

HUMAN BASIC NEED OF HOUSING SUPPORTED BY LAND BANK SISTEM

Martin Roestamy¹, Abraham Yazdi Martin²

¹Dr., Post-graduate School of Law, Djuanda University Bogor, martin.roestamy@unida.ac.id

²Mr., Ph.D Student of Law, UNS Surakarta, Research Fellow in Djuanda University Bogor, originalbram@yahoo.com

Abstract

Background - The idea of establishing a land bank as an alternative provision of land for the public interest includes construction of roads and bridges, irrigation, other public facilities and infrastructure such as markets not initially for housing. Some studies of land banks have been directed to the provision of land by the government as an elaboration of the mandate of the agrarian constitution, the right to control the country where the state regulates land use, use, supply and maintenance. Due to the higher land prices, even the land has been used as a business commodity, investment and even speculation has created difficulties for the people to get access to land in urban areas in particular, due to the increase in land prices and limited land ownership by the government has resulted in barriers to development for the development of housing for low-income people, because of the limited ability of the people to buy land for housing development. Although on the other hand the government launched the provision of one million houses in one year. One of the steps taken is the development of rusunami (private flats) and rusunawa (rental flats), but still there are limitations on the availability of land. The development of the concept of land bank is an alternative where the provision of land for housing development becomes the main function of the land bank, in addition to other tasks. The research question is how is the concept of developing land bank institutions to provide land in order to build affordable housing for low-income people with a land legal system approach in Indonesia? This study aims to analyze and find solutions to the availability of land for the benefit of building people's houses from aspects of land tenure, legal certainty, and land use for the public interest. From this research, it is expected to generate thoughts about the development of land bank institutions that function as land suppliers for affordable housing development for low-income people. The research method uses a normative juridical approach that sees secondary legal material as a research basis. Primary legal materials are used to look deeper into the authority of the State Control Rights as a way to provide access to land provision for affordable housing development, among others by conducting land redistribution or land consolidation. Primary data can also be used as additional information to be able to describe the solution of the direction of research by comparing the number of land holdings, house prices, and the ratio of the ratio of people's income to the availability of affordable housing. The findings of this study are the down streaming of previous research for 8 years to open up access for low-income people to have affordable housing without having to buy land with the development of land bank institutions. Housing ownership without buying land is given proof of building ownership rights certificate (SKBG) which is a follow-up research including certification models, cadastral models, and institutional cadastral buildings in the building legal system as the development of land law. The ownership of buildings and development of building laws that are not yet well known because they should have independence.

Keywords: land bank, land supply, control right of state, affordable house.

1 BACKGROUND

It was stated in the Constitution of Indonesia 1945 that the land overlay is the nation's right and is used as much as possible for the prosperity of the people, in fact in Indonesia today the land is controlled by an oligopoly group or cartel. As a result, people experience difficulties in getting land to build affordable houses with a high backlog of 15 million while 2017 is 14.6 million, because land prices are very expensive due to oligopoly practices. It is the duty of the government to open access with the program to build a million houses and one thousand towers since the SBY regime 15 years ago, but the achievement is very low, even if the housing development has reached 80% in the past two years, the absorption rate does not exceed 60%, because house prices are expensive. Because people have to give their homes and expensive land. So affordable housing programs can be said failed. The Question to ask then, what is the obstacle to the failure of providing affordable housing for the people? What about land ownership by the cartel which is the main obstacle to affordable housing? Can land banks be used as an alternative provision of land to accelerate a million-land program?

Procurement of land for housing and settlement development cannot be separated from classical problems as mentioned above. Lots of land acquisition for the construction of housing, the dispute has been raised from preparation to execution. There are also many crime scenes are up to the field of the court although the certification of land rights has been issued by BPN to on behalf of developers, even the end-user (buyer). Which happens to private developers and National Housing Program (PERUMNAS), whose work to provide low-income housing, including subsidized apartment, not in spite of the dispute.

The above phenomenon of which it is a fact that advanced and even became the main issue both for public and law officers. The question is, how is the root cause of the dispute over land acquisition? Seems to have become difficult to disentangle the tangled threads, because it involves parties and sequences. From various studies conducted by the researcher with the University Djuanda and the Notary Office and the Land Official Committee (PPAT), the problem of land acquisition can be identified from several factors as follows:

1. The development of democratization in Indonesia, such as respect for human rights, local wisdom, the principle of Equality Before the Law, as if triggered euphoria, the paradigm of "important fight", not to mention the provocateurs land classified as speculators, NGOs, lands' agencies, hooligans, brokers; sometimes make the land acquisition process became chaotic, and deadlocks. The article of 2 of 2012 on Land Acquisition, especially regarding land acquisition for public purposes, more specifically the acquisition of lands for the housing for Low-Income People (LIP).
2. The land has become a commodity of trade and investment, as a consequence of land prices soar, and keep the land from the people, so that there is a saying: "*The land is getting higher in the sky.*" In particular, the procurement of land for housing and settlement for the LIP, a direct impact on house prices, for urban areas may be said of the lower class, or are poor, almost say cannot afford housing footprint, while the construction of flats is not irrespective of the problems of land acquisition, although the new paradigm suggests that home ownership separate from the land as stipulated in the enactment Law of housing (see Articles no. 46, 47, 48 and 49)
3. The existence of negative style principle of land registration that makes land registration has no legal certainty, even if the right holder has the strongest legal position, but the principle of respect for the rights of the old is also a problem.

From some problems and problems of land acquisition as mentioned above, the many people who missed the presence of the institutions that can provide a way out for the acquisition of lands for the construction of infrastructure, housing and settlements, including investment.

The method used in this study is normative juridical with the type of qualitative research and explorative approach by examining things that affect the occurrence of something and to map something object in a relatively deep way. So that the results of this study are expected to provide a way out of the legal vacuum, which is a problem in this study. Data collection was sought through data collection techniques in-depth interviews and Focus Group Discussion (FGD). The informants of this research are low-income people, housing developers and regional governments in the regions mentioned above. The data obtained is interpreted and constructed based on the subjective perspective of the Research Team. Emphasis on the depiction, understanding and meaning of various phenomena about the legal system for housing ownership for the LIP. Then reflecting on the data obtained to map the community paradigm and various stakeholders and stakeholders for the construction of affordable housing.

2 LITERATURE REVIEW

2.1 Horizontal perspective separation

Mariam Darus Badruzaman (1982) gives an example of the use of horizontal separation principle in Basic Agrarian Law Act (UUPA) as follow: "*UUPA does not embrace an attachment principle but horizontal separation had been taken from the Customary Law. The sale and purchase of rights over a land does not automatically include buildings and plants on it. If building and plants are to be included, it has to be clearly stated in the deed of sale and purchase.*"

Ter Haar (1981), a student of Van Vollenhoven, stated that rights over a house and over planted plants are basically separated from rights over land on where those goods exist. Therefore, horizontal separation principle can be perceived as a doctrine that separates the ownership of land from the ownership of goods attached to it. This includes a land transaction or land sale and purchase. As a matter of fact, there are also some problems in the application of horizontal separation principle in customary law. In customary law, the application of this principle is restricted by certain things.

Iman Sudiayat (1978) inventories these restrictions as follows:

1. Transaction of yard usually includes house and plants. This makes the house and plants, in addition to the yard, as the object of the sale and purchase. Besides, people may also trade the house and plants separated from the land.
2. Sometimes, rights over plants (and over the house) come together with rights over a piece of land related to the plants and house.
3. Rights over land are not separated from rights over a concrete house which is not movable without any damage (different from bamboo or wooden house). With these restrictions, the following uncertainties might occur.
4. Whether a house should be considered as a concrete house or not.
5. How big is the size of land that should be considered as a house yard; yet all of these do not nullify the point.
6. In a relation between rights over a house and plants and rights over land in a royal atmosphere, there is an unusual custom that rights over land is called the King's right and the land is called a King's land (in Javanese: *Keagungan Dalem*). Yet, individual rights over land, in fact, is recognized as such, and they do it by saying it as rights over house and plants. The authority of the government to take actions and burden the restrictions of rights is done in such a way as if it is based on the King's rights over land, yet virtually is done based on the King's power to govern.

It can be seen from the above explanation that as development keep occurring in the society, the horizontal separation principle is not strictly applied as shown by the recognition that a concrete house is considered different from a bamboo or wooden house that can be removed away. However, this does not nullify the principle that land and other goods on it are separated. The application of horizontal separation principle at present time, especially in Indonesia, is regulated in and refers to UUPA which is still enacted. However, in practice, this is not totally applied as articles about vertical attachment principle in Indonesian Civil Code are still embraced even though juridical they should be repealed as they are already differently regulated in UUPA. However, if UUPA should be the one to be referred to, the application of horizontal separation principle should be applied consistently. This is really important as there is an urgent need to fulfill. (Roestamy, 2015)

2.2 Housing

A house has to be built to fulfill people need to be seen from numerous basic factors related to human needs. One of the most basic human needs is physiological need, including shelter. (Martin & Loomis, 2012) The shelter should be the one that gives safety and comfort and bring social benefits for the family as well as the neighborhood. Giving safety and comfort means that the house should be able to be used to protect its dwellers from various kinds of dangers including the collapse of the house itself. Therefore, the house should be built as a strong and durable structure as a strong and durable house gives its dwellers a safe and comfortable feeling. Therefore, there are some criteria of a decent house.

Technically, a shelter or a house has to meet a standard quality as a decent house. In general, Low-Income People (LIP) want to have a house building which is technically decent or meet the following criteria. It has to be a simple house with the simple bathroom, an open but roofed room, and a bathroom facility. The type of

the house should be 21/60, 36/72 type, or erected on 100M² of land. The building should have a strong construction to protect the dweller from the danger of building collapse. The house building should be constructed by using red bricks. In short, a strong house means that the house should be built with a strong construction so that it can protect the dwellers from the danger of building collapse and provide comfort to the dwellers during their stay in the house.

The house has to be durable and strong. Durability means that the house should be long lasting. For durability, the materials used should meet the quality standards and the construction work is done following the appropriate procedures. Besides, building maintenance and control have to be done on a regular basis especially on parts that need replacement or rejuvenation. There are different orientations between respondents in Bogor City and Bogor Regency and those in Depok City and North Jakarta City. In Bogor City and Bogor Regency, respondents tended to choose durable and strong buildings although they were expensive. Respondents in Depok City and North Jakarta City, on the contrary, preferred buildings which were durable, strong, and affordable. This difference might be caused by different prices of buildings in those areas. This difference in prices was caused by the difference in land value. For example, in an advertisement, an office building and 450 M² of land in Penjaringan Jakarta Utara (Pantai Indah Kapuk) was sold for Rp144,000,000,000 or Rp320,000,000 per M². In Kelapa Gading, North Jakarta, however, a building of 25,000 M² was sold for Rp16,250,000,000 which was equal to Rp650,000 per M² only. Another 540 M² of land in Kelapa Gading was sold for Rp7,500,000,000 or Rp13,888,889 per M². These different prices were subject to the differences in building quality and location. Based on the information from Urbanindo (www.urbanindo.com/) as per 14 May 2014, the price for all properties was Rp24,395,458 per M², for a house only Rp28,250,413 per M², and for land only Rp17,193,170 per M². Compared to North Jakarta City, Depok City had cheaper prices of land and house. In Depok City, a house-sized 75 M² with a land sized 160 M² was sold for Rp475,000,000 which was equal to Rp2,968,750 per M². Another house sized 1126 M² with a land sized 2860 M² was advertised for sale for Rp10 billion or equal to Rp3,546,099 per M². On average, based on the information from Urbanindo (www.urbanindo.com) as per 14 May 2014, the price for all properties was Rp5,212,213 per M², for a house only Rp5,410,326 per M², and for land only Rp1,884,395 per M². In Bogor Regency, a house-sized 48 M² with a land sized 84 M² was advertised for sale for Rp385,000,000 or equal to Rp5,000,000 per M². Based on the information from Urbanindo (www.urbanindo.com) as per 14 May 2014, the price for all properties was Rp4,157,217 per M², for house only Rp5,013,481 per m², and for land only Rp1,265,301 per M². In Bogor City, a house-sized 21 M² with a land sized 50 M² was advertised for sale for Rp140,000,000 or equal to Rp3,000,000 per M². Based on the information from Urbanindo (www.urbanindo.com) as per 14 May 2014, the price for all properties was Rp4,157,217 per M², for house only Rp5,013,481 per M², and for land only Rp1,265,301 per M². This showed that there was no significant difference in prices of land and house in Bogor City and Bogor Regency.

Another criterion is that a house should look beautiful and comfortable to reside. Beauty is an element that can add more values to a house so that the dwellers feel proud and have higher self-esteem by living in it. This is usually taken care of by people who can afford a house whose condition is higher than a minimum standard for a shelter. To make a beautiful house, the proportion between structure and room organization has to be carefully considered. Sanitation and cleanliness must be the most important element. Health element is important to consider as health is also a human basic need. Therefore, a building plan has to consider the cleanliness and health of its environment. Attention has to be given to the following factors: sewerage (sanitation), rubbish disposal, lighting, aeration, and room temperature and humidity.

For LIP, the expected housing should have at least 3 closed rooms for a bedroom, a restroom, and a multifunction room that can function as a living room, a family room, or even a dining room and kitchen. As for the Minimum Space Standards, it can be calculated based on space requirement for a person to do basic activities inside the house. These activities include sleep, eat, work, sit, take a bath, defecate and urinate, wash, cook, etc. Studies found that a minimum space requirement is 9 M² per person for a house with the average ceiling height of 2.80 M².

Simply healthy housing allows its dwellers to live a healthy life and do daily activities in a decent way. Minimum room requirement for simple, healthy housing is determined by considering the following factors: space requirement per person, space requirement per Head of Household (HH), building space per HH, land requirement per building unit, health and comfort need, house lighting requirement, and sunlight access as a day natural lighting. Standards of decent housing according to the UN Universal Declaration of Human Rights in UNESCAP (2008) are:

1. Basic service and infrastructure: A dwelling have to have facilities to provide health, safety, comfort, and supporting facilities for clean water, an energy source for cooking, heating, lighting, sanitation, garbage disposal, storing, and emergency condition.

2. **Affordability:** A decent dwelling should be affordable so that every household can have it without reducing its ability to cater for the need.
3. **Livable:** A dwelling has to be able to protect its dwellers from cold, heat, rain, or other health threats and to provide enough space for the dwellers.
4. **Accessibility:** Everyone including marginalized people has the right to have a decent house. Access should be given to marginalized people to a dwelling place and this access should prioritize their rights for land allocation and land use plan.
5. **Location:** Housing should be located in a place with access to working place, health service, educational service, child care center, and other social facilities. This requirement applies in both urban and rural areas. It should also be far from polluted area or source of pollution.
6. **Cultural reflection:** A housing area should be built in such a way that reflect the culture embraced by the dwellers but at the same time it should also adopt the use of modern facilities.

Compared to the requirements set by UN, the kind of housing expected by LIP mentioned above is very modest. This modest expectation might reflect the problems faced by them. Poverty is the main problem faced by LIP that makes most LIP live in indecent housing. So complicated is their poverty problem that they do not even dare to dream of having a decent house. (Roestamy, 2015)

3 RESEARCH METHOD

Methodology explains about what research method used, how the data collected and proceed quantitatively or qualitatively to get more explanation in the result and discussion. The research method used is normative and substantive juridical, by taking primary data using socio-juridical, then processed using secondary legal materials by discussing in the Focus Group Discussion (FGD) activities and pooling the results of research to find substantive root problems so that research have an outcome or novelty that is beneficial to stakeholders.

4 RESULTS

4.1 Backlog and Housing

Housing is considered as a basic right for Indonesia's citizen as stated in UUD 1945: "every person has the right to pursue happiness, to dwell and obtain a good and healthy environment and the right to health services". In line with Indonesia's Law, as agreed by the international community and stated in the Global Strategy for Shelter in the Year 2000, it is the responsibility of all governments to provide adequate and affordable shelter for all. This commitment was further strengthened by the Habitat II Conference in Istanbul, which declared that the right to housing is part of human rights. In Indonesia and most developing countries, providing adequate and affordable housing for millions of the urban poor is one of the most difficult challenges. It is predicted that in 2004, the housing backlog reached 5.8 million units and increased to 7.4 million units in 2009 (Kemenpera, 2009). Every year more than one million housing units should be built to meet Indonesia's housing demand. (Iriansyah, 2011; Setioko & Pandelaki, 2015)

The great majority of households occupy a non-attached dwelling unit and the total stock is approximately 54 million housing units of which approximately 24 million are in urban areas. Although the overall quality of the housing stock appears to be fairly good (using the household's own assessments the BPS Housing and Settlement Survey of 2004 indicate that 95 percent of the housing stock is in good to moderate condition), there are still over 2.5 million units that require urgent replacement. The State Ministry of Housing estimates a backlog of 6 million and a requirement for new housing of more than 1 million per year if the backlog has to be removed by 2020. This is the official policy goal and an enormous challenge for the government. There is a great awareness that reaching this goal will require a major expansion of the micro and mortgage housing finance systems. (Hoek-smit, 2006) Moreover, the backlog on 2014 recently it reaches 15 million. (Roestamy, 2015)

From that facts, it's found that the great majority of households occupy a non-attached dwelling unit and the total stock is approximately 54 million housing units of which approximately 24 million are in urban areas. Although the overall quality of the housing stock appears to be fairly good (using the household's own assessments the BPS Housing and Settlement Survey of 2004 indicate that 95 percent of the housing stock is in good to moderate condition), there are still over 2.5 million units that require urgent replacement.

4.2 Land Bank and Land tenure

According to Law No. 5 of 1960 (known as UUPA) of article 2, paragraph (1) item "a" is mentioned: States regulate and organize allocation, use, inventory, and maintenance of earth, water, and space. Part of the

right to control the country, has authorized the state, especially the President of the Republic of Indonesia through the BPN, giving delegated to local governments regarding land matters, then more specifically on land acquisition as stipulated in Law No. 2 of 2012 on Land Procurement which in article 4 paragraph (1) states that the government and/or local governments guarantee the availability of land for public purposes. And in chapter 6 jo. Article 11 stated that: Procurement of land for public interest held by the central government or local governments. Or state-owned institutions may also request the procurement of land for public purposes. What is meant by the Public Interest is the interest of the nation, the state and society should be realized by the government and used for the greatest prosperity of the people which include:

1. Defense and national security;
2. Public roads, highways, tunnels, railways, railway stations, and railway operation facilities;
3. Reservoir, dam, irrigation, drinking water supply, drainage and sanitation, and other buildings;
4. Ports, airports, and terminals;
5. Infrastructure oil, gas, and geothermal;
6. Generation, transmission, substations, network, and power distribution;
7. The Government of telecommunications and information networks;
8. Place waste disposal and treatment;
9. Hospital/regional government;
10. The public safety facilities;
11. The public cemetery/regional government;
12. Social facilities, public facilities, and public green open space;
13. nature reserve and cultural heritage;
14. Office of Government/Local Government/village;
15. Structuring urban slums and/or consolidation of land, and housing for low-income people with the status of the lease;
16. Infrastructure or school education/regional government;
17. Infrastructure Sports/regional government; and
18. Common Market and a common parking lot. (As stipulated in Article 10 of the Law No. 2 of 2012)

The process of land acquisition shall include the following phases: planning, preparation, execution and delivery of results (execution). In the process, as stipulated in article 9, paragraph (2) The provision of land for public purposes conducted under the principles of balance (also considered the public interest) as well as the provision of adequate compensation and fair. Understanding decent and fair intended to do with the mechanism of transfer of rights or a waiver. As for the interests of residential areas and settlements for LIP carried by also considering the provisions set forth in Article 105, 106, and 107 of Law No. 2 of 2012 regarding the provision of land set include: Procedures for the provision of land by way of granting rights, land consolidation, transfer of rights, waiver of land by the owner, the use of state property, wastelands. Especially with regard to the transfer of rights or compensation or consolidation of land is done with regard to the rights holders of the land on either already registered or unregistered (unregistered) including land directly controlled by the state or indigenous lands. Land acquisition is not registered to receive recognition from this law, in the United States in land acquisition are also recognized against unregistered land.

The Government handles three branches of functions related to the use of government expenditure (Musgrave and Peacock, 1958, Stiglitz, 1999), namely:

1. The function of macroeconomic stabilization concerning the level of employment opportunities and price stability;
2. Income redistribution function, concerning welfare equalization in the form of subsidies;
3. The function of resource allocation, concerning the use and management of resources related to the livelihood of many people by the government. The resource allocation function is the basis for providing land for development in the public interest.

The Constitution mandates that *"the earth, water and natural resources contained therein are controlled by*

the state for the greatest prosperity of the people". Furthermore, this mandate was translated into Law Number 5 of 1960 concerning Agrarian Principles (UUPA 1960), especially in article 2 paragraph (1) *the authority of the state concerning land includes (a) regulating the supply, use, allotment and maintenance of the earth, water and space; etc.*

Regarding land tenure and ownership aspects, its activities include:

1. Protection and giving equal opportunities for every Indonesian citizen to own land as a source of life in a fair manner;
2. Prevention of excessive land control;
3. Realizing equitable improvement in the standard of living of the economically disadvantaged;
4. Realize the equitable distribution of ownership and land use.

Land Bank is an institution that provides land for development purposes, as well as acting as the controller of land prices. Land Bank is a Business Entity that is not solely seeking profit but is more of a land manager in terms of controlling land prices and supporting the implementation of the Spatial Plan.

The Land Bank supports the government's task in managing, supplying and controlling land prices. The Land Bank allows the government to own land long before it is needed. The benefit is that land prices are cheap and possible as a tool to influence the development pattern of an area (UNESCAP: 1993)

The Land Bank has at least several main activities, namely:

1. Buying land,
2. Finalizing the land both physically and administratively;
3. Sell land lots ready to build to those in need;
4. Administer the sale and purchase of land in accordance with the provisions Etc.

The function of the Land Bank includes:

1. Land keeper; in the form of inventory and development of land database, administration and land information system;
2. Land warrantee; in the form of securing the provision, allotment, land use in accordance with the spatial plan and ensuring the efficiency of the land market;
3. Land purchaser; in the form of control of land ownership and use in accordance with applicable regulations;
4. Land valuers; in the form of supporting standard, fair and mandatory land values for various purposes;
5. Land distributor; in the form of ensuring fair and equitable distribution of land based on the unity of land values, securing land planning, supply and distribution;
6. Land manager; in the form of land management, analyzing, determining strategies and managing implementation related to land.

Thurston (2004) emphasizes the objectives of the Land Bank including (a) managing urban growth; (b) ensure the availability of land for certain purposes; and (c) taking capital gains due to an increase in land value. Meanwhile, Flechner (1974) describes the objectives of Land Banks can include:

1. Forming regional growth;
2. Arranging the development of the city;
3. Benefit from increasing the value of land investment;
4. Perfecting the land market so as to reduce land speculation;
5. Obtaining land for public use;
6. Reduce the cost of public services as a result of planned development;
7. Allow to provide housing subsidies for low-income people;
8. Maintaining environmental quality (Limbong, 2013).

Cleveland State University (2005) shows that there are 8 (eight) factors that support the success of Land

Bank practices in the United States, namely:

1. Clear and detailed goals and objectives;
2. The coordination of the Land Bank and local government including other stakeholders becomes a necessity in order to create efficiency in the practice of the Land Bank;
3. Acceleration of legal processes in the purchase of land is very necessary;
4. Land Bank independence is needed in the land distribution process;
5. The availability of an integrated management information system is a must;
6. Land Bank objectives should be internalized in the government's strategic plan;
7. Procedures should be efficient;
8. Funding should also be efficient.

Land Banks in the United States are carried out by the regional government, which includes the process of buying and controlling land by the local government. The reason for the regional government in establishing the Land Bank is to protect green open areas and agricultural areas. The local government pays the cost of establishing a Land Bank by renting out the land it owns or by reselling it with very strict requirements that guarantee the non-conversion of land.

In the Netherlands, the Land Bank began to be implemented in 1896 in the city of Amsterdam to offset the rapid growth of the city. In 1971, around 83 percent offered for urban development were obtained from the Land Bank. About 31 percent are leased for private interests. The Land Bank is fully responsible for almost all cities in the provision of land (Limbong, 2013). The practice of land banks in the Netherlands is more inclined to special land bank activities (Mutia, 2004).

In Stockholm, Sweden, the Land Bank only began in 1904 through the establishment of a property company that manages the purchase of land. In 1979, about 70 percent of land in Sweden had become public property.

France was a little late in implementing the Land Bank, only in 1958 through the establishment of a national-level Land Bank for housing construction. But the Land Bank was less successful because of the lack of political and financial commitment (Strong, 1979 in Limbong, 2013).

China, Land Bank and began in the 1990s. The government established the Land Use Right (LUR), and the Land Bank practice has now expanded to reach more than 1,600 cities.

The Japanese government determines a policy that people who buy land and then resell the land in less than 10 years since the land was purchased, then categorized as land speculation activities, so that they are subject to very high taxes (Mutia, 2004)

Guatemala, 'the government provides tax relief to every land owner who sells his land to the state.

Land Bank practices abroad have become a means of controlling urban growth in the form of controlling urban growth patterns and regulating land prices.

In Indonesia, the case of land that is directly controlled by the state or unregistered land, land rights granted after the offender housing and settlement development as the applicant's rights to land finalize compensation for the whole community cultivated by consensus. if there is no agreement on compensation, the settlement is conducted in accordance with the provisions of the legislation. In this case, the process of transfer of rights or compensation referred to, pay attention to the principles of private law, including the principle of legal certainty to the meaning of the terms of the agreement as set out in Article 1320 of the Civil Code and such article, remains a benchmark.

By law, in accordance with the authority land acquisition process always involves the role of the Notary/PPAT in particular in the implementation of the compensation, transfer and discharge rights. As an official public may be authorized by law to make the deed as set in the Civil Code, in the role of the Notary should be fair or impartial, it is guaranteed by the Act. In the process of restitution of land and the position of the notary must be in the center position and is free of pressure from the community, government, owners, stakeholders, NGOs or from protests either.

In practical, although the notary is responsible only for the formal correctness, in the practice of land acquisition either transition or compensation, is also performed by Sociological Approaches to the law, such as customary law see the structure or the rights of inheritance and tradition and customs, behaviors, and

local wisdom, this is done to avoid the overlapping, duplication and safeguard the rights for the weak side, which can only be in a position that is not free. In line with the dignity of the notary thorough, impartial and independent; in accordance with the provisions of the law.

Not infrequently the issue of inheritance to be one of the crucial problems during the process of land acquisition, sometimes the heirs did not recognize other heirs or inheritance disputes. Perhaps due to the heirs see the magnitude of the nominal or because of the influence of third parties on the land acquisition process to be freed. Or it could be because of the legal culture of society regarding awareness of land registration, given the significant costs and require considerable time.

Here, a Notary/PPAT should be viewed not just law in its civil alone, but also respect for the customary law and sociology of law including the Anthropology of law such as the habit of shifting cultivation, in the case of land acquisition for plantations, which should see the history of the land by requesting information from officials either from the local village or sub-district officials. In this case, the notary precision is important.

Alternatively, it could also be done through a waiver of land acquisition committee, although it is quite possible to land acquisition committee will be under pressure from the local community, or other parties interested or even unauthorized. That is why no wonder that there are parties such as the head or local officials, especially the village chief who selected people who do not get a salary from the government as well as civil servants in general who come to enliven the process of transition or a waiver and indemnity in question. For example, in the case of Land Acquisition for Toll Road Bogor, Ciawi and Sukabumi (BOCIMI) cannot be separated from the conflict of interests, so that its implementation dragged on for nine years cannot be realized. From research conducted by the Center for Study of Property University Djuanda Bogor, it was found that the land acquisition project is loaded with the interests of sharing parties, including land speculators, farmers tie the titling absence including officers in the village or sub-district as described above.

Not infrequently a dispute even after the completion of land registration, they raised concerns or land disputes, due style land registration which adheres style negative, where every person has the right to contest land rights held by others, even if already registered, this means each land that is owned by someone and already own a certificate of proof of the right, can be sued by others who feel they have the right, even though that right is not listed. As a result of style these negatives, there are cases in the city of Bogor, where a descendant of the deceased Asmara, sued for nearly half of the city of Bogor, including the office of Mayor of Bogor, which is claimed as private land belonging to the descendants of the deceased Asmara (Upgrading the Rights on Indigenous Lands, BPN Bogor City, 2009).

Another case is quite popular is the case Meruya Potanigra in West Jakarta, where the original owner sued and won the case, although each of the lots already certificates as proof of land rights. The case has shocked the land registration system in Jakarta. (Tisna Ayu, Oktaviany; Ana, Silviana; Sri, 2013)

The issue of registration of land which has a negative style actually already been done by PP-IPPAT study period 2000-2004 which provides recommendations to the BPN to consider imposing positive style for land ownership rights that have been registered for over 15 years, with regard to the principles *verjaring aquisitive* for example, but until now negative style is still valid, and this situation must be a concerned issue due to all researchers of Land Law.

It must be remembered that negative style treatment does provide an opportunity to obtain legal certainty which is essential but also jeopardize some of the parties have the right to just arbitrarily (in most cases) can be sued by the other parties are not responsible. If this is maintained forever, then the owner of the certificate uncomfortable because it is not likely one day be surpassed by other evidence, while the process for obtaining the certificate is not an easy affair. In this case, also the accuracy required officers involved in the registration of land, from the village head/village heads, district and local land office.

Furthermore, who is has the right to manage the state granted to certain parties and to manage the land, also still a legal issue. Legal certainty is also doubtful with a limited time period of 20 or 30 years. if the investment is made by foreigners or people that period disrupts investments, because if the land rights over management rights expire, especially for the industrial zone, the employer or the user rights must reapply and pay the price of land in accordance with the price NJOP times the area of land at a price the same as the original purchase.

Thus, the assumption people who have already purchased land at the beginning of the time management right ends it can be considered no longer exists and an abundance of foreign companies closed because of management rights only apply a maximum of 30 years. Therefore, the future of land rights that exist in the BAL should be re-examined, especially in the time period should be extended, a minimum of whether to use rights may be granted up to HGB 50 years old and 75-year concession which is input to the formulation of

Law land.

If we look at the problem of land acquisition laws against practices originating from the acquisition of land above, it is clear there are many legal issues that make an impression or a direct impact to the legal uncertainty of land acquisition. There is an impression, as the executor of government land procurement for public interest hesitant step for the paths that are final, which gives legal certainty to partner governments or the government itself in the process of land acquisition. No wonder if the government is precisely the demands of land rights holders or heirs and those who feel they have a part of the injured party or parties who are not satisfied with the land acquisition. Not only that, even the land that has been completed (done) even certified, but it still does not escape than the dispute. If combined with investments, this situation makes investors count again to continue its investment in Indonesia. The issue of land is one indicator of the weak competitiveness of Indonesia in promoting investment (of course, in addition to labor and taxation issues). But the matter of land acquisition should be seen more comprehensive, simplified so that there is no legal certainty.

Problems of land acquisition by using a Land Bank in Indonesia, once initiated by Supraba Sekarwati Wijayani (2003) in a dissertation that designs recommendation Land Bank in order to build sustainable housing that focuses on the concept of a state of law as the foundation for building Land Bank as well as the development rights of control state with the Model Development Area Pulogadung in industries such as Jakarta or Rungkut in Surabaya, which can be used as early embryonic stages of provision of land.

For residential areas and settlements, especially the LIP, according to the researcher, the delivery model LISIBA and KASIBA conducted by National Company (Perum) Housing in case of Driyorejo Gresik can be used as the initial model, if land acquisition perspective associated with the need for an institution, whether it's Land Bank or other institutions in the process of land acquisition for the purposes of housing and settlement development for the LIP. Initially, the cooperation carried out by the companies under the Ministry of Public Works is a group of "work". Then, in accordance with the provisions in force at the time, the program of LISIBA and KASIBA with KSP pattern, which has been designated a third party as a housing developer and settlement development, including settlement for LIP. Then in another project, National Housing Program also working with several developers in housing and settlement development to Cengkareng, so Cengkareng thus grew to what it is today. Cengkareng pattern with the development program through the procurement LISIBA KTM. The model was made by Housing either project Gresik or project Cengkareng, can be used as a reference for the beginning or the embryo of Land Bank (Land Banking), it is not possible region by leveraging regional assets or abandoned land in the area, can develop models for land acquisition as done by region or model National Housing Program. No wonder if the government can free National Housing Program of an agent of economic development, with a load must profit to develop an activity as an agent of the housing development without having to charge him profit motive, can only with government policy, specifically to the development of housing and settlement for the LIP, either owned or leased or possibly also the provision of land for construction of residential property that apart from the land, as stipulated in articles 46, 47, 48, and 49 of Law No. 20 of 2012 as mentioned above. Granting ownership of the building as the researcher initiated the dissertation recommend home ownership (property) that is separate from the soil by the application of the principle of horizontal separation, which is then developed with the research of the National Strategy (STRANAS) on the topic: Model Law Development Housing for Providing Homes for LIP and Providing House for the Low-Income People and continued with paradigm Development Model Community for Home Ownership Separated from Land to accelerate the provision of Home to LIP.

If the Model National Housing Program as mentioned above is developed by the authority of the expanded specifically for the procurement of land for the construction of housing and residential areas, especially low-income, according to the researcher, the application of articles 46, 47, 48 and 49 can be paired together to motivate accelerate the supply of homes for LIP, either owned or leased, with a model of the same flats as RUSUNAWA.

The utilization of the land which is the region's assets, empowerment of abandoned land, with land acquisition for the construction of housing and residential areas for LIP both rental and property of the subsidy; The area also can develop sources of soil derived from the company's CSR area, for the provision of houses for the workers or employees. When the land resources can be managed by a body modeled on the Industrial Zone and National Housing Program above, could have formed a regional government as an embryo BLUDs Land Bank in the area. In addition, of course, remain subject to the provisions in force, land acquisition models BLUDs can also use budget funds for basic infrastructure, investment and development of housing and residential areas. (Roestamy, 2015)

Land Bank which is intended, according to the researcher, is a subject of law is a legal entity as it will

support the rights and obligations of course as a legal entity, it needs careful thought, about the manner of its formation, the reference to the rules governing the lodging, preferably in the form of the Act, amorphous regulation as a legal entity in accordance with the principles of civil law, given the duties and responsibilities that are complex and not simple. Thoughts on the establishment of land banks are in line with the concept of Land Tenure and can also as a development lease rights, as stated in article 44 and 45 are also missed by investors as freehold or leasehold prevailing in some countries like China or Singapore.

In connection with BLUDs, as mentioned above, local governments regulate local regulation, the basic tasks and functional in the activities of the activities of Land Banking. In the United States, Land Banking regulation as a means of land management can be set by each state (Act.), So it could have the government level City, Village or Town, can form the Land Banking. From the above, it is clear that the establishment of Land Banking is not an impossible, only needed a strong legal foundation with the provisions of Land Banking can only be developed by the regions, does not necessarily have to be managed by the central institution of the center.

5 CONCLUSIONS AND RECOMMENDATIONS

It's concluded that:

1. Houses are human needs in any country, so the government must be present as the person responsible for the implementation of the country because of basic needs compared to obligations, then the responsibility of the government is a basic obligation that must be accounted for both executive, judicial and legislative institutions and directly to people who have an impact on the level of people's satisfaction with the party or president in power.
2. To fight the cartel and oligopoly the role of the government as the holder of the state's right to control land and the relationship that arises between legal subjects and land can give rise to a land control institution known as a land bank. With the government land bank, it can prevent the practice of oligopoly which leads to the practice of landlords who are prohibited by law or constitution.
3. The development of the role of land banks as land providers is one way out by providing additional description, namely the provision of affordable land for the benefit of low-income people and the poor, by subsidizing land to projects managed by the government or state-owned enterprises to achieve A million home development targets and pressing backlog numbers with affordable housing.

As the results, this research recommends some points, namely:

1. It is necessary to immediately establish a national land bank in the form of a national public service agency (BLUN) and regional public service agency (BLUD) by the regional government with the addition of duties as a land provider for affordable housing development.
2. It is necessary to involve all parties to encourage the formation of land banks, especially academics and non-governmental organizations, especially the provision of land for affordable housing development which in turn can open access while fulfilling a million housing development programs for the people.
3. It is necessary to deepen the study of house ownership separated from land as a result of land banks that are part of land subsidies, which is enough to buy a house that is very affordable and free from land price speculation. Copyright is protected by copyright, institutions that issue certificates, and socialization of house ownership from land and the environment as family defense.

REFERENCE LIST

- Aminuddin Salle, (2007) *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Kreasi Total Media (KTM), Jakarta.
- Budi Harsono, (2005) *Hukum Agraria Indonesia*. Djambatan, Jakarta.
- Dixon Martin, (2002) *Modern Land Law*: Antony Rowe Ltd. England.
- Hoek-smit, M. C. (2006). Expanding Housing Finance for Low- Income Housing in Indonesia. *Finance*, (February).
- Iriansyah, N. (2011). *A Need for affordable housing in Banda Aceh*, Indonesia, 1(2), 189–193.
- Martin, D., & Loomis, K. (2012). A constructivist approach to introducing education. *Building Teachers*, 72–

75.

- Hutagalung Arie Sukanti dan Markus Gunawan, (2008) *Kewenangan Pemerintah di Bidang Pertanahan*, PT Rajagrafindo Persada Jakarta.
- Mariam Darus Badruzaman, (1993) *KUHPerdata Buku III Hukum Perikatan Dengan Penjelasannya*, Alumni, Bandung.
- Martin Roestamy, (2008) *Kepastian Hukum Atas Kepemilikan Rumah Dan Bangunan Gedung Oleh Investor Asing Dikaitkan Dengan Asas Nasionalitas Dalam Sistem Hukum Pertanahan Indonesia. Dissertation*. Bandung: Program Pascasarjana Program Studi Doktor (S3) Ilmu Hukum, Universitas Padjadjaran Bandung.
- _____, (2009) *Konsep-konsep Hukum Kepemilikan Tanah dan Bangunan Gedung bagi Asing*, Alumni Bandung.
- _____, (2015) *Providing House for the Low Income People, Proceeding of International Seminar on Management of Social Science*, Osaka Japan.
- _____, (2016) *Land Issues on Housing Policy, paper on International Focus Group Discussion*, Universitas Djuanda, 30 Agustus 2016.
- Martin Roestamy, Rita Rahmawati dan TN. Syamsah,. (2014) *Model Pengembangan Sistem Hukum perumahan Bagi Masyarakat Berpenghasilan Rendah Yang Layak Secara Teknis, Ekonomi Dan Sosial. Research Report*.
- Martin Roestamy, Rita Rahmawati, (2016) *Model Pengembangan Paradigma Masyarakat Bagi Kepemilikan Rumah yang Terpisah dari Tanah untuk Mempercepat Penyediaan Rumah bagi Masyarakat Berpenghasilan Rendah, Research Report*.
- Muhammad Yamin, dan Abd. Rahim Lubis, (2004) *Beberapa Masalah Aktual Hukum Agraria*: Pustaka Bangsa Press, Medan.
- Panei Geofree *Land Tenure in Indonesia, paper pada International Focus Group Discussion*, 30 Agustus 2016.
- Setioko, B., & Pandelaki, E. E. (2015). *Toward Housing for the Elderly in Indonesia*, 5(6).
- Sungkana, (2015) *Konsep Dasar Land Banking/Bank Tanah, Artikel pada DJKN Kementrian Keuangan*.
- Supraba Sekarwati, (2003) *Gagasan mengenai Pembentukan Bank Tanah (Land Bank) dalam rangka pembangunan perumahan dan permukiman yang berkelanjutan di Indonesia, Disertasi*, Universitas Pajajaran Bandung.
- Syafruddin Kalo, (2005) *Kapita Selekta Hukum Pertanahan*, USU press Medan.
- Sudiyat, I. (1978). *Asas-asas hukum adat: bekal pengantar*. Liberty.
- Ter Haar Bzn, (1981), *Asas-Asas dan Susunan Hukum Adat*, Pradnya Paramita, Jakarta.
- Tisna Ayu, Oktaviany; Ana, Silviana; Sri, S. Diponegoro L. R. (2013). *Diponegoro Law Review* Volume 1, No. 2, 2013, 3(7), 1–11.
- The HUD Magazine, (2012) *Edisi pertama Berbagi Tanah Untuk Rakyat Dalam Membangun MBR (Masyarakat Berpenghasilan Rendah). Paper*. Unpublished