

# Prophetic Law-based Land Bank Policy Reformulation in Indonesia

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*Abstract:* - In regulating the land bank policy, Indonesia refers to Law Number 11 of 2020 concerning Job Creation and Presidential Regulation Number 64 of 2021 concerning Land Bank Agency. These two laws regulate all general technical requirements required by investors. This study aims to: 1) Describe the land bank legal policy after the legalization of Law Number 11 of 2020 concerning Job Creation; 2). Formulate a land bank policy based on prophetic values which integrate the positive law and religious values. This is normative legal research which used secondary data and library materials as the main data sources. It used the philosophical juridical approach: the juridical approach was in the form of legislation (statute approach) and the philosophical approach was in the form of the prophetic ethical paradigm through ash-Asyatibi's *Maqasid al-Syari'ah* (the purpose behind Islamic laws). The data analysis was divided into two. The first was the descriptive-qualitative analysis by describing land bank policies after the enactment of Law Number 11 of 2020 concerning Job Creation. While in the second problem formulation, because the main objective was to find the concept of land bank policy based on prophetic ethics, the authors conducted critical and predictive analyses. Land bank policies have various advantages and disadvantages. With these weaknesses and strengths, a new land bank policy was formulated, which was predicted to be able to guarantee equitable land distribution and wise management of land tenure.

*Key-Words:* - Land bank, policy, reformulation, prophetic law, Islam, Indonesia, ash-Asyatibi, *Maqasid al-Syari'ah*, positive law.

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## 1 Introduction

The dynamic development of law in Indonesia leads to many debates. The majority of Indonesians embrace the Islamic religion and believe in one God (Allah). They believe in the Qur'an as the Holy Book. The Qur'an, Chapter Ali Imron, Verse 20 states, "*So if they argue with you (O Prophet), say, 'I have submitted myself to Allah, and so have my followers.' And ask those who were given the Scripture and the illiterate (people), 'Have you submitted yourselves (to Allah)? If they submit, they will be (rightly) guided. But if they turn away, then your duty is only to deliver (the message). And Allah is All-Seeing of (His) servants.'*"

According to Rohidin, Islam means the submission or surrender of a servant (humans) to the Lord (Allah). This means that in dealing with their Lord, humans must feel small. They must admit their weaknesses and justify the power of God. Humans' reasoning and mental capabilities that are manifested in science are not comparable to the knowledge and ability of God, [1]. So, in the case of

differences, disagreements, and doubts, religious references should be used as a solution, [1].

Indonesian political elite and legal scholars were shocked by the passing of Law No. 11 of 2020 concerning Job Creation, [2]. The Job Creation Law seems to be a special invitation made by the government for investors and conglomerates in the form of a legislation. This is because all the provisions stipulated in the Job Creation Law can independently regulate all general technical requirements needed by investors to invest. Thus, there is no need to bother looking at other laws and regulations. The issuance of this Job Creation Law legally changed 82 laws and regulations and revoked two laws and regulations.

An implication of the enactment of the Job Creation Law that is no less interesting was the issuing of Presidential Regulation Number 64 of 2021 concerning the Land Bank Agency. The Land Bank Agency aims to ensure the availability of land to achieve economic justice, public interest, social development, economic equity, land consolidation, and agrarian reform. The Director of Land

Valuation and Land Economics at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (AASP/NLA), Perdananto Aribowo said that there are state lands. But the *de facto* condition is that the government cannot control the land. On the contrary, it only acts as a land administrator. Meanwhile, no agencies have the role of executor, [3]. The Land Bank concept has actually existed in the 2019 Land Bill but it failed to be ratified.

The pros and cons of the Land Bank concept were triggered by the community's sensitivity towards the re-emergence of the '*domein venklaring*' colonial element. It also deviates from the objectives of agrarian reform. In this Land Bank concept, the government does not have the mere status of controlling, but also owning. It is not only authorized to distribute land to the poor, but also to use the land for investment projects. It has the authority to manage state land and also to sell management land. Even so, the government has a positive spirit to create economic equality. It has the enthusiasm to open up large scale job opportunities for its citizens by inviting investors to take over the state's duty to bring prosperity to the people.

Legal scholars expressed various ideas to criticize the efforts to establish this Land Bank Agency. This is so that the government could rediscover the identity of Indonesian law that must justly provide protection for all people according to the Indonesian nation's ideals of independence as contained in the Preamble of the Republic of Indonesia's 1945 Constitution. This is because Indonesia's Pancasila (the Five Principles that are Indonesia's ideals) and the 1945 Constitution are a combination of religious, moral, legal, and state values in one inseparable unit.

From this idea, this research aims to describe the land bank legal policy after the legalization of Law Number 11 of 2020 concerning Job Creation and formulate a land bank policy based on prophetic values which integrate the positive law and religious values.

Then, according to the government, the Land Bank Agency concept is a form of legal change that aims to answer every problem in society. The law must always dynamically develop. In this case, it concerns problems in the land sector. Furthermore, it was conveyed that humans cannot easily accept change, as the slightest change must be followed by adjustment. The community must understand that this new form of legal change is leading in a good direction. But it must go through an adjustment stage in order to be accepted by the community, [4]. Apart from the polemic of the establishment of this

land bank, legal reform is a necessity in the current multi-sectoral development era. The law must be able to answer every problem in society. Therefore, it must always dynamically develop, [5]. Even, the state constitution does not rule out the possibility to be renewed to accommodate the demands of the times, [6].

According to Ni'matul Huda, the making, perfecting, and changing of the legal rule is part of the legal development. This applies in a broad sense, meaning that any form of law (including the constitution, laws, customs, and conventions) can be changed or renewed, [7]. According to Harold J. Berman, [8] legal change refers to the notion that law is always growing. Legal growth has an internal logic. This means that change is not only an adaptation of the old to the new, but it is also part of a pattern of change. This does not happen randomly. But it was resulted from the reinterpretation of past rules with present conditions and future needs. In its growth, the law systemically interacts with sectors of social life, [9]. In interacting with social life, there is a tug of war between reality and ideals in a legal society, [10].

When discussing the socio-political dynamics of legal development in Indonesia, Soetandyo argued that the meaning of change is understood as a change from what is ideologically desirable to another function outside of ideology that is not desired. This points to the notion of a gap between what is *das sollen* (the ideals) with what is *das sein* (the facts), [11]. So, according to Suhirman Djirman, to understand the complex human civilization, human knowledge (thought) needs to be reconstructed with a spiritual approach. Spirituality is not just an institution. Modern science cannot reach the spiritual dimension, as it relies on analytical ratios that are logical and systemic (Newtonian). Meanwhile, the spiritual mind (ratio) is silent (passive) and the heart (the center of the small universe) will be active, opening up to a natural complex universe (big universe). This emits an atmosphere of depth to understand that life is full of miracles, [12]. Spirituality is a substantial dimension of the divinity concept. It is embodied in an understanding of life as a divine human being as in the precepts of God as an emphasis on existence. The preamble of Indonesian 1945 Constitution provides the point of "God's grace". This shows that all laws and regulations that begin with the preamble have a transcendental meaning, [12].

Indonesia requires a modern legal system, namely a set or a legal system that can anticipate and overcome various possible problems. This is because with Pancasila and the 1945 Constitution,

Indonesia has a combination of religious, moral, legal, and state values in an inseparable unit, [13]. Deconstruction has dismantled modernism which modern society has regarded as the truth in the legal field. J. Balkin states that deconstruction and interpretation are means to seek justice. According to him, in certain aspects, the law is unfair, [14]. The conception of legal truth is a very important value, showing a relative and vague tendency.

The value of truth is understood using different views. It leads to an understanding that the truth is measured according to the perception of lawmakers. Lawmakers are based on the will of the authorities who are supported by the majority political group by being set forth in the form of a law, [15]. In fact, the wills and political views of the majority do not necessarily reflect the truth.

In the Islamic perspective, the modernization of the law does not have to be accompanied by secularization, as is the opinion of Imam Shafi'i who explains the position of reason against the Sharia (the Islamic Law), [16]. He said that the mind follows the Sharia. He likened the mind to the eye which has a limited vision, where its reach stops at that limit. Likewise, the mind has a limit where it is limited to a certain point, [17].

The spirit of legal reform in Indonesia is both an opportunity and a challenge for the study of Islamic law to be empirical and realistic, [18]. Islamic law must be able to play a role and become efficient for the needs of Muslims and Indonesians in general. It must show its great promise, namely as *rahmatan lil 'alamin* (a blessing for the universe) and *litahtaqimashalihal-nas* (ensuring the realization of human benefit). In the Islamic legal system, there are five laws or rules that are used as a benchmark for measuring human actions in the fields of worship and *muamalah* (commercial transactions). The five rules are known as *al ahkam al khamsah* or the five legal classifications, namely *jaiz* or *ibahah* (permissible), *sunnat* (recommended), *makruh* (disliked), obligatory, and unlawful, [19].

There are several terms in Islamic law, including *shari'ah*, *fiqh* and *ushul fiqh*. According to Hasbi Ash Shiddieqy, [20], Sharia includes laws that Allah has set out for His servants through His Messenger to be practiced with full faith. These laws can be related to worship, belief, and morals. The Islamic Sharia regulates worldly and religious matters. From a legal perspective, Sharia is the basic legal norm set by Allah which must be followed by Muslims based on faith. It concerns morals both in relation to Allah and with fellow creatures of Allah. This basic legal norm was then explained by Prophet Muhammad (peace be upon him/pubh). It was the *sunnah* of the

Prophet. Later, by Kuntowijoyo, [21] this method of developing science and religion was often termed the prophetic paradigm. Previously, the study of Islamic law seemed to be 'floating', because it was seen as only memorizing the thoughts of scholars from centuries ago. Now, in viewing contemporary issues, the study of Islamic law is required to provide its views with the prophetic legal paradigm. Therefore, the authors are interested in conducting research on the reformulation of land bank policy based on prophetic law.

## 2 Method

This was legal research, also classified as normative legal research. Normative legal research was conducted to find secondary data by using library research. The focus of this research was to formulate a land bank policy concept based on prophetic law that guarantees a fair distribution of land and a wise management of land tenure. It used the philosophical juridical approach. The juridical approach was in the form of legislation (statute approach) and the philosophical approach was in the form of prophetic law.

## 3 Results and Discussion

### 3.1 Land Bank Policy in Indonesia

The number of experts who put forward the definition of policy provided a common thread in understanding it. There are several things contained in the policy, namely, [22]: 1) there are certain goals to be achieved that are in favor of the public interest; 2) there is a series of actions to achieve a goal. This set of actions is a structured strategy to easily achieve goals. Such strategies are often translated into programs and projects; 3) the proposed actions can come from individuals or groups from within or outside of the government; 4) there is a provision of inputs to implement the strategy. The inputs are in the form of both human and non-human resources.

Thomas R. Dye, defines public policy as "whatever the government chooses to do or not to do", [23]. In the context of Indonesia as a legal state, the formulation of public policies must be based on the provisions of the applicable laws and regulations. In general, Law no. 11 of 2012 contains the main materials which systematically formulate: principles in forming laws and regulations; types, hierarchies, and content of the laws and regulations; planning and preparation of laws and regulations;

techniques for drafting laws and regulations; discussion and ratification of bills; discussion and stipulation of Draft Provincial Regulations and Draft Regency/Municipal Regulations; promulgation of laws and regulations; dissemination; community participation formulating a legislation; and other provisions concerning the formation of Presidential Decrees and other state and government institutions, [24].

According to the land bank policy, using the land bank, the government tries to respond quickly to strategic state programs such as food, energy, infrastructure, and public housing for the community. The allotment of control, ownership, use, and utilization of state land and former abandoned land is for the benefit of the community and the state through agrarian reform and state strategic programs. The state's strategic programs include the development of the food, energy, and public housing sectors in order to improve the welfare of the community. Other state reserves include, among others, meeting the needs of land for the benefit of the government, defense and security, land needs due to natural disasters, as well as the relocation and resettlement of communities affected by development for the public interest. The 2015-2019 Mid-Term National Development Plans stated that the expired Permits of Business Use and 0.6 million hectares of abandoned land are the authorities of the Ministry of AASP/NLA. The data on the achievement of control and utilization of abandoned land up to 2017 is shown as follows, [16]:

Table 1. Achievement of Issuance and Utilization of Abandoned Land up to 2017

Year	Designation of Abandoned Land (Ha)		Optimization of Abandoned Land (Ha)
	Designation Decree	Clean and Clear	
2010-2017	76.384.30	24.825.76	2.389.37

Source: Directorate of Control and Utilization of Abandoned Land, Land Information System Application, 2019

From this data, it can be seen that there is only a minimum effort to use abandoned land in the period 2010 to 2017. The number of abandoned lands steeply increased, reaching 76.384,30 hectares. Then, the cleaning and clearing of abandoned land were not maximally applied. This impacted the suboptimum use of abandoned land that has been

cleaned and which has been given a new function, which amounts to 2.389,37 hectares. This showed that the increasing optimization of abandoned land can bring welfare.

The Land Bank's existence is regulated in Article 125 to Article 135 of Law no. 11 of 2020 concerning Job Creation. Land Bank is a special agency that manages land. It functions to carry out the planning, acquisition, procurement, management, utilization, and distribution of land. According to the Secretary General of the Ministry of AASP/NLA, Himawan Arief Sugoto, the land bank exists as land manager. The land manager will function to form a land management strategy to develop optimum land use. The regulation of the land bank in the Job Creation Law has become the legal basis for the establishment of a new state institution in Indonesia.

The land bank is given special authority by the government to guarantee the availability of land in the framework of a just economy, for public interests; social interests; national development interests; economic equity; land consolidation; and agrarian reform, [25]. With this authority, land banks function to undergo planning; land acquisition; land management; and utilization and distribution of land, [26]. The Land Bank Agency was established to guarantee the availability of land for public interests. It guarantees the provision of land for all development purposes. Its activities are supported by central and regional governments. Its contributions to social interests include guaranteeing the provision of land for the purposes of education, worship, sports, culture, reforestation, conservation, and other social interests of the people.

### 3.2 Prophetic Law-based Land Bank Policy Reformulation

Prophethood (prophecy/prophetic), is not a terminology that is only known in Islam. As stated by Fazrul Rahman, prophethood is a universal phenomenon in human existence throughout the ages, [27]. The term *prophetic* is basically related to the ideal figure of a prophet, with all his prophetic qualities. In this case, if the prophetic term is used for another entity, then that entity should also fulfill the prophetic characteristics. Based on this understanding, *prophetic* can generally be defined as an entity that seeks to prepare and provide itself to be able to read and capture the messages of God, take lessons from them, and then try to implement these messages of God in the world in everyday life.

Kuntowijoyo interpreted the method of developing science and religion in prophetic terms based on Islam's Holy Quran and Sunnah.

According to him, they are the main bases for the overall development of science, [21]. The prophetic law is a law based on culture and objective norms resulting from appreciation of religion (Islam). As a science that is based on transcendental values, the prophetic law affirms faith, not doubt, as the basis for building its theoretical framework, [28]. Islam does not recognize a dichotomy in science. Muslim scholars simultaneously rejected liberal secular science of the west which is claimed to be value-free, which contributes significantly to the gradation of humanity in the modern era. Islamic thinkers offer a way out according to an Islamic perspective which is different from the western mainstream way of thinking. The difference can be seen from the world view, epistemological, and axiological aspects, [29].

The authority exercised by the Land Bank is not only to distribute land for the community, but also for investment and other public interests, [30]. Concerning the authority to ensure the availability of land for investment, this is suspected to deviate from the agrarian reform which is conceptualized so that land is not only controlled or owned by a few people or certain parties, thus causing inequality. There are few people who own a lot of land, and conversely, there are many people who own little land or none at all.

Meanwhile, it is also possible that there will be inequality in terms of land allocation for various uses by various sectors. This is also known as sectoral inequality, namely the unfair allocation of land used for the agricultural sector, forestry sector, mining sector, energy and minerals, industrial sector, housing sector, tourism sector, and so on. Each of these sectors also has an imbalance of control between land allocated to the community and those allocated to corporations and public/state interests. The agricultural/food sector and its allocation to the community are often displaced by the interests of investors or the state. It is absolutely necessary to have a policy capable of overhauling the two structures of injustice, which has not yet been seen from the emergence of the Land Bank Agency.

Against the first, Islam has emphasized that (the source of) wealth should not revolve around the rich alone *“Whatever the Messenger gives you, accept it. And what he forbids you, leave it. And fear God. Truly, God is very severe in His punishment”* (Chapter Al Hasyr: 7). The concentration of ownership will damage socio-economic relations (create injustice) and damage to nature. Allah has prohibited mankind from doing damage to nature (and the social/cultural buildings on it). Allah’s

creations are in the best form, *“And do not do damage to the earth after it was (created) well. Pray to Him with fear and hope. Indeed, God’s mercy is very close to those who do good”* (Chapter Al A’raf: 56). Overhauling an unjust structure towards justice is mandatory, [31]. Islam highly upholds the enforcement of justice, even the piety of a person (especially the leader) is judged from the level of justice. *“Be fair, because it is closer in degree to piety”* (Chapter Al Maidah: 8). The degree of piety of a person or a regime is measured by its fair attitudes or policies. There is no piety without justice. So, it is no exaggeration to say that fighting for agrarian reform as an effort to create justice is something very spiritual. It is a journey towards piety to Allah, [32].

The experience of the Prophet above can be used as a basis and reference for the need for agrarian reform. The agrarian reform meant is the agrarian reform that is based on law as the controller in creating order in the life of the nation and the state, [33]. "Human farmers" or "farmers" according to Article 1 of Law Number 2 of 1960 concerning the Basic Agrarian Law, are subjects in carrying out agrarian reform because they are the only ones whose main livelihood is cultivating land for agriculture. Those who work in the agricultural sector as tenants, cultivators, and farm laborers are essentially the targets of development in the agricultural sector. They are simultaneously active actors in the activities to develop the agricultural sector, [34].

According to Gunawan Wiradi, [35], agrarian reform is a realignment (or rearrangement) of the composition of ownership, control and use of agrarian resources (especially land), for the benefit of the small people (farmers, farm laborers, etc.), in a comprehensive and holistic manner on all agrarian resources, including water rights, protection from climate change, and biodiversity. It must equitably consider the needs of the community and investment. This is to increase people's income and welfare, especially for small farmers, in a fair and equitable manner. This is to give people the opportunity to develop themselves to achieve prosperity, as part of national development is to realize a just and prosperous society based on Pancasila. This is in line with the principle of development. In development, the principle of sustainability is applied to natural resources and then utilizes these natural resources without damaging the human environment, [36].

Concerning the scientific contribution of this paper, the government can use instruments that exist in the law, especially from the prophetic aspect, that

the government can and has the right to revoke land management rights. The revocation of abandoned land management is an essence of both the positive and prophetic laws, as land is a productive factor that is crucial in increasing people's welfare.

The positive law, i.e., the law on land and the prophetic law that is embraced by most Indonesians allow the state to revoke the management rights of abandoned land that is not well managed. This revocation aims to maximize land management as a production factor in people's welfare.

The conception of land management as exemplified by the Prophet above should be our starting point in orientating the Indonesian national agricultural development. Historical experience shows that the production process will be influenced by the ownership system of the means of production. Individually-controlled means of production will allow human exploitation to occur. Therefore, we need a system where the ownership of production facilities (which control the lives of many people) does not exploit humans to uphold justice and eradicate poverty. This is to create a better and more meaningful life. According to a prophetic perspective, land banks cannot be exclusive. It needs to enter a wider dimension, including encouraging reforms in the mode of production and the establishment of a new order with new values. Thus, it means that a new agrarian policy is required. It must no longer be based on the capitalist mode of production, but a mode of production that favors the homeless "Poor farmers, small farmers, farm laborers and those who are at the bottom of the social structure) and why don't you fight in the way of Allah and defend the weak" (Chapter An-Nisa (Women): 75).

#### 4 Conclusion

The land bank is given special authority by the government to guarantee the availability of land in the framework of a just economy, for the public interest; social interests; national development interests; economic equity; land consolidation; and agrarian reform. The functions of the land bank include land planning, acquisition, and management as well as utilization and distribution of land. The Land Bank Agency was established to ensure the availability of land for the sake of justice, both for the benefit of the community as well as for investment purposes.

The state cannot revoke the rights of abandoned land with a private ownership right (certificate of land tenure). But the state can revoke abandoned land without private ownership such as the land with

rights of building use, land use, etc. (such as *petok* D, letter c, dll) that are abandoned. They can have their functions shifted to be used for the welfare of the people.

Islam recognizes the existence of private ownership, including in terms of managing and controlling land. But Islam rejects monopoly. The teachings of the Sharia law taught by Prophet Muhammad (pubh) aim to maintain a humane balance. He has practiced this with the Ansor and Muhajirin people who shared land at that time in Madinah. The Prophet has laid down the concept of land reform with the principles of justice and benefit. This law guarded the people against damage. We should also use the history of good relations between the Muhajirin and Ansor as an example. Therefore, land bank should be applied as long as it adheres to the above principles.

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### Contribution of Individual Authors

- ABSORI: Edited the draft, reviewed the paper, provided materials and data for the research.
- MOHAMMAD INDRA BANGSAWAN: Conceived the research, provided original idea of the study, provided materials and data for the research.
- ARIEF BUDIONO: Designed the methods, selected research data, analyzed and interpreted the data, wrote the paper.
- DEWI KUSUMA DIARTI: Analyzed the data, provided description, wrote the paper, reviewed the paper.

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### Conflict of Interest

The authors would like to declare that there is no conflict of interest.