

## The Effectiveness of Land Banks in the Implementation of Land Management in Indonesia

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**Abstract.** *This study aims to analyze: 1) The role and function of the land bank in land management in Indonesia. 2) The effectiveness of the land bank in the implementation of land management in Indonesia. The approach method used in discussing this research problem is a sociological juridical approach. The specification of the research used is descriptive analytical research. This type of data uses primary data and secondary data. The data analysis method used in this research is qualitative data analysis. The results of the study concluded: 1) The role and function of the land bank in land management in Indonesia, namely the land bank plays an important role in developing and increasing the capacity of land or land use. The procedure used by the Land Bank is to control the market and stabilize land owned by the local market meanwhile, the function of the land bank is contained in Article 3 Paragraph (1) of Government Regulation Number 64 of 2021 concerning Land Bank, that the function of the land bank is to carry out planning, acquisition, procurement, management, utilization and distribution activities of land. Based on the concept of legal certainty theory, legal certainty intends to provide certainty of the availability of land in the implementation of a land bank and provide guarantees to parties who are entitled to get their rights correctly. The certainty referred to in the form of certainty in the implementation of a land bank for the purpose of public welfare and public interest. 2) The effectiveness of the Land Bank in the Implementation of Land Management in Indonesia depends on whether the regulations that govern it are running or not. Land bank can be said to be effective if it can provide guarantees of legal certainty and prosperity for the community. The effectiveness of land banks in land management in Indonesia is determined by several factors, including regulations (legal regulations), land bank institutions, land bank financing and other factors. Regulations that must be enforced in realizing the effectiveness of a land bank are Government of Indonesia Number 113 of 2021 concerning the Structure and Operation of the Land Bank Agency.*

**Keywords:** *Effectiveness, Land Bank, Land Management*

## 1. Introduction

The complexity of the problem of land availability for general development requires strategies and methods to be resolved fundamentally, systematically, effectively and efficiently and in the long term (to meet the demands of the far future).<sup>1</sup>One of the targets of the 2005-2025 National Long-Term Development Plan (RPJPN) to achieve is infrastructure development to achieve optimal state service conditions. The existence of land banks in developed countries has been widely practiced. In the 2015-2019 National Medium-Term Development Plan (RPJMN), the government strictly implements the need to establish a land bank in Indonesia. Several notes in the substance of the Job Creation Law relate to the establishment of a Land Bank, including the Land Bank Agency as a special state-owned agency with separated state assets. This means that the Land Bank Agency is in the form of a Legal Entity or a limited liability company that carries out its functions autonomously/independently.

The Land Bank is one of the many means of resource management that plays an important role in developing and increasing land or land use capacity. The procedure used by the Land Bank is the activity of controlling the market and stabilizing land owned by the local market. The mechanism in the land bank is to acquire and reserve land for infrastructure purposes. The city that first initiated and implemented a land bank was Amsterdam, the Netherlands in 1890, then several cities in Europe also implemented it in the 1970s, which was then implemented by several cities in the United States, China and Singapore.<sup>2</sup>The land bank has a concept with the aim of providing guarantees for the availability of land or land for sustainable public infrastructure purposes. In the juridical aspect, it aims to fulfill the creation of justice, certainty and usefulness in law.<sup>3</sup> Based on Article 1 Paragraph 1 of Government Regulation Number 64 of 2021 concerning Land Bank Agencies, a land bank is a special agency (*sui generis*). The specificity of a Land Bank is in line with the concept of a land bank, namely that a land bank can function as a land market controller that guarantees the efficiency and rationality of land prices, streamlines and guarantees a fair and just land value, and functions to integrate policies, strategies, implementation and evaluation related to land.<sup>4</sup>The formation of the land bank itself is related to problems in land acquisition today due to a shift in views on land as a strategic

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<sup>1</sup>Bernhard Limbong, 2014, *Agrarian Policy Opinion*, Margareta Library, Jakarta, p.82

<sup>2</sup>Noegroho, *Application of the Land Banking Concept in Indonesia for MBR Housing Development in Urban Areas*, *ComTech Journal*, Volume 3 Number 2 December 2012, p.962

<sup>3</sup>Fidri Fadilah, Fitri Nur Latifah, Diah Krisnaningsih, *The Urgency of Land Banks as an Alternative to Restoring the Economy in Indonesia in the Perspective of Islamic Law*, *Scientific Journal of Islamic Economics*, Volume 7 Number 3 of 2021, p. 4

<sup>4</sup>Hariani Mochtar, *The Existence of a Land Bank in Land Procurement for Development*, *Horizon Law Journal*, Volume 18 Number 2 of 2013, p. 127

commodity.<sup>5</sup>This triggered land liberalization which resulted in land prices soaring due to land speculators' game so that the projects planned by the government in building infrastructure were hampered by land compensation issues.<sup>6</sup>Especially in urban areas, land has turned into a commodity that is traded in a market that is difficult to control due to the absence of effective strategies and programs in making land policies.<sup>7</sup>

The implementation of the functions of the Land Bank can be carried out in the form of cooperation with other parties. The parties referred to are the Central Government, Regional Governments, state agencies, state-owned enterprises, regionally-owned enterprises, business entities, state-owned legal entities, private legal entities, communities, cooperatives, and/or other legitimate parties. The cooperation between the Land Bank and these parties is a form of mutually beneficial relationship, including receiving entrusted land for cultivation. This form of cooperation shows that the Land Bank can be agile in acquiring land to be managed so that it is profitable and at the same time provides land availability for development.<sup>8</sup>

Even though the existence of a land bank is very necessary, there are big challenges in the governance of a land bank, namely it requires a long period of time and very large capital so that the land bank runs according to its formation. Meanwhile, from a juridical point of view, the governance of a land bank must adapt to spatial and regional management as well as land institutions for the sake of certainty of legal benefits. In addition, the implementation of a land bank must be integrated with the development plans of the Regional Government. This is important because the main mission of the land bank is to create a just economy, including within the scope of the local area.<sup>9</sup>At first glance, it seems that the legislature is prioritizing the establishment and general provisions of the Land Bank. Its establishment was also included in an Omnibus Law which contains various laws. From a legal perspective, the effectiveness of the implementation of a land bank will also be determined by the regulations that govern it, for example the institutional form, objectives, and various implementation mechanisms.

## **2. Research Methods**

The research method that will be used in this study is a sociological juridical approach. This research is an analytical descriptive research. The types and

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<sup>5</sup>Hasyim Sofyan, Irwansyah, Rosdalina, Supervision of Land Banks: Urgency, Authority, and Mechanisms, *Journal of Law*, Volume 4 Number. 1 of 2021, p. 183

<sup>6</sup>Loc. cit, p. 127

<sup>7</sup>Herni Amir, Aminuddin Salle, and Sri Susyanti Nur, "Land Bank Activities as a Form of Provision of Land for People's Settlements," *Journal of Legal Analysis*, Volume 3, Number 1 of 2014, p. 3

<sup>8</sup>Hadi Arnowo, Management of Land Bank Assets to Create a Just Economy, *Land Journal*, Volume 11 Number 1 of 2021, p.94

<sup>9</sup>Hadi Arnomo, Op.cit., p.93

sources of data used in this study are primary data obtained directly from the field. As well as the Secondary data obtained from library research supported by field research. The specification of the research used is descriptive analytical research. The data analysis method used in this research is qualitative data analysis. The data analysis used is normative qualitative analysis method.

### 3. Results and Discussion

#### 3.1 The Role and Function of the Land Bank in Land Management in Indonesia

The effort to overcome the availability of land for the needs mentioned above is to form a land bank. The establishment of a land bank through Act No. 11 of 2020 concerning Job Creation (UUCK) is expected to guarantee the availability of land in the framework of a just economy. Land bank comes from 2 (two) terms, namely land banking and land banks. Land banking in general can be translated into Indonesian as "land banking", which is used to describe activities related to land banking. Meanwhile, the term land bank is used to describe the existence of institutions or cooperation between institutions that are active in the field of land acquisition. Based on the various definitions mentioned in the paragraph above,

1. Acquisition of abandoned or problem land, land that has not been developed and land that is considered to have potential for development.
2. Manage and organize it temporarily.
3. Redistribute it for the public interest in accordance with government programs, both short term and long term programs.<sup>10</sup>

The granting of management rights to land banks means that the land bank can cooperate with other parties and can then be granted land rights over management rights. The cooperation is intended to gain profits in order to meet the operational needs of the land bank. Although cooperation with other parties is possible, the distribution of land to create a just economy, especially in rural areas, must be a priority.<sup>11</sup>

Gustav Radbruch put forward that the purpose of law must be understood as the basis as well as binding in the formation of legislation. There are 3 (three) basic values of law which are known as the ideals of law, in which law must fulfill these basic values, namely: justice, usefulness (*zweckmaszigkeit*), and legal certainty.<sup>12</sup>

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<sup>10</sup>Fatima Al-zahra, Legal Construction of Land Bank Arrangements to Realize Equitable Management of State Land Assets, Journal of Law, Nurul Jadid University, p.24

<sup>11</sup>Hadi Arnoqo, Op.Cit, p. 3086

<sup>12</sup>Emsi Warasih, 2005, Legal Institutions, a Sociological Study. Suryandaru Utama, Semarang, p.44.

Gustav Radbruch put forward 4 (four) fundamental things related to the meaning of legal certainty, namely:

1. The law is positive, meaning that positive law is legislation.
2. The law is based on facts, meaning it is based on reality.
3. Facts must be formulated in a clear way so as to avoid misunderstandings in meaning, besides being easy to implement.
4. Positive law should not be easily changed.

Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically of legislation. Based on his opinion, according to Gustav Radbruch, positive law that regulates human interests in society must always be obeyed even though the positive law is unfair.<sup>13</sup>

According to the theory of legal certainty above, legal certainty can be realized if there is positive law, namely legislation. To create legal certainty for the community regarding the establishment of a land bank, land banks are regulated in Articles 125-135 of Act No. 11 of 2020 concerning Job Creation or known as the Job Creation Law. As for its implementation, land banks require derivative regulations such as Government Regulations, Presidential Regulations and Ministerial Regulations. Apart from being regulated in the Job Creation Law, land banks are also regulated in Government Regulation Number 64 of 2021 concerning Land Bank Agencies and Regulation of the President of the Republic of Indonesia Number 113 of 2021 concerning the Structure and Administration of the Land Bank Agency.

Based on Article 1 Paragraph (1) of Government Regulation Number 64 of 2021 concerning Land Bank Agencies, a land bank is a special agency (*sui generis*) established by the Government. According to UUCK, the specificity of a land bank is related to the management of the assets of the land bank body as separate state assets and the management of land assets for the benefit of a just economy. The interests of a just economy are stated in Article 126 of the Job Creation Law, namely:

1. Public interest
2. Social interests
3. National development interests
4. Economic equity
5. Land consolidation
6. agrarian reform.

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<sup>13</sup>Gustav Radbruch, 1961, *Einfuehrung In Die Rechtswissencharft*, Koehler Verlag, Stuttgart, p.36

The position of a Land Bank is regulated in Article 2 of the Presidential Regulation of the Republic of Indonesia Number 113 of 2021 concerning the Structure and Administration of a Land Bank Agency, namely:

1. The Land Bank is domiciled in the Capital City of the Unitary State of the Republic of Indonesia.
2. Land Banks may have representative offices throughout the territory of the Unitary State of the Republic of Indonesia.
3. Further provisions regarding the establishment of a representative office are regulated in the Regulation of the Head of the Implementing Agency.

The Land Bank plays an important role in developing and increasing land use or land use capacity. The procedure used by the Land Bank is the activity of controlling the market and stabilizing land owned by the local market. The mechanism in the land bank is to acquire and reserve land for infrastructure purposes. The land bank has a concept with the aim of providing guarantees for the availability of land or land that aims for sustainable infrastructure for public needs. In the juridical aspect, it aims to fulfill the creation of justice, usefulness and certainty in law.

Based on the concept of legal certainty theory, legal certainty intends to provide certainty for the availability of land in the implementation of a land bank and to provide guarantees to entitled parties to obtain their rights properly. The certainty referred to is in the form of certainty regarding the implementation of a land bank for the purpose of public interest based on the methods stipulated in laws and regulations and the certainty of the sound of the rules governing it, in the sense that there is no sentence or language in the said rules which can give rise to different interpretations.<sup>14</sup>

According to Article 3 Paragraph (1) of Government Regulation Number 64 of 2021 concerning Land Banks, the function of a land bank is to carry out planning, acquisition, procurement, management, utilization and distribution of land. Whereas Paragraph (2) explains that in carrying out the functions referred to in paragraph (1) the Land Bank has the following tasks:

1. Carry out long-term, medium-term, and annual activity planning.
2. Acquisition of land which can be sourced from the determination of the government and other parties.
3. Carry out land acquisition for development in the public interest or direct land acquisition.
4. Carry out land management from development, maintenance and security activities, and land control.
5. Utilizing land through utilization cooperation with other parties.
6. Distributing land by carrying out land provision and distribution activities.

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<sup>14</sup>Fatima Al-zahra, op.cit., p.26

Explanation regarding the implementation of functions and duties as referred to in Article 3 Government Regulation Number 64 of 2021 concerning the Land Bank Agency, the land bank guarantees the availability of land for:

1. Public interest.
2. Social interests.
3. National development interests.
4. Economic equity.
5. Land consolidation.
6. agrarian reform.

The land obtained by the land bank will be managed for distribution in order to meet the needs of various sectors and for private use. The basic issues that must be regulated by derivative regulations are institutional portfolios, management of land assets and distribution of land assets to parties or sectors in need.<sup>15</sup>The Land Bank, as an alternative to land acquisition for public purposes, has the following objectives:

1. Ensure the realization of the objectives formulated in Article 33 paragraph (3) of the 1945 Constitution, namely that the land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people whose embodiment is sustainable, just and equitable national development for the benefit of the people. many people.
2. As an instrument to carry out various land policies and support regional development efficiently and effectively.
3. Control the procurement, control and utilization of land in a fair and reasonable manner in carrying out development.<sup>16</sup>

Sumardjono mentioned the functions of a land bank, namely as a land reserve, land security, land control and land distribution. Based on this function, the land bank is the answer for providing land for various development needs. The land bank can be used to provide land for settlements and housing, housing construction in urban areas and in the context of land acquisition for public purposes. In addition, the land bank is also an important part in the development of agricultural areas. Land banks can be formed at the City level to meet the needs of public housing by utilizing undeveloped land from real estate housing allotments.<sup>17</sup>

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<sup>15</sup>Hadi Arnowo, The Role of Land Banks in Arranging Land Provision, Journal of Research Innovation, Volume 2 Number 9 February 2022, p.3078

<sup>16</sup>Noegi Noegroho, Application of the Land Banking Concept in Indonesia for the Development of MBR Housing in Urban Areas, ComTech Journal, Vol.3 No. 2, 2012, p. 966

<sup>17</sup>Hadi Arnowo, Op.Cit., p. 3080

Based on the theory of legal certainty by looking at some of the functions of the Land Bank, it can be emphasized that good use of land as well as those that have been assigned neglected status can be empowered as part of government investment and part of policies in tackling illegal land management by the community. Where the concept of the Land Bank can increase the potential for welfare and legal certainty for the community in the future. The land bank enables the government, both central and regional, to acquire and accumulate land for short and long term strategic purposes. Effective government involvement in the land bank will establish the appropriate role of government. Based on the description above, the Land Bank plays an important role in developing and increasing land or land use capacity. The procedure used by the Land Bank is the activity of controlling the market and stabilizing land owned by the local market. Meanwhile, the function of a land bank is contained in Article 3 Paragraph (1) Government Regulation Number 64 of 2021 concerning Land Bank, that the function of a land bank is to carry out planning, acquisition, procurement, management, utilization and distribution of land. Based on the concept of legal certainty theory, legal certainty intends to provide certainty for the availability of land in the implementation of a land bank and to provide guarantees to entitled parties to obtain their rights properly. Certainty in question is in the form of certainty regarding the implementation of a land bank for the purpose of public welfare and public interest based on the methods stipulated in laws and regulations and the certainty of the sound of the rules governing it, in the sense that there is no sentence or language in the said rules which can give rise to different interpretations.

### **3.2 The Effectiveness of Land Banks in the Implementation of Land Management in Indonesia**

Land management is an activity carried out by the land bank after controlling the land and before distributing the land and can be utilized by the land bank itself. Under Article 129 of the Job Creation Law (UUCK), land managed by a land bank will obtain Management Rights. Furthermore, regarding the provisions regarding Management Rights to be bound by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration. The provisions regarding Management Rights in the regulation also apply to land banks as holders of Management Rights. Land bank assets that have been granted Management Rights, then their management is sourced from cooperative utilization with other parties or disposal for the granting of Property Rights.

The allotment of Land Bank Management Rights is divided into for equitable economic interests and for investment. The designation of just economic interests must be based on a priority scale so that it is clear in the framework of the planned program. It is hoped that the land bank can provide land for the



community. Meanwhile, for investment purposes, land banks can work together with beneficial owners who are expected to lead to community prosperity as mandated by Article 33 paragraph (3) of the 1945 Constitution.

Several types of land that can be used as land resources for public land banks can be found in the national agrarian law system. Sources of land can be obtained from land owned by other legal subjects, abandoned land, government asset land, confiscated land, erfpacht land, and absentee land.

Whether or not land banks are effective in land management in Indonesia is determined by several factors, including regulations (legal regulations), land bank institutions, land bank financing and other factors.

#### 1. Regulation (Legal regulations)

According to the theory of effectiveness, legal regulations governing land banks must be able to identify and describe objectives, institutional forms, and mechanisms for administering land banks in a clear and detailed manner. The clarity of legal regulations will have significant implications for the effectiveness of land banks in managing land in Indonesia. There are at least three aspects that must be regulated in legal regulations governing land banks, including the type of land bank, parties involved in the land bank, and the mechanism for administering a land bank.

##### a. Aspects of Land Bank Types

The type of land bank that is formed is closely related to the source of financing that will be used for the operation of the land bank. The effectiveness of the administration of a land bank is highly dependent on stable and sustainable sources of funds. Learning from land bank financing in the Netherlands, which comes entirely from the government and in the United States, which applies a funding collaboration model between private banks and government grants, Indonesia can follow the financing scheme that has been implemented in the Netherlands, with the source of land bank operational financing coming entirely from the government budget. .

The most appropriate financing scheme for land banks, as has been implemented in the Netherlands, comes from government allocations that can be sourced from the APBN, APBD, or grants. The implementation of a land bank can be financed with APBN or APBD funds, by first submitting the budget required for the implementation of a land bank to the Government, both central and regional. So that the Government, both central and regional, can allocate funds from the APBN and APBD for the implementation of land bank activities every year.

##### b. Aspects of the Parties Involved in the Land Bank

As mentioned in the previous discussion regarding the types of land banks, the government itself is the most appropriate land bank actor. Then it automatically requires cooperation between related government agencies. The institutional structure of a land bank may consist of several delegations from related institutions, which are determined in a separate rule which becomes the basis for determining who the board of directors is. The institutional structure of a land bank can be regulated separately through a Presidential Decree, bearing in mind that the institutional structure can change at any time based on the achievements.

### c. Aspects of the Land Bank Implementation Mechanism

In general, the implementation of a public land bank is carried out through several successive stages consisting of the provision stage, followed by the maturity stage and ending with the land distribution stage. At the stage of land provision, land resources that can be controlled or owned by the land bank can be obtained through the mechanism of buying and selling, bartering and auctions, and does not rule out the possibility through a grant mechanism. Acquisition of land through the mechanism of buying and selling, bartering, or grants must involve an official who has the authority to do so, namely the Land Deed Making Officer (PPAT). Meanwhile, the acquisition of land through an auction mechanism must involve an Auction Officer from the Office of State Assets and Auction Services (KPKNL).<sup>18</sup>

The form of the seriousness of the Government of Indonesia in realizing the effectiveness of land banks in implementing land management in Indonesia is the establishment of Legislation concerning Land Banks. The government issued Government Regulation Number 64 of 2021 concerning the Land Bank Agency that a Land Bank Agency has been formed which is an Indonesian Legal Entity, which is then based on the provisions of Article 26, Article 32, Article 33, Article 34, Article 44 paragraph (2), and Article 48 paragraph (2) Government Regulation Number 64 of 2021 concerning Land Bank Agencies, as implementation of the provisions of Article 134 of Act No. 11 of 2020 concerning Job Creation (UUCK). After issuing these regulations.

## 2. Institutional Land Bank

The organizer of the land bank should be in the form of a public legal entity, this is because the land bank has great authority and responsibility which concerns the interests of the community at large so that the government must play an active role in the implementation of the land bank. This land bank can carry out the duties of BPN, including:

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<sup>18</sup>Fatimah Al-Zahra., Op.Cit., p.43

- a. Coordinating policies and planning in the land sector by preparing plans for the supply, allocation, use and maintenance of land through land use administration in level II regions.
  - b. Carry out supervision and control of land ownership by conducting monitoring and evaluation of land use and utilization as well as in the context of land redistribution including land consolidation.
  - c. Conducting land management in the field of land information.
3. Land Bank Financing

Bank financing land. The problem of land bank financing is very important, especially at the implementation stage. The financing of a land bank depends on many factors such as the structure of the land bank, the objectives of the land bank, the scale of operations, etc. Thus the land bank is highly dependent on the existence of a stable and sustainable source of funds.

#### 4. Other factors.

Other factors that are also determining factors for the success of land banks such as political will from the government, especially in making regulations, regional spatial plans which are guidelines in planning activities related to land allocation so that it can be utilized as much as possible without damaging the environment, human resources, no less important for the success of the land bank, the human resources who play a role in the land bank must have qualified and professional expertise so that the implementation of the land bank is efficient.<sup>19</sup>

Based on the theory of effectiveness, with the support of legal instruments in the form of laws that specifically regulate land banks above, the implementation of land banks in land management in Indonesia will run according to their functions effectively and have great efficiency. This condition will automatically increase the welfare of each individual and carry out the mandate of the constitution to realize the maximum prosperity of the Indonesian people.

The effectiveness of implementing the concept of a land bank is highly dependent on regulations governing its objectives, institutional forms and implementation mechanisms. Therefore, regulations or laws and regulations regarding land banks must be able to identify the objectives, institutional forms, and mechanisms for administering land banks in a clear and detailed manner. Regulatory clarity will have significant implications for the effectiveness of the implementation of the land bank concept, which will automatically determine the success of implementing the land bank concept in Indonesia.<sup>20</sup>

The land bank can be an efficient and effective separate instrument to carry out various land policies and support area development and control land acquisition in a fair manner in carrying out development. The Land Bank will address several

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<sup>19</sup>Hairani Mochtar, Op.Cit., p.134

<sup>20</sup>Fatimah Al-Zahra., Op.Cit., p.36

complex issues related to the provision of land that often occur, such as providing government land stocks for various development purposes in the future, saving APBN/APBD funds, reducing disputes in the land acquisition process, and reducing the negative impacts of land liberalization, including limiting space for speculators and land mafia.<sup>21</sup>

#### **4. Conclusion**

The role and function of the land bank in land management in Indonesia, namely the land bank plays an important role in developing and increasing land or land use capacity. The procedure used by the Land Bank is the activity of controlling the market and stabilizing land owned by the local market. Meanwhile, the function of a land bank is contained in Article 3 Paragraph (1) Government Regulation Number 64 of 2021 concerning Land Bank, that the function of a land bank is to carry out planning, acquisition, procurement, management, utilization and distribution of land. Based on the concept of legal certainty theory, legal certainty intends to provide certainty for the availability of land in the implementation of a land bank and to provide guarantees to entitled parties to obtain their rights properly. The certainty in question is in the form of certainty in the implementation of a land bank for the purpose of community welfare and public interest. The effectiveness of the Land Bank in the Implementation of Land Management in Indonesia depends on whether or not the regulations that govern it operate. A land bank can be said to be effective if it can guarantee legal certainty and prosperity for the community. Whether or not land banks are effective in land management in Indonesia is determined by several factors, including regulations (legal regulations), land bank institutions, land bank financing and other factors. Regulations that must be enforced in realizing the effectiveness of land banks are Government Regulation Number 64 of 2021 concerning Land Bank Agencies.

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<sup>21</sup>Nila Erdiana, Budi Santoso, Mujiono, Existence of Land Banks Related to Land Procurement Based on the Job Creation Law, *Notary Journal*, Volume 14 Number 2 of 2021, p.935

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