

Protection of Land Owned by Community of Customary Law in Land Acquisition by the Land Bank Agency for the Benefit of Investors

Omay Chusmayadi^A, Nia Kurniati^B, I Gde Pantja Astawa^C

Abstract

The focus of this research is the examination of the impact of the inadequate legal protection of customary land in the acquisition by Land Bank Agency for the benefit of investors. This research also examines the reason why community of customary law find it difficult to obtain land certificates as proof of ownership is that these certificates can be used for the benefit of the communities' members. This research uses secondary data namely: laws, regulations and literature which relates to the research problems. The results show that The Land Bank Agency is a unique agency that is recognized as a matter of policy by the central government and granted the prerogative to oversee land management, has the authority to take over land of unclear ownership. Consequently, the land owned by the community of customary law, the ownership of which is generally unclear, is under threat of acquisition by the Land Bank Agency for the benefit of investors. It is therefore recommended that the Land Bank Agency act as representative of the state to protect land owned by community of customary law. The government should simplify regulations and ease the registration process for customary land so that community of customary law have the legal power to protect their rights if the Land Bank Agency implements land acquisition programs for investment purposes.

Keywords: Protection, Land, Community of Customary Law, Land Acquisition, Land Bank Agency, Investor.

INTRODUCTION

The rapid growth of global investment has increased demand for land for plantations, agricultural areas, and forests where factories can be built to process products. However, land available for investment is becoming scarce. Consequently, land acquisition has become a common strategy.

Plantation and mining companies are prominent figures in conflicts over customary land, and their involvement can lead to a number of challenges and issues. At the turn of the millenium, these conflicts were brought to the fore when a new style of government that was more transparent and democratic was established, which made it easier for affected individuals to voice their concerns (Bakker, 2023). The intersection of companies and communities has resulted in numerous

^AUniversitas Padjadjaran, Bandung, Indonesia, Email: chusmayadiomay@yahoo.com

^BUniversitas Padjadjaran, Bandung, Indonesia

^CUniversitas Padjadjaran, Bandung, Indonesia

conflicts (Nasir, 2022). Among all the nations that comprise the Southeast Asian region, Indonesia possesses the most substantial land resources. Nevertheless, these assets are not being utilized to their maximum capacity (Subekti, 2023). In developing countries, the quick expansion of housing and changes that is uncontrolled in land use put increasing stress on urban areas located in the suburbs (Bonye et al., 2020; Fente et al., 2025). Significant quantities of farmland around the world are influenced by horizontal urban growth towards surrounding rural areas (Mohammed et al., 2017). The rising economic importance of land, driven by its increasing role as a commodity, has led to widespread reforms in the land sector worldwide. In the region of Saharan Africa, land has traditionally served as a resource for livelihoods. It has also served as a resource for spiritual well-being. Land has been a resource for cultural heritage. Finally, land has been a resource for prestige. (Kwakye, 2024).

The rising population density in urban areas is driving up demand for food products. This, in turn, is intensifying and commercializing agriculture in peri-urban areas. In these areas, the way land is owned is changing. It is becoming more individualized, and as land prices rise, informal markets for land are growing. Urban elites are accelerating the change in relations to land in suburban areas. This is happening by purchasing land primarily for speculative purposes. This includes public officials, businesspeople, and politicians (Bugri & Yuonayel, 2015). The informal sector continues to meet Nigeria's growing demand for land in cities. Deficiencies in the formal sector drive this growth, causing an increase in demand for non-formal sector land. However, concerns about tenure security and land supply equity have become major issues in the sector (Gheyisi, 2020; Kwakye, 2024). Because of the unique nature of land and its vital role in human settlements, many societies have created enforcement mechanisms, policies, processes, institutions, and organizations to allocate land can be developed (Olapade, 2021). The Indonesian government is overcoming the scarcity of available land by acquiring land for the project.

The Indonesian state acknowledges traditional or customary rights, also referred to as *hak ulayat*. These rights are held by traditional peoples according to tradition. They are based on a constitution. According to Article 18B, Paragraph (2) of the Constitution, Indonesia recognizes and respects customary law societies and traditional rights, provided that they exist according to the growth of society and the idea of a single state of Indonesia as set by law. This article confirms that the state recognizes customary law and the rights of communities. Article 28I stipulates that the cultural identity and entitlements of traditional communities are acknowledged as society evolves. This shows that respecting the traditional rights of indigenous peoples is a basic human right that's closely tied to their culture, society, and spirituality.

The Article 33 of the Constitution's, Paragraph 3 stipulates customary rights. According to this article, the state is responsible for managing natural resources, the land, and waters, within the country and using them to ensure the optimal welfare of the people. Thus, the state controls the land, waters, and people's optimal welfare is supported by natural resources.

Customary rights are the rights that belong to indigenous peoples as a group regarding the land, territory, and natural resources which are passed down through generations. According to Indonesian Agrarian Law, these rights are the prerogatives that certain communities are endowed under customary law over specific areas that the environment of their citizens is comprised of these areas. These communities can benefit from the area's natural resources, including land, to support their survival and livelihood. These rights come from a continuous physical and spiritual connection that has been passed down through generations of the community that follows customary law.

In accordance with Law No. 41 of 1999 on Forestry, the right to collect forest resources for daily needs is reserved for the community according to customary law, provided that the community still exists and is recognized. These communities also have the right to perform forest management activities that do not conflict with the law based on applicable customary law, and they also have the right to get help to make their lives better.

Despite their constitutional and legal basis, customary rights have been under threat since Government Regulation Number 64 of 2021 was enacted. One form of customary authority is customary land. This refers to land located within the territory controlled by a community of customary law that still exists in practice but is not subject to land rights.

To address the scarcity of available land for investment, the government issued Government Regulation No. 64 of 2021, which concerns the Land Bank Agency. This regulation puts community of customary law in a weak position to defend their rights to customary land. This could result in the Land Bank Agency acquiring customary land to procure land for investors. Without legal protection, indigenous communities will be unable to defend their rights, leaving their customary lands increasingly vulnerable to seizure by the Land Management Agency to meet investors' needs. The disputes between native populations and authorities or enterprises are frequently due to a lack of clarity regarding traditional land borders, limited knowledge of traditional law among communities, and the reduced role of traditional chiefs within these communities.

Customary land management is often mishandled by the government through the granting of authority over customary land to companies without the rights of indigenous peoples being considered. Communities throughout Indonesia resist or dispute such takeovers and seek to protect their interests through legal and illegal means (Rutten, 2017; Semedi, 2014). Although the bulk of this territory is not considered forested, this classification remains significant. Indonesians living and working in "*forest areas*" cannot obtain legal title to their land. They are obliged to rely on customary property rights systems, known as "*adat*" under Indonesian law, to conduct land transactions. However, courts rarely uphold land claims based on customary law. Consequently, communities embroiled in land disputes frequently struggle to provide the formal documentation required to substantiate their claims (Barenschot, 2021).

Companies must consult with communities when ulayat lands are needed for development projects, according to the 2014 Plantation Law.

However, there is no stipulation in the agreement that it must be preceded by an agreement. To put it differently, ulayat properties can be utilized, without an agreement. Frequently, businesses and communities only interact when disputes have already intensified into aggression, and interventions mainly concentrate on facilitating consent for land transfers (de Vos, 2019). Consequently, it is imperative to examine the Land Bank Agency's prerogative to procure and administer land. This will help ensure that the Constitution, relevant legislation, or the state's goal of improving the well-being of its people, including Indigenous communities, is not violated by the agency. The following section outlines several relevant studies that have been conducted on this topic.

Sasu's research tried to figure out the best spots for land banking projects in Ghana's tricky informal land markets, looking at it from the point of view of private and semi-public real estate developers (Sasu, 2024). The results revealed that land title security is the most critical factor in identifying the best locations for land banks. Nevertheless, substantial difficulties connected to land title protection are present in metropolitan and interior peri-urban zones. This has resulted in an uptick in the conversion of farmland into housing developments in regions that developers favor for land banking. This analysis demonstrates that policy responses are essential to enhance title security and motivate developers to broaden their land banking options beyond greenfield locations. Such reactions should motivate developers to incorporate a combination of greenfield and urban brownfield locations based on current land transformations.

The focus of Sasu's research is the examination of the impact of land banking practices on informal land markets in developing countries. For this endeavor, the writer conversed with over 30 individuals from four communities in Ghana's unregulated land market. An analysis of the interviews revealed that developers hold substantial plots of land as investments through land transfers. The absence of development on these plots has resulted in developers exerting a gradual influence on land prices. The analysis also showed that developers have started working relationships with traditional land managers. A significant effect on the dynamics of land prices has been had by these connections, resulting in the replacement of state-mediated statutory powers for land exchanges. The study suggests that individuals engaged in land transactions should engage in further discourse on the means to ensure adherence to the regulations stipulated by the Ghanaian Lands Commission (Sasu, 2024).

Ghataka's research is all about finding ways to help farmers who lose their land when it's taken for, like, industrial stuff. Prior to acquisition, farmers usually lease land from a private owner or the local government under a legally mandated sharecropping contract. These principles of compensation have a significant impact on landlords' choices regarding the sale of land to industrial developers following purchase, as well as the ex-ante investment motivations of tenants and landlords in agricultural productivity. To be efficient, it is very important that farmers be paid for their work when their land is changed (Ghataka, 2014).

Murray shows how the current housing supply model, the basis of these policies has major limitations. In this regard, he assesses the extent of correspondence between land banking behavior and the model's predictions. In order to accomplish this objective, he meticulously compiled a novel dataset of residential sales and land banks from the annual reports of Australia's eight largest publicly traded residential developers from 2001 to 2018. Complete state-level planning approvals and lot production data in Queensland, Australia, were also used by him. The conclusion of economic analyses of rapid housing price growth is often that planning regulations are to blame. They limit how fast new houses can be built (Murray, 2020).

Bakker's study looks at the long and ongoing fight over land between mining and plantation companies and communities that say they have the right to the land. The foundation of his scholarly article was his meticulous research into land issues in Indonesia since 2004, with a particular emphasis on the four Kalimantan provinces that constitute the Indonesian portion of Borneo (Bakker, 2023).

So, the 2022 Kidido study looked at customary inheritance and the reissuance Regarding documentation pertaining to land in three Kumasi communities where land is scarce. It was revealed by the study that land documents, including allocation records, location maps, and receipts, were being reissued to property developers by newly appointed village chiefs as a method of generating revenue. The issuance of this reissuance was not for the purpose of the correction of old records. Rather, it was intended to provide monetary incentives. This imposition exacts a considerable financial toll from developers, with non-indigenous individuals bearing a greater financial burden. Furthermore, it undermines the authority of former village chiefs, creating uncertainty and confusion in the land market. The national government is creating a set of rules for newly appointed chiefs to follow. These rules will explain how the chiefs should handle land that was previously given to their predecessors.

As stated earlier, earlier studies do not seem to have dealt with the safeguarding of indigenous communities' land rights when the Land Bank Agency acquires land for commercial growth by investors in Indonesia. These studies have not significantly illuminated the implications of the land status of indigenous peoples because they find it difficult to obtain ownership certificates administratively.

This research examines the impact of the Land Bank Agency's inadequate legal protection of customary land acquisition for investors. Moreover, it explores into the reasons why communities that are based on customary law face challenges in acquiring land certificates that could be advantageous for their members.

LITERATURE REVIEW

The term "*customary rights*" refers to the collective rights with respect to land, territory, and natural resources, this is about Indigenous peoples. These rights are passed down from generation to generation. Ensuring the long-term sustainability of Indigenous peoples in a region hinges on these factors. Land is vital for enhancing the well-being of farming communities (Sefiew et al., 2025).

Indigenous peoples collectively hold these rights over land, territory, and natural resources. These rights have been handed down through the generations and are closely tied to the cultural, social, and spiritual identity of Indigenous peoples. Although customary land cannot be sold because it is considered common property, it can be leased and business use rights can be granted with the indigenous community's consent through a deliberative process. These communities widely believe that forfeiting customary lands to corporate entities is inequitable. Accusations against corporations include acquiring more land than permitted, colluding with government authorities are withholding information intended compensation from the population, and deceiving rural land users about their legal rights to force them to hand over their rice fields, gardens and lands throughout Indonesia, communities engage in struggles or disputes to protect their interests and prevent such acquisitions. Companies are pressured by them using legal and illegal means (Li, 2023; Bakker, 2023).

The phrase "*land banking*" was first used in 19th-century Europe, where it played a significant role in altering land ownership, reinforcing it, and transferring land. The objective was to enhance national land systems. However, the U.S. approach evolved differently. Land banks were pretty uncommon until the 1960s, and their goals were different from those in Europe. The use of land banking by some municipalities was for the preservation of green spaces and wetlands. The use of land banking by others was for the management of vacant or abandoned properties (VAPs). The 1970s saw the emergence of vacant and abandoned property land banks in metropolitan areas such as St. Louis (1971), Cleveland (1976), Louisville (1989), and Atlanta (1991). Complicated and delayed tax seizure procedures were faced by these initial land banks, as well as a lack of enabling legislation (Lee, 2025). The notion of land banking has gained worldwide momentum as a tactical instrument for overseeing unoccupied public and private land. However, scholars can trace its origins back further (Park, 2026).

A subsequent surge was initiated in the early 2000s, gaining impetus following the collapse of traditional urban economies and the subprime mortgage crisis. Michigan and Ohio are among the states that passed legislation that provided land banks with more powerful tools for the purchase and financing of land. Michigan's Land Bank Fast Track Law streamlined the process of title clearance, addressed outstanding tax liabilities, reduced property taxes, and set aside funds for expenses related to title clearance. The Neighborhood Stabilization Program (NSP) got assistance in the form of financing from the 2008 Housing and Economic Recovery Act. Using this funding, land banks quickly purchased foreclosed properties and rehabilitated them. They bought properties from people who could no longer pay their mortgages and from people who could no longer pay their taxes. The creation of land banks was meant to make it easier to transfer ownership of properties that don't pay taxes (TDPs). This could be done by either getting rid of any taxes that are still owed or by clearing the title (Lee, 2025).

Sasu (2024) defines land banking as the early purchase of land by the government, quasi-public, or private organizations to meet future strategic needs. A land bank is an institution through which real estate,

particularly land, is purchased and sold for the public's benefit. Land banks can be public, quasi-public, or private. They are specific vehicles that complement public authorities' instruments and strive to improve urban and regional development.

However, inadequate legal protection for customary land has been resulted in by the Land Bank Agency's land acquisition program, which was intended to benefit investors. A land bank agency is established as a government-run organization through which land is acquired, disposed of, or granted for use, with the aim of augmenting mobility, enabling the rural land market and accomplishing public policy goals concerning the eco-friendly usage of rural land (Versinskas, 2020). Several functions are performed by land banks. Property can be held and cleared by them, and it can be sold or leased for short or long periods to accomplish their missions. In practice, land banks can serve as more than just repositories; they can also be tools for strategic local redevelopment (Robinson, 2024).

There are two kinds of land banks: government-owned and privately held. Public land banks are operated by public institutions, and private land banks are operated by private entities. Public land banks are governed by the Job Creation Law. These banks will be established in the future. One source of land for these institutions to manage will be land left by investors. Private land banks have long been run by investors, primarily companies engaged in property or real estate. The primary impetus behind private enterprises undertaking this particular land banking initiative is to ensure sustained profitability. The long-term availability of land is expected to either increase its value or encourage speculation (Herawati, 2020). A land bank is a government organization that is oriented towards converting unoccupied, deserted, and foreclosed properties into useful spaces (Fujii, 2015).

The legal framework of a land bank whether semi-public, public, or private, is important to consider this, but it often comes down to circumstance. Land banks are principally responsible for this phenomenon (Spit, 2018). The word "*land bank*" was first used in Indonesia. by Law Number 11 of 2020 on Job Creation (Herawati, 2021). Private land banking signifies the procurement of land in its nascent stages with the objective of its subsequent reservation for prospective development. So, this practice is connected to something called "*land hoarding*," according to Murray's research from 2020. Land banks limit speculation by selling properties only to market participants willing to improve them (Hummel, 2015). The country's inaugural land bank, located in St. Louis, has been found to hold a disproportionate amount of property in neighborhoods that have been redlined, according to previous studies (Clark & Miles, 2021).

Investment signifies all undertakings encompassing the allocation of capital with the objective of generating revenue or augmenting the value of assets. Domestic investment is basically when domestic investors use domestic capital in Indonesia to make investments. So, foreign investment is basically when foreign investors do business in Indonesia and invest here. These operations might utilize the entirety of foreign capital. They may also initiate a joint venture with local investors.

Investments are overseen in accordance with the tenets of lawful certainty, clarity, sustainability, ecological concerns, and the harmony and integration of the domestic economy. The goal of investment administration is to promote national economic growth. It also aims to create jobs. Another goal is to encourage sustainable economic development. It seeks to enhance the competitiveness of national businesses. It also aims to develop technology. The goal is to stimulate growth in the informal economy. It aims to convert economic potential into real economic strength. It uses domestic and foreign funds to do so. Finally, it seeks to improve public welfare.

METHODS

This is legal study. According to Ihugba (2020), legal study is defined as the systematic process of identifying and understanding the law on a specific issue within a particular legal system. The objective of legal research is twofold: first, that a legally sound solution that is permissible under the law be ascertained; and second, that one's comprehension of the legal intricacies be enhanced. It involves searching for laws that govern specific sets of facts, such as customary land owned by a community under customary law. This qualitative study endeavors to explore and comprehend the essence of social issues. It focuses particularly on legal issues. These issues are present within community groups. The community groups under discussion are particularly those that adhere to traditional law. (Creswell, 2021). The study examines the role of customary law communities in utilizing or owning customary land.

Specifically, the constitution, laws, and regulations concerning these communities' existence and their control or ownership of customary land are examined. Regarding the study's emphasis, we gathered information on the framework and guidelines concerning the condition of land under the jurisdiction of a society that adheres to traditional law and is not formally acknowledged by the state or administration. Additionally, this study gathers information on regulations and literature concerning the growing scarcity of land and land banks capable of supplying unspoiled, uncontaminated land. This information is crucial for investors who need land quickly to expand and develop their businesses.

When examining the legal challenges related to safeguarding the rights of communities of customary law in land acquisitions by land banks, a favorable legal strategy was utilized. The relevant legal sources were also used. This approach involved reviewing the Constitution, as well as laws and regulations related to customary land without legal basis. Thus, this study employed a normative legal method that combined legal documents and literature.

The collected data were analyzed. They were also presented in a thematic narrative. This was done to address the study's central question. How can the land bank agency protect the land of communities based on customary law while carrying out its functions and authorities? This strategy allows communities to enhance their well-being by working together with the land bank agency to manage their customary lands and fulfill investors' land requirements.

RESULTS

The concepts of investment and land banking are examined in this section of the study. A theoretical framework that encompasses interrelated concepts, including investment, land banking, land acquisition, land bank agencies, community of customary law, and customary rights, is used to set the research.

Investment

The term "*investment*" pertains to all categories of investment activity undertaken by both domestic and foreign investors operating within the jurisdiction of the Republic of Indonesia. The term "*domestic investment*" is referred to investment activity that a domestic investor carries out using domestic capital to conduct business in Indonesia, while "*foreign investment*" is when a foreign investor puts money into an Indonesian company. This can be done by using all foreign capital or by creating a joint venture with a local investor.

Investments are overseen according to the principles of legal certainty, transparency, sustainability, environmental sensitivity, and equilibrium in the progression and cohesion of the national economy. The goal of investment administration is to promote national economic growth. It also aims to create job opportunities. Another goal is to encourage sustainable economic development. Investment administration seeks to enhance the competitiveness of national businesses. It also aims to develop national technology. The ultimate goal is to stimulate growth in the people's economy. It endeavors to transform economic potential into genuine economic strength. To do so, it uses domestic and foreign funds. Finally, it seeks to improve public welfare.

A fundamental investment policy has been established by the government of Indonesia. The objective of this policy is to encourage the development of a favorable national business environment. The policy's objectives include enhancing the national economy's competitiveness and accelerating investment growth. According to legislative provisions, the government provides investors with legal and business certainty and security throughout the licensing process and until the termination of investment activities.

Investors require land. They require land on which to construct or cultivate their enterprises. An investor is basically just someone who puts money into things in the hopes of making a profit. Investors can be domestic or foreign. So, domestic investors are basically Indonesian individuals or business entities, the Indonesian state, or regions that invest in Indonesia. A "*foreign investor*" is an individual of foreign nationality, a foreign business entity, or a foreign government that invests capital in Indonesia.

Land Banking

One method for regulating and overseeing the expansion of suburban communities is through the practice of land banking, a mechanism employed in land use planning. Since land banking sometimes involves the use of eminent domain powers, it is typically implemented by a government agency or government-chartered

corporation (Alexander, 2005). Because cities have different levels of wealth and income, land banks must have different legal and departmental structures and functions (Van der Krabben et al., 2020). Scholarly inquiries indicate that in three out of every four households in emerging nations, the socio-economic disparity has intensified since the early 1990s. While people in countries like China and India have more money, the difference between rich and poor has gotten smaller. But in about two-thirds of countries, the difference between rich and poor has gotten bigger from 1988 to 2011 (Forster, 2019). The hesitation of most developing countries to pursue land banking is due to the lack of success of the practice in the past (Gilbert, 2009). After neoliberal market economies became common in these countries in the early 1990s, investments in urban real estate by semi-public and private companies increased (Roy, 2018).

One way to control how suburbs grow is through land banking, a tool used to plan how land is used. Since land banking sometimes uses powers to take land, it is usually done by a government agency or a government-chartered corporation (Alexander, 2005). But because cities are different, and need solutions that fit them, land banks are very different in how they are set up and what they do (Van der Krabben et al., 2020). Also, it seems that three out of every four households in poor countries live in societies that have become more unequal since the early 1990s. While people in countries like China and India are earning higher incomes, this has contributed to global inequality. In about two-thirds of countries, inequality worsened between 1988 and 2011 (Forster, 2019). Most developing countries aren't too keen on land banking. This is due to the lack of success of the public sector (Gilbert, 2009). An increase in private and semi-public urban real estate investments has been seen in these countries following the emergence of neoliberal market economies in the early 1990s (Roy, 2018).

It is challenging to articulate precisely what the concept of land banking signifies. Proffering a definition that encompasses its manifold applications in disparate disciplines and countries is arduous (van der Krabben et al., 2020; Spit, 2018). Fifteen definitions of land banking were amassed by Sasu (2022) from the disciplines of economics, urban planning, agricultural science, urban renewal, redevelopment, active land use planning, agricultural practices require land mobility. This demonstrates the difficulty of achieving a universal definition. But most of the stuff written about it talks about it as a way of managing public land. So, in this strategy, public entities are buying land. The objective of this process is the design of future spatial plans. They then sell this land to the private sector. This is accomplished by aligning circumstances that enable the fulfillment of public strategic goals (Spit, 2018).

The government buys land near cities through a process called "*land banking*." It holds onto this land for a while before selling it to private companies. The government engages in accords with the private sector that mirror its strategic objectives. So, there are some common features of Tools for the management of public land like land pooling and land readjustment. With these tools, you can acquire, design, reserve, and supply serviced or unserviced lots. However, the concepts of land pooling and land readjustment are distinct (Sasu, 2024; Mugisha, 2023).

Implementing land pooling systems was an iterative process in nearly all instances. In the Netherlands, for instance, the administration had a solid reputation among farmers is something that is important. due to its earlier support of increased agricultural productivity (Ballaney, 2022).

Land pooling signifies a method of amalgamating disparate tracts of land that are the property of multiple individuals. The combined land is then sold to one person, who sells some of it to recoup the costs. Conversely, land banking curtails landowners' prerogatives after acquisition (Louw, 2008). Although the legal system protects the rights of participating landowners, the resulting distribution of adjusted sites may not align with developers' preferences. And just because they're doing land readjustment doesn't mean they've got it all figured out. As a result, developers must continue to identify a method for acquiring a desirable location.

Land banking is the same as land consolidation. These two land management tools are closely related. The implementation of land consolidation is possible through the use of land banking. Multiple plots of land are combined into a single entity through land consolidation, streamlining ownership and management. When it is done the right way, it creates good land ownership systems and gets rid of problems that have come from changes in history, politics, the economy, and the environment. Land consolidation programs have existed for decades, even centuries, and they have the potential to promote rural prosperity. This has led other countries to make changes based on what has worked in their own regions and around the world (Versinskas, 2020). The term "*land consolidation*" is interpreted in divergent ways across different countries. (Versinskas, 2020).

Versinskas says that the process is controlled by the law. This is done by a government group that organizes how property is used in rural areas. They do this by working with the people who own the land and the people who use it. The objectives are threefold: the decrease of land fragmentation, the enablement of farm expansion, and/or the accomplishment of other public goals, such as nature restoration and infrastructure development (Versinskas et al., 2021).

A public authority oversees the legally regulated procedure of land consolidation. This process reorganizes property ownership in rural areas by coordinating the reallocation of land parcels among owners and users. This reduces land fragmentation, facilitates farm expansion, and achieves other public objectives, such as restoring nature and constructing infrastructure (Versinskas, 2020). Specialists in land consolidation are tasked with the formulation of a plan for said consolidation. This plan is duly registered in the land registry. It is subsequently implemented upon approval by the pertinent public authority and landowners (Versinskas, 2021).

The concept of land consolidation is not the direct source of the term "*land bank*," but this financial tool often plays a crucial role in facilitating its success. The execution of land consolidation is made more effective when the state possesses a reserve of land ready for consolidation initiatives. This means there's more flexibility to reallocate land within the project area. A strategic public land bank involves the government acquiring and storing land for specific purposes. These

objectives include enhancing agricultural land mobility, among other things (Gorgan & Hartvigsen, 2022).

The establishment and oversight of state-owned land reserves is possible by public institutions, state-owned enterprises, and other legal entities at the state, regional, or municipal levels within the land market. These entities have the right to engage in land transactions, such as buying, selling, exchanging, and leasing, and they must adhere to adapted budgeting rules, including the requirement of revolving budgets. It is important to consider land banks, land banking, and their integration with land consolidation. Land banks can do more than consolidate land. They can also purchase land in advance in areas where public infrastructure projects are planned. This strategy allows land banks to capitalize on favorable market conditions and reduce the risk of future expropriation (Versinskas, 2020). The importance of land banking stems from the limited availability of public lands designated for formal use and the unequal distribution of access to them (Goytia, 2019).

The establishment of state-owned land reserves may be established and overseen by public institutions, state-owned enterprises, and other legal entities at the state, the level of regional or municipal concern levels within the land market. This flexibility includes the right to engage in land transactions, such as buying, selling, exchanging, and leasing, as well as adapted budgeting rules, including the requirement of revolving budgets. The importance of considerations regarding land banks, land banking, and their integration with land consolidation cannot be overstated. In addition to consolidating land, land banks can purchase land in advance in areas where public infrastructure projects are planned. This strategy enables land banks to capitalize on advantageous market dynamics and mitigate the risk of future expropriation (Versinskas, 2020). The whole land banking thing comes from the fact that there aren't a lot of public lands available, and they're not distributed evenly (Goytia, 2019).

Community of customary law and customary rights

A community of customary law is a collective of individual who all follow the same traditional laws. Its members are connected by shared residence or ancestry, forming a legal community. This community is characterized by the presence of customary institutions, as well as collectively owned property and/or customary assets. A value system that determines its institutions and legal norms is also possessed by the community.

Indonesian law recognizes communities of customary law. These communities are groups of people bound by customary law based on common residence or descent. They have customary institutions, jointly owned property, and customary assets. A value system that determines the institutions and norms of customary law is also in place.

Adat is a concept with a rich history in Indonesian land legislation. It first rose to prominence during the colonial period. Cornelis van Vollenhoven, a law professor at Leiden University, used this notion to contest the land policies of the Dutch East Indies administration. In 1870, the Dutch legislature passed a novel land law for Indonesia that ushered in private capital to cultivate new plantations. At that time, the

leaders of the Netherlands Indies declared any unused land as "*wasteland*." They claimed that the state could lease this land to private companies. Nevertheless, van Vollenhoven contended that a substantial portion of this territory was possessed in accordance with adat law, communities are entitled to the "*right to use*" under the auspices of a communal mandate. Thus, the state was unable to lease it to businesses (Bedner & Arizona, 2019).

The law recognizes traditional rights, especially land rights, as an original source. Despite their constraints, these entitlements and regulations assume a pivotal function within legal frameworks concerning land and natural assets. The state's recognition and respect for communities that adhere to customary law is stated in Article 18B of the Indonesian Constitution. The state also recognizes their traditional rights. This is contingent on their continued adherence to these traditions. They must also not contravene the principles of the Republic of Indonesia. Across Indonesia, rural communities recognize the authority of customary law in governing access to land and natural resources. However, proving that these customs constitute continuing traditional law or the utilization of collective territory aligns with national standards rather than corporate agendas poses a significant challenge for these communities (Li, 2023; Bakker, 2023).

These communities frequently regard it as unjust when they forfeit their customary territories to enterprises. They say that companies are buying more land than they should, working with the government to not pay people for their land, and lying to people who live in the country so they can take their land, rice fields, and gardens. Throughout Indonesia, communities are uniting to oppose these land seizures. Everything possible is being done, both legally and illegally, to put pressure on companies to protect their interests (Li, 2023; Bakker, 2023).

Customary rights are collectively held rights of indigenous populations concerning land, territory, and natural resources. These rights have been passed down from generation to generation. The long-term sustainability of indigenous peoples in a region depends on these rights. Indigenous peoples collectively hold these rights over land, territory, and natural resources. These rights are inextricably linked to their cultural, social, and spiritual identity, and they are meticulously transmitted from one generation to the next. The sale of customary land is prohibited due to its status as common property. However, there is the possibility of leasing. Permission for business usage can be granted. This is possible with the consent of the indigenous community. This process is deliberative.

The Indonesian Constitution holds that the government of the Republic of Indonesia is responsible for protecting its citizens and homeland, with the aim of improving public welfare and advancing citizens' intellectual lives. Two of the four main ideas of the Republic of Indonesia talk about the country's responsibility to keep its people and homeland safe for its people (Roestamy, 2022).

DISCUSSION

First, the consequences of insufficient legal protection of customary land acquired by the Land Bank Agency for investors is examined. The

text goes on to explain the reasons why communities that follow customary law have such a hard time obtaining land certificates to prove ownership. These credentials can be advantageous to community members.

The Impact of Inadequate Legal Protection of Customary Land

Inadequate legal protection for customary land has been resulted in by the Land Bank Agency's land acquisition program, which was intended to benefit investors. A land bank agency constitutes a public institution that acquires, disposes of, or grants the use of land to enhance mobility and facilitate the rural land market while seeking public policy goals connected to environmentally-friendly land usage (Versinskas, 2020). There are two primary categories of land banks: private and public. Public land banks are overseen by public institutions, while private land banks are managed by private entities. Public land banks are regulated under the Job Creation Law and will be established in the future. One source of land that these institutions will manage is land left by investors. In fact, private land banks have long been operated by investors. These investors are primarily real estate or property companies. Private companies run this type of land bank primarily to remain profitable, and they do so by following a specific business model. They acquire land at low prices and sell it for a profit. It is expected that the long-term availability of land will either increase its value or encourage speculation (Herawati, 2020).

The land bank agency's functions include acting as a land reserve, providing land security for future development needs, purchasing land, and distributing it for development. The existence of three reasons for land banking projects has been identified. First, this practice makes sure there will always be land for future buildings and/or development of land (Kania, 2014). Second, the financial rewards and market potential of selling land in these projects make land banking a the most popular business model for people who invest in real estate. (Bakar, 2018). Third, land banking reduces the risks involved in land exchanges in informal markets in developing countries (Sasu, 2024).

The increasing number of private and semi-public land banking projects in developing countries can be attributed to the following reasons. However, existing literature mostly focuses on public land banking practices within established land markets, planning policy challenges (Spit, 2018), brownfield site renewal (Robinson, 2024), and affordable housing (Roestamy, 2022).

The central government of Indonesia has set up a bureau for the land bank. This agency is responsible for managing land. Its assets are considered state assets. The agency's duties encompass strategizing, obtaining, acquiring, overseeing, employing, and allocating land. The agency's mission is to make sure there is enough land for the public and for social interests. It also works to support national development, economic fairness, and changes to the way land is owned and used. The prerogative of management rights is accorded to land under the agency's administration. In addition to proprietary prerogatives, utilization entitlements for commercial objectives and edifices may be conferred. The right to use buildings can be extended and renewed, along with

management rights, provided that the use is consistent with the purpose for which the right was initially granted. Groups of people bound by customary law based on shared residence or ancestry are recognized by Indonesian law as communities of customary law. These communities have customary institutions, shared property, and a value system that shapes their institutions and legal norms. Legislation recognizes customary law as an original source of rights, particularly land rights.

The recognition of customary rights is a legal component of basic land regulations. So, the way these rights are put into practice—or the way they're exercised—has to line up with what's good for the country and the state, you know, based on keeping the country united. And this is true for the rights of other communities based on customary law, too. But, and this is important, these interests can't go against the Constitution. They must also not conflict with higher-level regulations. For customary rights to be recognized, certain requirements must be met. First, the existence of the rights in reality is necessary. Secondly, it is imperative that they are congruent with national and state interests. Third, they must promote national unity. Finally, they must not violate higher laws and regulations. Also, the basic rules about land say that land rights should serve a social purpose.

Therefore, interests that benefit society more may supersede the land rights of a community of customary law. During the New Order regime, for instance, and even today, plantations and mines are considered socially beneficial and thus take precedence over land claims by individuals or indigenous peoples.

Customary law stipulates that a community is entitled to certain powers over natural resources, including land, for the purpose of survival and livelihood. These rights are known as customary rights. These rights stem from an unbroken physical and spiritual relationship between the community and the area in question that has been passed down from generation to generation.

Communities that adhere to customary law assert dominion over territory and other natural resources, and they frequently do so with a sense of injustice. Folks who support traditional land rights say those rights were in place before the country was colonized and the Indonesian state was created. Despite being suppressed since colonial times, these rights serve as a substantial and genuine foundation of norms and regulations that should not be disregarded. They say that these rights came from the first Indonesian society and that not giving them to people is bad for Indonesians (Bakker, 2023). While a few communities have been recognized as adat communities, few have registered their communal land. Local governments appear reluctant to relinquish their authority over it. Consequently, the legal power to defend their land in the event of a dispute or acquisition by the Land Bank Agency is lacking for the community of customary law. As a general rule, customary lands are not explicitly delineated in national legislation with respect to ownership. This allows the Land Bank Agency to easily acquire land for various purposes, including investment, which is increasing in Indonesia.

These communities feel strongly that the loss of their traditional lands to corporations is unfair. They say that corporations are taking

more land than their permits allow and are working with government authorities to not pay compensation to the population. Kouwagam's (2020) research indicates the existence of accusations against corporations of deceiving rural land users about their legal entitlements, in order to obtain their land, rice fields, and gardens. According to the Constitution and various regulations, the Land Bank Agency is responsible for representing the state and protecting land owned by communities according to customary law.

Difficult to obtain land certificates as proof of ownership

The following conditions must be met. These conditions are key to making sure customary rights are still around. First, a group of people must be bound by their existing customary legal system. This system impacts the group's daily life and is recognized and applied by the system. Second, there's got to be specific customary land that makes up the living environment of its citizens. Third, land ownership customs must be governed, managed, and utilized in accordance with the prevailing legal framework. Citizens must be able to apply this system and adhere to its principles. Fourth, the management, control, and use of customary land must be addressed by the system, and it must be applicable and obeyed by its citizens.

However, while a few communities have been recognized as communities of customary law, customary land has rarely been registered, as local governments seem hesitant to give up their authority over the land (Bedner, 2016; Bakker, 2023). The truth of the matter is that land that is owned by a community that follows customary law and is used for livelihoods and welfare is usually not registered with the land registry office. These communities face challenges in acquiring land certificates that verify ownership and benefit community members. In recent years, different legal, governmental, and civil society initiatives have been undertaken, including those related to village adat land. Nevertheless, these initiatives have yet to devise a discernible protocol for acknowledgement or refusal (van der Muur, 2019).

Indeed, the government of Indonesia has promulgated statutes that permit the registration and certification of customary land. According to Minister of Agriculture and Spatial Planning and Head of the National Land Agency of the Republic of Indonesia Regulation Number 14 of 2024, customary land can be registered. The execution of land administration and the inscription of community land rights based on traditional law are governed by this regulation.

One option is to seek formal acknowledgement of customary land rights in accordance with Regulation 5 of 1999, a decree promulgated by the Minister of Agrarian Affairs. This regulation outlines the process by which lower-level governments evaluate requests for such recognition from communities. A community's qualification depends on its regional government's recognition of it as a community of customary law that adheres to customary law in daily life. In the event that a community makes use of land collectively, it has the option to submit a request to the National Land Agency for the purpose of mapping and registering its traditional territory. The regional government must endorse this request. (Bakker, 2023).

A list containing details of customary land parcels is known as the customary land register. These parcels are numbered according to the results of cadastral measurement and mapping. Registration of management rights occurs in stages: application submission, land collection and examination, issuance of a decision, and issuance of proof of rights. A community of customary law may submit customary land recorded in the register to the Minister of Management Rights. This application forms the basis for registering these rights.

The community of customary law can use certified customary land for economic purposes to benefit the community. To this end, these communities collaborate with the Land Bank Agency which manages customary land so that other parties, such as investors who need land on which to build and develop their businesses, can use it. The regulation stipulates that the Land Bank Agency can utilize land by cooperating with other parties when carrying out its functions and duties, making this possible. Despite the Constitution and various regulations clearly protecting the rights of communities of customary law, obtaining ownership certificates for customary land is difficult. Various obstacles arise during the registration process.

It is hard to register customary land for real. This is because people do not know about the history of the land. Indigenous peoples often lack historical awareness and did not realize the importance of legally registering their land in the past. This has given rise to a considerable number of instances of unregistered customary land with ambiguous status. Another problem is the absence of complete information regarding the limits and proprietorship of traditional territory. Therefore, registering traditional land is difficult. Registering customary land is also difficult because its location in forest, water, or cultural reserve areas requires complex status adjustments, making immediate registration impossible. The government should streamline the customary land registration process because community members face numerous obstacles when trying to obtain land certificates.

CONCLUSION

According to Indonesian Agrarian Law, land law is based on customary law. It's got to be done in line with what's best for the country. It must also be in accordance with the laws and regulations that are currently in effect. The Indonesian Forestry Law is also important because it recognizes customary law and is essential for protecting it. These communities have the right to collect forest products for daily use. They also have the right to carry out forest management activities. These activities must be in accordance with customary law. They must not conflict with national regulations and laws. They also possess the entitlement to: receive support to improve their well-being. Furthermore, customary land can be certified and used for economic purposes by collaborating with the Land Bank Agency, which benefits these communities. The Land Bank Agency oversees the management of customary land, ensuring its utilization by external parties, such as investors.

Registering customary land for the purpose of obtaining ownership certificates is a difficult process, despite the existence of constitutional

and regulatory protections for communities that adhere to customary law. The land registration process is not without its challenges. It has been demonstrated by the results that land of unclear ownership can be taken over by the Land Bank Agency. Consequently, land owned by a community of customary law is at risk of being acquired by the Land Bank Agency. This land is generally unclear as to ownership. The land would be acquired for the benefit of investors.

Consequently, the Land Bank Agency is entrusted with the role of serving as the state's agent, with the objective of safeguarding the land held by customary law communities. The government should also simplify the regulations and registration process for customary land. The Land Bank Agency's implementation of land acquisition programs for investment purposes would be subject to changes that would empower communities of customary law to protect their rights.

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