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Land Bank Agency and Participation of Indigenous Peoples: Where is The Legal Certainty?

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Abstract

This research aims to analyze the problem of legal uncertainty for MHA regarding the formation of a Land Bank as mandated by the Job Creation Law. This research is normative legal research with a conceptual and statutory approach. The results of the research concluded that the obligation to involve MHA in land use through the Land Bank is said to be urgent, especially in efforts to maintain the mandate of the 1945 Constitution of the Republic of Indonesia and the UUPA to provide guarantees of recognition, protection, and empowerment for Indigenous Peoples. The involvement of MHA in land use through the Land Bank Agency is essential because MHA generally have customary rights in the form of control over land, and this can be empowered by being involved in land use through the Land Bank Agency. This research suggests that there is a need to revise Article 8 paragraph (2) of the Land Bank Agency PP, which confirms that MHA is one of the legal subjects in land use through the policy of establishing the Land Bank Agency.

Keywords: Land Bank; Legal Certainty; Indigenous Peoples.

Abstrak

Penelitian ini bertujuan menganalisis permasalahan ketidakpastian hukum bagi MHA terkait pembentukan badan Bank Tanah sebagaimana amanat UU Cipta Kerja. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan konseptual dan perundang-undangan. Hasil penelitian disimpulkan bahwa kewajiban pelibatan MHA dalam pemanfaatan tanah melalui badan Bank Tanah dikatakan urgen khususnya dalam upaya untuk menjaga amanat UUD NRI 1945 serta UUPA untuk memberikan mendapatkan jaminan pengakuan, perlindungan sekaligus pemberdayaan terhadap Masyarakat Hukum Adat. Pelibatan MHA dalam pemanfaatan tanah melalui Badan Bank Tanah menjadi penting karena MHA pada umumnya memiliki hak ulayat berupa penguasaan atas tanah dan hal ini dapat diberdayakan dengan dilibatkan dalam pemanfaatan tanah melalui Badan Bank Tanah. Saran dari penelitian ini yaitu perlu adanya revisi terhadap Pasal 8 ayat (2) PP Badan Bank Tanah yang menegaskan bahwa MHA merupakan salah satu subjek hukum dalam pemanfaatan tanah melalui kebijakan pembentukan Badan Bank Tanah.

Kata kunci: Bank Tanah, Kepastian Hukum, Masyarakat Hukum Adat.

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Introduction

The Customary Law Community or *Masyarakat Hukum Adat* -in Indonesian- (hereinafter referred to as MHA) is a community group bound by tradition, genealogy, and a specific locus that has its system of norms and considers the

environment as one unit with it (Mansur et al., 2020). The characteristics of Indigenous Peoples, in general, include a strong and persistent relationship with the land and the environment, having a value system that determines economic, political, social, cultural, and legal institutions, hereditary in some of geographical regions, the existence of an equal place of residence, customary law, and cultural identity (Royani, 2022). Constitutionally, the existence of MHA is guaranteed in Article 18B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In principle, the state must protect and facilitate the existence of MHA and their rights. State guarantees for MHA are also contained in Article 2 paragraph (4) of Law no. 6 of 1960 concerning the Basic Agrarian Regulations (hereinafter referred to as UUPA), in which the rights owned and attached to MHA are fundamental rights so that they must be protected by the state (Sulaiman, 2021).

Article 5 of the UUPA also emphasizes that national agrarian law aims to integrate national legal policies with customary law developed in MHA (Ekawati et al., 2020). Apart from being regulated in the UUPA, the existence of MHA is also regulated in the Job Creation Law which, after being declared conditionally constitutional by the Constitutional Court, the government issued Government Regulation in lie of Law No. 2 of 2022 concerning Job Creation and replace by Act No. 6 of 2023 (hereinafter referred to as UU CK) which substantively still facilitates the provisions in the Job Creation Law (Humas Sekretariat Kabinet, 2022). One of the provisions relating to MHA, particularly land rights for MHA, is related to establishing a Land Bank agency, which is confirmed in Article 125 paragraph (1) of the UU CK. Furthermore, Article 135 of the UU CK emphasizes that the formation of a Land Bank Agency is regulated explicitly in a Government Regulation (*Peraturan Pemerintah* or PP).

Based on Article 135 of the UU CK, Government Regulation No. 64 of 2021 concerning Land Bank Agency (hereinafter referred to as PP Land Bank). One of the functions of the Land Bank in Article 3, paragraph (1) letter e of PP Land Banks is land utilization. Article 14 paragraph (1) PP Land Bank emphasizes that " other parties can carry out land utilization." Article 14 paragraph (2) PP Land Bank emphasizes that cooperation with "other parties" can take the form of buying and selling, leasing, business cooperation, grants, exchanges, and other forms agreed with other parties. Furthermore, Article 14 paragraph (3) PP Land Bank emphasizes that land use must be based on the principle of benefit and proportionality. The community here needs to be explained further, whether the community is private or may also include MHA. Thus, MHA can potentially be excluded from land use in PP Land Banks. Suppose you look at the facts of the Customary Law Community, both juridically and empirically. In this case, MHA still has not received legal guarantees related to MHA's rights to control and use land, so this has the potential to cause legal uncertainty, especially for the existence of MHA with the establishment of a Land Bank. This study aims to analyze the problem of legal uncertainty for MHA related to establishing a Land Bank as mandated by the UU CK.

Research on the Land Bank has been carried out by several previous researchers, such as research by (1) Wahyu Bening and Ilham Dwi Rafiqi (2022), which discusses the existence of disharmony in efforts to establish and regulate

Land Banks with other institutions, namely the Ministry of Agrarian Affairs and BPN (Wahyu Bening, 2022). Furthermore, research conducted by (2) Muhammad Fajar Sidiq Widodo and Moh Ahza Ali Musthofa (2022) discusses the legal politics of establishing a Land Bank as one of the orientations of the creation of the Job Creation Law (Muhammad Fajar Sidiq Widodo, 2022). Furthermore, research conducted by (3) Nellis Ramadhanti, Onny Medaline, and T. Riza Zarzani (2022) discusses one of the tasks of the Land Bank, namely to optimize the land acquisition program (Nellis Ramadhanti, Onny Medaline, 2022). Of the three previous studies, research that addresses explicitly legal uncertainty for MHA regarding establishing a Land Bank as mandated by the UU CK has never been comprehensively studied. Hence, research that the authors conducted is original. The author's novelty in this study is to carry out legal interpretations to ensure legal certainty for MHA regarding establishing a Land Bank agency (in Indonesian: *Badan Bank Tanah*) as mandated by the UU CK.

Research Problems

This research seeks to answer two problem formulations: (1) What is the urgency of the Customary Law Community (MHA) participation in land use through the Land Bank? Moreover, (2) What are the efforts to achieve legal certainty for Indigenous Peoples (MHA) in land use through the Land Bank?

Research Methods

This type of research is normative juridical research with legal issues, namely legal uncertainty, especially for the existence of MHA with the establishment of a Land Bank agency (Efendi et al., 2019). This research is oriented towards the study of primary legal materials in the form of legal products, namely related laws, and regulations, as basic materials to be researched and elaborated on with articles, books, and writings associated with these primary legal materials. The primary legal materials in this study include the 1945 Constitution of the Republic of Indonesia, UUPA, UU CK, and PP Land Bank. Secondary legal materials in this research include books, journal articles, and various Land Banks and MHA studies. Non-legal materials are language dictionaries. The approach used is the conceptual approach and the statutory approach. Data analysis in this research was carried out qualitatively prescriptively. In this process, legal materials are analyzed and adapted to the problem formulation in the research to find a prescription to solve the legal problems that have been presented.

Discussion

The Urgency of Participation Indigenous Peoples in Land Utilization Through the Land Bank Agency

MHA are identified as people who still practice customary law. In this case, customary law is a series of rules carried out by the community and adhered to for its sustainability (Abiyoso et al., 2020). Since Indonesia was established as a

sovereign country, customary law has occupied its role. In its development, customary law has received a special place in developing national law. Even the formation of state law and habits (often called local wisdom) that live in society are critical considerations in forming state law, both in forming laws and forming regional regulations (Setyaningsih & KAYUAN, 2022). In this case, customary law has special characteristics in a legal system in a country, namely the relationship between the state legal system (state law) on the one hand and the people's law system (folk law) and religious law (religious law) on the other side (Asher, 2020). MHA is a group of legal communities that have fulfilled three aspects (Herlius, 2022) ; first, from the aspect of legal structure, MHA has traditional law enforcement officers who are local and with names and mentions that are unique to the local village. In addition, customary law officials may not formally have a specific designation but are respected or recognized by the community for specific figures, such as traditional and other traditional elders. Thus, MHA has fulfilled the legal structure aspect from the first aspect.

Second, regarding legal substance, MHA has customary law rules, usually written in nature and even socialized orally. Even so, it is common for MHA to write down some of their customary norms. Even so, writing related to customary norms cannot be identified as a "politicizing" customary law but only an attempt to remind people of the customary norms that apply in society (Prasetio et al., 2021). Thus, even if something is written down, the substance of customary norms is essentially unwritten. If written down, customary law officials' interpretation ultimately determines customary law norms' the enforceability. Thus, MHA has fulfilled the aspect of legal substance and has the substance of customary norms, both unwritten and written. Third, from the traditional legal culture, every MHA has its own legal culture, which is internalized according to individual needs (Winardi, 2020). Internalization is usually carried out by including certain activities, usually held based on specific day commemorations or in conjunction with cultural or religious activities according to the needs and traditions of the local community (Prasetio, 2021). Thus, MHA already has a legal culture that their respective Indigenous Peoples internalize. Based on the aspects of structure, substance, and legal culture above, MHA has fulfilled these three things so that they are considered to have fulfilled the formation of an independent legal system, namely the customary law system.

Regarding the existence of MHA, KBBI provides an understanding that existence is related to the existence and position of MHA. Regarding the existence of MHA, Hilman Hadikusuma provides a standard that the existence of Indigenous Peoples is determined from several aspects, which include (Heryanti, 2019): ((i) the existence of MHA's traditional rights, (ii) the existence of MHA institutions, (iii) existence related to the environment of MHA, (iv) juridical existence through recognition by the state. From this description, Maria S.W. Sumardjono (Sukirno, 2018) reinforces that one of the essential aspects of MHA is the existence of traditional rights, especially those relating to land rights. For MHA, land rights are not only related to legal rights but also include aspects of belief (religion-magical), so these land rights must be protected and maintained. Article 2, paragraph (4) of

the UUPA emphasizes that rights controlled by the state are not only the sole monopoly of the state but are also delegated to the Customary Law Community. In Article 2, paragraph (4) of the UUPA, the state's right to control must be understood as public control and cannot be understood as private control (Shabia, 2021). Tenure rights in private law are synonymous with ownership rights. This means if the state's right to control in Article 2 paragraph (4) of the UUPA is interpreted in a private legal dimension, then all agricultural resources belong to the state, and no institutions are allowed to participate.

Article 2 paragraph (4) UUPA also provides space for state control rights exercised by Indigenous Peoples and Autonomous regions with limitations in the form of not contradicting national interests, according to the provisions of Government Regulations (Sulaiman, 2021). This explicitly emphasizes that Article 2 paragraph (4) of the UUPA cannot be interpreted as state control in a personal sense but must be interpreted as state control rights in the context of public law. Concerning land rights by MHA, the state, based on Article 2 paragraph (4) of the UUPA, is obliged to protect and facilitate MHA. This mandates that every legal policy issued by the state is obliged to protect and facilitate MHA and their rights. Rikardo Simarmata (Simarmata, 2021) argues that several factors inhibit the implementation of the recognition of the protection of the fundamental rights of Indigenous Peoples.

These include (i) the ineffectiveness of customary law when it intersects with state law (national law), (ii) the lack of the participation of the Regional Government in providing guarantees of legal certainty for MHA, and (iii) the rights of MHA are often neglected, especially land rights when dealing with state policies. From the factors presented by Rikardo Simarmata, there is a potential reduction in the rights of MHA, especially land rights concerning land use, with the issuance of the Job Creation Law and its implementing regulations. Even though the Job Creation Law is based on the Constitutional Court Decision (In Indonesian: *Putusan Mahkamah Konstitusi*) No. 91/PUU-XVIII/2020, it was declared conditionally unconstitutional so that its entry into force was suspended for two years, with the formation of the UU CK made the implementation regulations for the Job Creation Law legally valid (Artioko, 2022). One of the implementing regulations for the UU CK is the PP Land Bank, which in Article 14 paragraph (1) the PP Land Bank stipulates that land use can be carried out with "other parties." The Land Bank Agency has a good purpose; however, the ambiguity of the provisions for "other parties" in Article 14 paragraph (2) PP Land Bank provides an affirmation that cooperation with "other parties" can take the form of buying and selling, leasing, business cooperation, grants, exchanges, and other forms agreed with other parties.

Referring to Rikardo Simarmata's view above, three main factors influence the existence of MHA, namely political, legal, and economic (business) factors. Regarding political factors, the existence of the MHA is sometimes slow in its efforts to protect it. The MHA Bill has not yet been ratified by the DPR and the Government even though the MHA Bill has been included in the national legislation program. In the legal aspect, there are several problems in positive law, such as a vacuum or ambiguity in what should regulate the rights and existence of MHA. The existence

of problems in positive law certainly has an impact and can threaten the existence of the MHA. In the economic (business) aspect, in practice, MHA is often seen as an "obstacle" to economic (business) activities. This obstacle occurs, among other things, when MHA's rights are often ignored when dealing with economic (business) aspects.

Furthermore, Article 14 paragraph (3) PP of the Land Bank Agency emphasizes that land use must be based on benefit and proportionality. If read comprehensively, Article 8 paragraph (2) PP Land Bank emphasizes that other parties include the Central Government, Regional Government, BUMN, BUMD, Business Entities, Legal Entities, and the community. In this case, the word "society" is also not given a further explanation, and in the explanation, it is only stated as "Sufficiently clear." This interpretation can be confusing, especially whether Customary Law Communities can be involved in land use through the Land Bank Agency as in Article 14 paragraph (2) PP Land Bank. This confusion is because "community" here can mean society in general (self/personal/everyone), or can it be constructed to include the Customary Law Community. This ambiguity can also hinder the Customary Law Community from obtaining guaranteed recognition, protection, and empowerment of the Customary Law Community as mandated by the 1945 Constitution of the Republic of Indonesia and the UUPA.

Participation as part of efforts to maintain the existence of MHA is an essential aspect of this research. KBBI provides that participation means substantive involvement, responsibility, and control over something. In the context of MHA and the Land Bank, participation for MHA is needed so that the land distribution paradigm for community justice in the Land Bank can be in harmony and under MHA's views regarding land itself. Participation by the MHA concerning the Land Bank is also necessary, considering that land law policies aimed at maintaining the existence of the MHA are still weak. This participation can be seen even though there is a UUPA. However, the land law policy that aims to maintain MHA's existence can still be considered not optimal, especially since the MHA Bill has not yet been ratified.

Efforts for MHA participation regarding land policy by the Land Bank Agency can be carried out by focusing on normative aspects in statutory regulations to provide MHA participation space. In this context, Article 14 paragraph (3) PP of the Land Bank Agency emphasizes that land use must be based on the principle of benefit and proportionality. If read comprehensively, Article 8 paragraph (2) PP Land Bank emphasizes that other parties include the Central Government, Regional Government, BUMN, BUMD, Business Entities, Legal Entities, and the community. In this case, the word "society" is also not given a further explanation, and in the explanation, it is only stated as "Sufficiently clear." This case emphasizes that efforts to provide participation for MHA regarding land policy through the Land Bank must be oriented primarily towards normatively involving MHA in statutory regulations.

Based on the explanation above, the obligation to involve the MHA in land use through the Land Bank Agency is said to be urgent, especially to maintain the mandate of the 1945 Constitution of the Republic of Indonesia and the UUPA to

provide guarantees for recognition, protection as well as empowerment of the Indigenous Peoples. Furthermore, the involvement of the Customary Law Community in land use through the Land Bank Agency is essential because the Customary Law Community generally has customary rights in the form of land tenure, and this can be empowered by being involved in land use through the Land Bank Agency. This involvement also seeks to emphasize the Customary Law Community as a legal subject that can become a party to land utilization through the Land Bank Agency, of course, by providing a broad (extensive) interpretation of the meaning of society, not just society in general (private individuals/everyone), but also includes Indigenous Peoples.

The Legal Ambiguity in PP Land Bank Agency: Lack of Participation of Indigenous Peoples in Land Utilization Through Land Bank Agency

The Land Bank is generally defined as a legal policy mechanism established by the state to utilize and provide fair land distribution (Hamidah, 2021). The orientation toward utilizing the land for the community is based on the view that land has essential aspects, especially economic ones (Andriawan et al., 2021). Land in Indonesian society is understood as something that has economic, cultural, and even religious values. Especially for MHA, religious and cultural aspects occupy essential aspects of land before economic aspects (Jayasa Putra Rajagukguk, Azmiati Zuliah, 2021). Regarding practices in various countries, Flechner categorizes land banks according to their types into two categories: public land banks and private land banks (Arnowo, 2021). The public Land Bank is a Land Bank body whose formation was initiated by the state so that the state has an orientation to distribute land proportionally and its benefits to the community (Sigit Sapto Nugroho, 2022). Therefore, in a public Land Bank, there are two orientations: general Land Bank and special Land Bank. A public land bank is a land bank whose orientation is to manage the management and use of land to be proportional to the community. Meanwhile, a special land bank or special land banking is a land bank whose function is to consolidate urban land, build public infrastructure, and provide private land (Fidri Fadillah Puspita, Fitri Nur Latifah, 2021).

Although, in principle, there are differences between public land banks and special land banks, the formation of land banks in Indonesia is more oriented toward establishing public land banks. Establishing a Land Bank in Indonesia is meant to succeed in national development, carry out economic equity through systematic, integrated land distribution and data collection, and guarantee legal certainty. From the various orientations for establishing a Land Bank above, it can be concluded that several orientations for establishing a Land Bank include (Arnowo, 2021):

1. Regulating the proportionality of land development, particularly in urban areas;
2. Minimizing unkempt land (abandoned land) in the community;
3. Carry out agrarian reform related to land and

4. Carry out the formulation of land arrangements that are social justice.

Van Dijk & D. Kopeva (Limbong, 2013) provide an analysis that there are five indicators related to the success of the Land Bank Agency. These five things are (1) Political will from the government coupled with adequate public policies; (2) Regional Spatial Plans that are good and compatible between the center and the regions; (3) Good and quality land management; (4) Supporting human resources; and (5) Community participation and empowerment related to land. That confirms that by fulfilling these five aspects, the policy for establishing a Land Bank Agency can be optimal for realizing societal justice (Danendra & Mujiburohman, 2022). One of the most critical aspects of implementing the Land Bank Agency in Indonesia is to realize legal certainty in land policy. Legal certainty, according to Sudikno Mertokusumo, is protection through written legal provisions for the parties (Mertokusumo, 2019). That means the importance of clear and firm meaning in written law is intended to guarantee legal certainty in legal regulations, which have implications for the application of the law. From this understanding, it can be concluded that legal certainty is always synonymous with the law, which questions the legal relationship between citizens and the state. In order to guarantee legal certainty, it is necessary to have rules that follow the soul of the Indonesian nation. In the view of Jan Michiel Otto, legal certainty can be achieved if the substance of the law is in line with the community's needs. Regulations that can create legal certainty are regulations that can reflect the culture that develops in society (Hazmi et al., 2021). The culture that develops in society is an illustration of the coveted needs of society so that regulations that follow the culture of society will later be able to create harmony between the interests of the state and society.

The concept of a Land Bank Agency in the context of land policy is very much in line with the needs of the community because, in this land bank concept, the value or price of land that will be used in the transaction of transferring land rights to acquire land will be based on the value formed in the market, which was carried out in advance. before the land is needed for development (Iswantoro & Luthviati, 2021)(Sigit Sapto Nugroho, 2022). In this context, the presence of the Job Creation Law is important to provide legitimacy for further regulation regarding the Land Bank Agency. Even though several aspects of the Job Creation Law are controversial in society, it would be too naïve to say that the real substance of the Job Creation Law is a law that only benefits certain parties. Apart from the controversial formation process, has several aspects of concern for weak parties. Even so, it must be acknowledged that the omnibus law method used to draft the Job Creation Law needs to be perfected and obtain precise and relevant implementing regulations.

Conditional unconstitutional status in the Job Creation Law based on MK Decision No. No. 91/PUU-XVIII/2020 has become an essential momentum in evaluating various provisions in the Job Creation Law, especially those relating to the Land Bank Agency. The conditional unconstitutional status in the Job Creation Law also impacts the implementing regulations for the Job Creation Law, in this case, including PP Land Bank. The conditional unconstitutional status in the Job Creation Law implies a "delay" from the entry into force of the Job Creation Law and its implementing regulations, especially within two years. That means that if, within

two years, there is no improvement in the process of drafting the Job Creation Law, then the conditional unconstitutional status will become unconstitutional, which means that all provisions in the Job Creation Law are null and void and void (Humas MKRI, 2021). This is also the ratio decidendi in the Constitutional Court Decision No. No. 91/PUU-XVIII/2020, which emphasizes that "...suspending all actions/policies that are strategic in nature and have broad implications, and it is also not justified to issue new implementing regulations". In the context of the Land Bank Agency, the PP for the Land Bank Agency as an implementation of the Job Creation Law is part of a strategic policy with broad implications. That can be seen from the range of regulations of the PP Land Bank Agency, which is comprehensive nationally. Regarding the Constitutional Court Decision No. No. 91/PUU-XVIII/2020, the Land Bank Agency PP is also temporarily suspended, as in the Job Creation Law.

Even so, the UU CK has actually "revived" the provisions in the Job Creation Law, including the provisions regarding the Land Bank, which are regulated further through the PP Land Bank. The substance of Article 14 paragraph (1) PP Land Bank confirms that "Utilization of land as referred to in Article 3 paragraph (1) letter e PP Land Bank is carried out through utilization cooperation with "other parties." In this case, other parties need a definite reference or standard, causing legal confusion. That legal ambiguity has implications for applying legal provisions that are inconsistent with legal objectives and potentially harm society (Muhamad, 2020). Furthermore, Article 8 paragraph (2) PP Land Bank Agency emphasizes that other parties include the Central Government, Regional Government, BUMN, BUMD, Business Entities, Legal Entities, and the community. If using a systematic interpretation, then the provisions of "other parties" in Article 14 paragraph (1) PP Land Bank are relevant to the provisions in Article 8 paragraph (2) PP Land Bank. That confirms that, in an authentic interpretation, other parties follow what is stated in Article 8 paragraph (2) PP Land Bank Agency, which includes: Central Government, Regional Government, BUMN, BUMD, Business Entities, Legal Entities, and the community. Thus, the provisions of Article 14 paragraph (1) PP Land Bank based on an authentic interpretation and systematic interpretation can be read, "Utilization of land as referred to in Article 3 paragraph (1) letter e PP Land Bank is carried out through utilization cooperation with other parties, which include the Central Government, Regional Government, BUMN, BUMD, Business Entities, Legal Entities, and the community".

Even so, the provisions in Article 8 paragraph (2) PP Land Bank also encounter problems, primarily related to the meaning of "community" in Article 8 paragraph (2) PP Land Bank. The community here needs to be explained further, whether it is private or could also include customary law communities. Thus, customary law communities have the potential to be excluded from land use as in the substance of the PP Land Bank. Suppose you look at the facts of the Customary Law Community, both juridically and empirically. In this case, the Customary Law Community still needs to receive legal guarantees regarding the rights of the Customary Law Community in controlling and utilizing land. Article 14 paragraph

(1) PP Land Bank Agency with an authentic and systematic interpretation that needs to be read simultaneously with Article 8 paragraph (2) PP Land Bank also raises new problems in the form of legal ambiguity regarding other parties who can be used as legal subjects in land use. In fact, in the elucidation of Article 8 paragraph (2) PP Land Bank, there is no further explanation regarding the word "community" and whether it is only an individual community or a customary law community. When referring to a grammatical interpretation, in the Big Indonesian Dictionary, the word society means "several people, in a broad sense, who are associated with cultures that are considered the same" (KBBI, 2022). Referring to the grammatical interpretation of Article 8 paragraph (2) PP Land Bank Agency, the word "community" as a legal subject in land use through the Land Bank Agency must be interpreted in two ways, namely: (i) the general public in the sense of each individual, and (ii) Customary Law Society.

Problems that occur within Article 8 paragraph (2) PP Land Bank, there is no further explanation regarding the word "community" and whether it is only an individual community or a customary law community has implications for MHA. If the understanding of the word "community" is only understood without including the MHA aspect, then the MHA's orientation to participate in the Land Bank becomes closed in the context of positive law. This case means that in Article 8 paragraph (2), the PP Land Bank does not facilitate Land Bank participation. MHA participation in legal policies related to Land Banks will be optimal if it is strictly regulated in Article 8 paragraph (2) of PP Land Bank. Therefore, efforts to facilitate MHA participation in legal policies related to Land Banks must be supported by appropriate favorable legal provisions, especially regarding the word "community in Article 8 paragraph (2) PP Land Bank.

Problems in positive law as in Article 8 paragraph (2) PP Land Bank, there is no further explanation regarding the word "community" and whether it is only an individual community or a customary law community can have an impact on MHA, one example of which is MHA Sendi in Mojokerto, East Java (Prasetyo et al., 2021). Sendi MHA is an MHA that has not received recognition regarding the existence of its customary law, which in this case includes the absence of recognition regarding the customary rights owned by the MHA. By not yet recognizing MHA Sendi as MHA, its existence could be disrupted significantly as the provisions of Article 8 paragraph (2) of PP Land Bank further reduce the existence of MHA Sendi to maintain the existence of customary rights and rights to the land it owns. It can be concluded that Article 8 paragraph (2) PP Land Bank can be a "killer regulation" for the existence of MHA Sendi. An example of a case related to the existence of MHA Joints is if Article 8 paragraph (2) of PP Land Bank is implemented without providing a normative framework for the involvement of MHA. Of course, more MHAs will suffer the same fate as MHA Joints, whose existence will be reduced.

From the explanation above, apart from the problem of uncertainty in positive law, especially participation for MHA, participation has also not received further attention in the Land Bank PP. In the context of state administrative law, participation is interpreted as involving the community in a policy or formulating statutory regulations. In this case, participation is interpreted as involving and

giving approval from the community or related parties to a policy or the formulation of statutory regulations. In another view, Ridwan HR broadly defines *participation* as involving all aspects, including planning, implementation, and evaluation of a policy or statutory regulation. (Muhamad, 2020). In the context of MHA participation in the PP Land Bank, participation should be interpreted broadly, involving MHA in various land bank policies normatively confirmed in statutory regulations.

Furthermore, when referring to the extensive interpretation of Article 8 paragraph (2) of the PP Land Bank, the word "community" should also be expanded because the PP Land Bank is intended for the public interest related to land policy. Because it is in the public interest, it is only natural that the word "community" in Article 8 paragraph (2) PP Land Bank be expanded not only for the community in general but also for the Customary Law Community. The teleological interpretation of the word "society" in Article 8 paragraph (2) PP

Land Bank also shows the urgency of expanding the meaning of the word "society," which is not only the general public in the sense of each individual but also includes the Customary Law Community. That is based on three arguments. *First*, the PP Land Bank policy as one of the land policies indeed refers to the UUPA; in this case, the UUPA also mandates the need for the involvement of Indigenous Peoples in every land policy. *Second*, the PP Land Bank, as the implementing regulation for the Job Creation Law, is oriented towards the spirit of agrarian reform, including the orientation of various land policies that are proweak. This policy aligns with the Customary Law Community, where there is yet to be a specific regulation, especially concerning the Customary Law Community Draft Bill that the House Of Representatives Of The Republic Of Indonesia and the Government have not passed. *Third*, referring to Article 8 paragraph (2) PP Land Bank, it can be concluded that the parties involved in land utilization through the Land Bank Agency are legal subjects, which include the Central Government, Regional Government, BUMN, BUMD, Business Entities, Business Entities Law, and society. In this case, the Customary Law Community also has a position as a legal subject confirmed in various laws and regulations, including being able to proceed in court if there are rights or legal interests of the Customary Law Community that are violated or reduced by other parties.

Thus, based on the three arguments in the teleological interpretation above, the importance of expanding Article 8 paragraph (2) PP Land Bank is related to the meaning of the word "society," which is not only society in general (individuals as legal subjects) but includes the legal community. Custom. In addition, if it is possibly related to the conditional unconstitutional status of the Job Creation Law, then the revision of the substance of the Job Creation Law needs to be carried out together with the revision of the implementing regulations for the Job Creation Law, especially regarding the PP Land Bank. In particular, Article 8 paragraph (2) PP Land Bank confirms that the Customary Law Community is one of the legal subjects in land use through the policy of establishing a Land Bank Agency. Based on the description above, legal uncertainty in the form of legal obscurity in the PP Land

Bank that has not involved the Customary Law Community in land use through the Land Bank agency has an impact on weakening the position of MHA where MHA has land rights which if not given space in the PP Land Bank. That has the potential to create contact between land rights owned by MHA and the land provisions contained in the PP Land Bank. Therefore, to realize legal certainty for Indigenous Peoples (MHA) in land use through the Land Bank agency concerning grammatical, authentic, and teleological (sociological) interpretations, it is necessary to expand the meaning of the word "community" in Article 8 paragraph (2) PP Land Bank which does not only cover the community in general (individuals as legal subjects) but includes the Customary Law Community. In addition, it is necessary to revise Article 8 paragraph (2) of the PP Land Bank, which emphasizes that Customary Law Communities are one of the legal subjects in land utilization through the policy of establishing a Land Bank Agency.

Conclusion

The obligation to involve the Customary Law Community (MHA) in land use through the Land Bank Agency is said to be urgent, especially to maintain the mandate of the 1945 Constitution of the Republic of Indonesia and the UUPA to provide guaranteed recognition protection as well as empowerment of the Indigenous Peoples. Furthermore, the involvement of the MHA in land use through the Land Bank Agency is essential because the MHA generally has customary rights in the form of land tenure, which can be empowered by being involved in land use through the Land Bank Agency. This also seeks to emphasize the MHA as a legal subject that can become a party to land utilization through the Land Bank Agency, of course, by providing a broad (extensive) interpretation of the meaning of society, not just society in general (private individuals/everyone), but also includes Indigenous Peoples.

In efforts to realize legal certainty for Indigenous Peoples (MHA) in land use through the Land Bank agency concerning grammatical, authentic, and teleological (sociological) interpretations, it is necessary to expand the meaning of the word "community" in Article 8 paragraph (2) PP Land Bank which does not only cover society in general (individuals as legal subjects) but includes the MHA. In addition, it is necessary to revise Article 8 paragraph (2) of the PP Land Bank, which emphasizes that MHA are one of the legal subjects in land utilization through the policy of establishing a Land Bank Agency.

References

- Abiyoso, Y., Abdillah, A., Wasti, R. M., Sujatnika, G., & Fakhri, M. (2020). Adat Institutions In Aceh Government: A Constitutional Perspective Constitutional Perspective. *Journal of Islamic Law Studies*, 4(1), 1–15.
- Andriawan, W., Winantyo, A. C., Juwono, I. P. B., & Rahmani, P. M. (2021). Land Procurement by Land Bank as a Form of Agrarian Reform Based on Law Number 11 Year 2021 Concerning Work Creation. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, 4(3), 3434–3439.

- Arnowo, H. (2021). Pengelolaan Aset Bank Tanah untuk Mewujudkan Ekonomi Berkeadilan. *Pertanahan*, 11(1), 13.
- Artioko, F. R. (2022). Pengadopsian Partisipasi Masyarakat Yang Bermakna (Meaningful Participation) Dalam Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan. *Al Qisth Law Review*, 6(1), 56.
- Asher, R. (2020). Unresolved Injustice : An Examination of Indigenous Legal Issues in Australia. *Udayana Journal of Law and Culture*, 4(2), 146–170.
- Danendra, M. R., & Mujiburohman, D. A. (2022). Pembentukan Bank Tanah: Merencanakan Ketersediaan Tanah untuk Percepatan Pembangunan di Indonesia. *Widya Bhumi*, 2(1), 1–20. <https://doi.org/10.31292/wb.v2i1.18>
- Efendi, A., Susanti, D. O., & Tektona, R. I. (2019). *Penelitian Hukum Doktrinal*. Laksbang Justitia.
- Ekawati, D., Wardhani, D. K., Prastiwi, D. E., Prayitno, S., & Purwanto, A. (2020). Prosedur Peralihan Kepemilikan Hak Atas Tanah di Indonesia. *JAMAICA : Jurnal Abdi Masyarakat Program Studi Teknik Informatika Universitas Pamulang*, 2(1), 90–101.
- Fidri Fadillah Puspita, Fitri Nur Latifah, D. K. (2021). Urgensi Kehadiran Bank Tanah Sebagai Alternatif Memulihkan Perekonomian di Indonesia Dalam Perspektif Hukum Islam. *Lmiah Ekonomi Islam*, 7(3), 1762.
- Hamidah, U. (2021). Distribution of Land Bank Assets Post Application of the Copyration Law in Realizing Equality Development in Indonesia. *Scholars International Journal of Law*, 4(11), 688–695. <https://doi.org/10.36348/sijlcj.2021.v04i11.005>
- Hazmi, R. M., Jahar, A. S., & Adhha, N. (2021). Construction of Justice, Certainty, and Legal Use in the Decision of the Supreme Court Number 46 P/HUM/2018. *Jurnal Cita Hukum*, 9(1), 159–178. <https://doi.org/10.15408/jch.v9i1.11583>
- Herlius, F. (2022). Kaidah Hukum Adat Dalam Penuntutan Demi Keadilan Berbasis Kearifan Lokal. *Perspektif*, 27(2), 94–103.
- Heryanti, H. (2019). Pengakuan Eksistensi Hak Ulayat Laut Masyarakat Hukum Adat Berdasar Nilai-Nilai Kearifan Lokal. *Halu Oleo Law Review*, 3(2), 196. <https://doi.org/10.33561/holrev.v3i2.8650>
- Humas Sekretariat Kabinet. (2022). *Pemerintah Terbitkan Perpu Cipta Kerja*. setkab.go.id.
- Iswantoro, I., & Luthviati, R. D. (2021). Land Banks' Impact on Agrarian Reform and Equitable Land Redistribution. *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 20(2), 88–103. <https://doi.org/10.31941/pj.v20i2.1722>

- Jayasa Putra Rajagukguk, Azmiati Zuliah, A. T. D. (2021). Akibat Hukum Jual Beli Atas Tanah Dengan Sertifikat Hak Milik Dalam Akta Di Bawah Tangan. *Dharmawangsa*, 15(2), 201.
- KBBI. (2022). *Kamus Besar Bahasa Indonesia Online*. KBBI.
- Limbong, B. (2013). *Bank Tanah*. Margaretha Pustaka.
- Mansur, T. M., Sulaiman, S., & Ali, H. (2020). Adat Court in Aceh, Indonesia: a Review of Law. *Jurnal Ilmiah Peuradeun*, 8(2), 423. <https://doi.org/10.26811/peuradeun.v8i2.443>
- Mertokusumo, S. (2019). *Perbuatan Melawan Hukum Oleh Pemerintah* (1st ed.). CV Maha Karya Pustaka.
- Muhamad, N. A. (2020). The Legal Philosophy of Lon L. Fuller: Profile. *The Social Contract Journal SCJ*, 1(1), 2.
- Muhammad Fajar Sidiq Widodo, M. A. A. M. (2022). Politik Hukum Pembentukan Bank Tanah Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. *Verfassung: Jurnal Hukum Tata Negara*, 1(1), 87.
- Nellis Ramadhanti, Onny Medaline, T. R. Z. (2022). Kajian Hukum Konsep Bank Tanah Untuk Kepentingan Umum Pasca Uu Cipta Kerja. *Rectum*, 4(2), 560.
- Prasetio, D. E. (2021). Inventarisasi Putusan Peradilan Adat Sendi sebagai Upaya Memperkuat Constitutional Culture dalam Negara Hukum Pancasila. *Jurnal Hukum Lex Generalis*, 2(3), 249–273.
- Prasetio, D. E., Disantara, F. P., Azzahra, N. H., & Perwitasari, D. (2021). The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law. *Rechtsidee*, 8, 1–14. <https://doi.org/10.21070/jihr.2021.8.702>
- Setyaningsih, N. P. A., & KAYUAN, P. C. K. (2022). Kompilasi Delik Adat Dalam Peraturan Daerah Sebagai Dasar Pemidanaan Dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana (RUU KUHP). *Jurnal Yustitia*, 16(1), 71–79.
- Shabia, G. N. A. (2021). Kontribusi Community Supported Agriculture untuk Gerakan Agraria di Indonesia: Pelajaran dari Jerman. *BHUMI: Jurnal Agraria Dan Pertanahan*, 7(2), 181–198. <https://doi.org/10.31292/bhumi.v7i2.490>
- Sigit Sapto Nugroho, I. W. K. J. U. (2022). Land Bank Maintains The Existence Of Land. *Notariil*, 7(2), 94–99.
- Simarmata, R. (2021). Orientasi Negara dalam Pendaftaran Tanah Adat di Indonesia. *The Indonesian Journal of Socio-Legal Studies*, 1(1), 4.
- Sukirno. (2018). *Politik Hukum Pengakuan Hak Ulayat*. Kencana Prenada Media Group.
- Sulaiman, K. F. (2021). Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012. *Jurnal Konstitusi*, 18(1), 091. <https://doi.org/10.31078/jki815>

Wahyu Bening, I. D. R. (2022). Permasalahan Hukum Pengaturan Bank Tanah Pasca Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja. *Suara Hukum*, 4(2), 269.

Winardi, W. (2020). Eksistensi Dan Kedudukan Hukum Adat Dalam Pergumulan Politik Hukum Nasional. *Widya Yuridika*, 3(1), 95.
<https://doi.org/10.31328/wy.v3i1.1364>