnerable groups (social economic politics). Social and economic politics are based on the principle of social justice to achieve political-economic democracy, which contains the following conditions:

- a. Equitable distribution of production produced by the community so that the entire community can feel the benefits of production;
- b. The existing social structure, resulting in differences in economic, social, and political access between interest groups.
- c. The existence of inequality in access (point b) can be justified, namely, if it benefits the members of society who are most under-privileged/ John Rawls⁵);
- d. The main problem with social justice is the lives of disadvantaged members of society.
- e. The structure of power determines the sharing of access to production products. Proximity to power provides "more" opportunities.

Economic equality of the community, which is the goal of the land bank, must be supported by the government's political will related to policies. According to Linn Hammergren, "Political Will represents how much commitment among key decision makers to a particular policy solution to a particular problem." Regulations that the government has issued must be supported by several supporting components so that the regulation can run by the purpose of promulgating a regulation. The purpose of promulgating the Land Bank regulation is to provide people's welfare by controlling, providing land/collecting, reserving, securing, or distributing land. Some of the objectives of the land bank in its implementation require commitment between the government as key decision holders to provide policy solutions if problems arise. Some of the problems that arise in the implementation of the land bank include:⁶⁷

⁵ Rawls, John, *A Theory of Justice*, Pustaka Pelajar, Yogyakarta, p 137.

⁶ <http://www.kompassiana.com> Linn Hemmergren, as such Quoted by Leo Alexander Stockpiles deep The Journal that Titled "Political Will deep Retrieval Policy Leader" p 1

⁷ *Ibid*, p 1



- a. Land identification, especially for land rights located in hard-to-reach/inland areas;
- b. Grouping each potential region
- c. Accommodating the potential of each region, especially those located on the border with other regions.
- d. Fair distribution to legal subjects related to ownership of land rights to minimize inequality of ownership of land rights.
- e. Implement the Land Bank program by regional land bank assets related to existing human resources.

Restrictions on ownership of land rights are needed so as not to harm the public interest, avoid extortion, avoid the system of liberalism over agricultural land, and improve the economy in Indonesia.⁸

A related problem between the Land Bank and the restriction of ownership of land rights is the fair distribution to legal subjects with ownership of land rights to minimize the inequality of ownership of land rights in the community. The restriction of ownership of land rights, both agricultural and non-agricultural, for each holder of land rights, is closely related to the Land Bank program. Restrictions on ownership of agricultural and non-agricultural land rights have yet to be regulated comprehensively. This affects factually the ownership of land rights at present.

Factual data on ownership of land rights that exceed the limit of ownership has yet to be validly stated explicitly but is based on student interviews and Notaries/ Land Titles Registrar based on the interview, it was mentioned in his statement: "I have more than 5 plots of land and even more than 10 certificates it turns out that the National Land Agency does not mind. According to Anwar Abas, Chairman of Indonesian Council of Ulama the Second Islamic Economic Congress related to inequality in land tenure stated before Joko Widodo: the Gini index in the land sector is very concerning, which is 0.59, which is 1 percent of the population controls 59 percent of the land in this country. The other 99 percent only controls 41 percent of the land. On the other hand, Fitri Wahyuni stated that in the city of Bandung, in practice, there are many freehold lands with an area of more than 5,000 square meters (five thousand square meters) in the names of individuals divided into more than 5 (five) fields. This is done by developers who are not legal entities, to cut costs because the status of property rights does not need to be downgraded to building-use land. On the other hand, the Head of the Bandung Land Office also said: "I agree that non-agricultural land ownership is not piled on one group or certain parties. The statement was interpreted based on Fitri Wahyuni's research regarding the ownership of non-agricultural property rights that exceed the limit: "that the ownership of non-agricultural property rights land that exceeds the limit still occurs at the Land Office in Bandung City because the system of controlling non-agricultural property rights land ownership in Bandung City does not yet have a system and Implementing Regulations that regulate clearly."^{9,10}

Regulation of restrictions on ownership of land rights has also become very important with the emergence of several cases, one of which is the case in the Territory Surabaya in 2015. The case is closely related to the regulation of restrictions on ownership of land rights, namely that the Surabaya City government owns millions of square meters originating from: a. Land of the former Gemeente or swapraja land, which in the Dutch era was used as the administrative office of the Dutch Government;¹¹

- b. Land rights of the Dutch (eigendom depending) whose owners after independence, choose to return to the Netherlands;

⁸[https:// media neliti.com](https://media.neliti.com). *Restrictions on Ownership and Control of Land Rights in the Perspective of Agrarian Reform*, Jurnal Hukum Magnum Opus, Vol 1 No. 1, Agustus 2018, accessed on March, 3, 2023.

⁹ Kompas.com, Vitorio Mantalean, journal, *Overcome Inequality Mastery Land, Recover Community Rights to Land*, Editor: Kristian Erdianto, p 2

¹⁰ Fitri Wade Journal, *Status Possession soil That exceed Border Maximum Ownership Non Freehold Land Agriculture*, Journal Law, Vol 3 No. 11025-2979-1-PB, p 28, 29, 30

¹¹ Constitutional Court Decision Number 62/PUU-XIII/ 2015

c. People's lands owned since the Dutch colonial era or land from buying and selling after Indonesian independence.

According to data from Yousri Nur Raja Agam MH - Chairman of Surabaya Care Foundation, the land reached 13,425,015.15 square meters, 134.25 hectares more. The land was leased to residents of the city of Surabaya. Based on the lease status to the City Government, the land cannot be raised to Hak Milik. This is what is demanded by Surabaya residents who occupy the City Government's land. On the other hand, some Surabaya residents occupy the land who can take care of certificates, so it is considered that the Surabaya city government discriminates against the ownership of land rights.

Problems related to restrictions on ownership of land rights cause unrest for the community because of social inequality. Parties who can own and control land rights are parties who have authority, power, and wealth. The community highly expects the government's fair distribution of land rights, which requires several components to enforce it. Regulation, supervision, and law enforcement on the issue of ownership of land rights that cause agrarian conflicts need to be maximally pursued by the government.

The Land Bank institution is an effort by the government to overcome inequality in land tenure which is expected to restore community rights to land. However, the success of the Land Bank Institution needs to be supported by other factors that are closely related to the implementation of the Land Bank. One component closely related to the Land Bank is the regulation of comprehensive restrictions on ownership of land rights, with strict supervision and law enforcement.

CONCLUSION

Based on the review related to the Land Bank and Restrictions on Land Rights Ownership, it can be concluded as follows:

1. Regulation of Restrictions on Ownership of Land Rights and their Application in Indonesia.

Restrictions on ownership of land rights both agricultural and non-agricultural in Indonesia have yet to be regulated comprehensively. About agricultural land, it is necessary to review , which is adjusted to the Law Number 56 of 1960 region and population. As for non-agricultural land, especially for Legal Entities, has yet to be regulated, so clear regulations are needed, while for individual land it needs comprehensive regulations. Regulation on restrictions on ownership of land rights is necessary, but strict supervision and law enforcement related to ownership of land rights are more important. This avoids discrimination in the ownership of land rights, i.e., only those with authority, power, and wealth can have land rights. The principle or principle in the Basic Agrarian Law is that every Indonesian citizen has the right to have land rights regardless of gender, as well as social status and power by taking into account social functions need to be carried out optimally, in addition to collusion, and nepotism is very unexpected.

2. The importance of limiting the ownership of individual land rights with the implementation of the Land Bank.

The government formed the Land Bank institution with the aim of equitable development and economic equity by controlling, providing land/collecting land or reserving land, securing land, and as a means of distributing land. Fair land distribution for every Indonesian citizen has yet to be implemented optimally. Restrictions on the ownership of land rights by individuals and legal entities are closely related to the Land Bank Institution in its implementation. Basically, the implementation of the Land Bank Institution to be carried out by the objectives of the Land Bank, is necessary to regulate and implement maximum restrictions on ownership of land rights.

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- [9] Minister of Agrarian Regulations Number 3 of 1997 concerning the Regulation of the Implementing Government Regulation Number 24 of 1997,
- [10] Constitutional Court Decision Number 62/PUU-XIII/2015