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THE GOVERNMENT IMPLEMENTS LAND BANK CONCEPT IN INDONESIA

The enactment of Law No. 11 of 2020 concerning Job Creation (“**Omnibus Law**”) on 2nd November 2020 amends 78 (seventy-eight) prevailing legislations and also brings a new concept in Indonesia. One of them is the “Land Bank” concept.

The Land Bank concept is not a new concept in the world. Indonesian Government has been examining and analyzing this concept for quite some time. The implementation of the Land Bank concept in Indonesia by regulating them in the Omnibus Law is a bold move in the agrarian law of Indonesia. Such action is not the end of the journey to study the Land Bank concept, but a fresh start in the agrarian law of Republic Indonesia. Thereby, this concept is not to be treated as a theory only, but applied for the great benefit of Indonesian citizens in order to ensure the availability of land for the implementation of democracy in the economic field.

What is the Land Bank?

Land Bank is an entity that is formed by the Central Government. It is a special entity for managing the land. The difference between National Land Office/*Badan Pertanahan Nasional* (“**BPN**”) and Land Bank is that the BPN acts as an administrator and regulator. Therefore, the BPN can not manage the land available for the appropriate user or a certain party in need. Meanwhile, the Land Bank is formed to manage state land for implementing, planning, acquiring, procuring, managing, utilizing, and distributing the same.

In accordance with Article 126 Paragraph 1 of the Omnibus Law, the Land Bank entity ensures land availability in the spirit of democracy in the economic field for public interest, social interest, national development interest, economic equality, land consolidation, and agrarian reform.

The Obligation and Authority of Land Bank

The asset of Land Bank is a separate state-owned asset. The nature of the Land Bank in the implementation of the Land Bank’s obligation is transparency, accountability, and non-profitability. The source of the asset of the Land Bank is the national budget/*anggaran*

pendapatan dan belanja negara, its income, the state investment; and other sources which are valid according to the prevailing law and regulations.

The meaning of non-profitability as the nature of the Land Bank does not necessarily mean that the Land Bank could not have any profit; rather the profit gained by Land Bank shall be used for public and social interest other than for its own interest.

This point can be underlined for the property company that it is possible to have joint venture or joint cooperation with the Land Bank since in the future Land Bank will own some areas which can be interesting for the property company who aims to develop the potential area all over Indonesia.

The draft of Government Regulation of Republic Indonesia regarding Land Bank which was updated on 23 December 2020 (“**RPP**”), explicitly states that the Land Bank can manage their income from joint cooperation/ *kerja sama* for the continuity and the expansion of Land Bank. The Land Bank may receive payment in the form of equity capital/*penyertaan modal* from other parties who is the venture of the land utilization.

Moreover, the RPP also regulates tax facilities granted for the Land Bank. The tax facilities are, the following shall be deemed as non-taxable objects:

1. Land and Building Tax (PBB) over the un-utilized land and or non-distributed land;
2. Duty of Land and Building Rights acquisition/*Bea Perolehan Hak atas Tanah dan Bangunan* (BPHTB); and
3. Corporate income tax (*PPh Badan*).

The existence of Land Bank is also good news to the property/developer companies, as they may have joint cooperation or joint venture company with the Land Bank.

Land Rights for the Land Bank

According to Article 129 Paragraph 1 of the Omnibus Law, the land which is managed by the Land Bank shall be granted the Right to Manage/*Hak Pengelolaan*. The Right to Manage/*Hak Pengelolaan* can be granted with the Right to Cultivate/*Hak Guna Usaha*, Right to Build/*Hak Guna Bangunan*, and Right to Use/*Hak Pakai*.

Conclusion

The Land Bank is formed in order to answer the land procurement issues over national infrastructure projects and Indonesian developments as the whole. The Land Bank entity

shall be the extension of the central government for managing state-owned land to actualize Article 33 paragraph 3 of 1945 Constitution of Republic Indonesia that “The land, the waters, and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people”.

However, the implementation of Land Bank is still a long journey to go. We shall wait the RPP to be enacted and other implemented regulations to be ratified to understand how the Land Bank implements their works and gives benefit of the people of Republic Indonesia.

Note: The content of this article does not constitute legal advice and should not be relied upon since there will be implemented regulation(s) to be further issued. The judge’s opinion may also be different, due to the facts relevant to the case. If you need specific advice related to this topic, please contact us by email through info@yangandco.com .