



ECONOMIC ANALYSIS OF LAW AND ITS APPLICATION IN GOVERNMENT REGULATION NO. 64 OF 2021 ON LAND BANK AGENCY

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How to Cite :

Khafidzoh, A.M. 2023. Economic Analysis Of Law And Its Application In Government Regulation No. 64 Of 2021 On Land Bank Agency. *Journal of Agri Socio-Economics and Business*. 5 (2): 75-86. DOI: <https://doi.org/10.31186/jaseb.05.2.75-86>

ABSTRACT

ARTICLE HISTORY

Received [25 Nov 2023]

Revised [2 Dec 2023]

Accepted [5 Dec 2023]

KEYWORDS

Economic Analysis of Law

Economic Theories

Land Supply

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The argument of law from various points of view has given birth to so many theories and concepts, one of the theories used in legal analysis is the Economic Analysis of Law. Between law and economics, both can be used as an analytical tool between economic impact and legal impact, and vice versa. Badan Bank Tanah is a sui generis legal entity established by the government through the Undang-Undang Cipta Kerja to support increased investment through the provision of land in the context of an equitable economy. All matters regarding the duties and functions of the Badan Bank Tanah are further regulated in Peraturan Pemerintah No. 64 Tahun 2021 about Badan Bank Tanah. This writing will describe the various economic theories used in the legal approach, especially in Peraturan Pemerintah No. 64 Tahun 2021, namely the Maximization, Equilibrium, Efficiency and Cost-Benefit theories. The Economic Approach Theory was chosen because this regulation was born on the basis of economic interests, with its various tasks and functions the Badan Bank Tanah aims to facilitate and shorten the process of acquiring land for investment activities by optimally utilizing state lands.

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) states that: "Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran

rakyat.". The provisions of Article 33 Paragraph (3) mandate all agrarian law products and their implementation for the prosperity of the Indonesian people. Act No. 5 of 1960 on Agrarian Principles or UUPA contains several rights, one of which is the right to control the state (Hak Menguasai Negara) over agrarian resources in Article 2, where the state is authorized to regulate and organize the allocation, use, supply and maintenance of agrarian resources; determine and regulate legal relationships between people and agrarian resources and determine and regulate legal relationships between people and legal acts concerning agrarian resources. The scope of the State's Right to Control (HMN) has been reaffirmed by Constitutional Court Decision No. 35/PUU-X/2012 (Judicial Review of Law No. 41/1999 on Forestry); Constitutional Court Decision No. 50/PUU-X/2012 on the review of Law No. 2/2012 on Land Acquisition for Development in the Public Interest; and Constitutional Court Decision No. 3/PUU-VIII/2010 on the review of Law No. 27/2007 on the Management of Coastal Areas and Small Islands against the 1945 Constitution. With the Judicial Review of the (3) laws, the Constitutional Court expressly stipulated that towards the State's Right to Control, the State is not the owner/owner of natural resources, but the presence of the state is to formulate policies (beleid), regulate (regelendaad), manage (bestuurdaad), manage (beheersdaad), and supervise (toezichthoudendaad). (Sasmitha, et.al. 2014)(Ahmad, 2020)

Departing from the State's Right to Control, the state as a policy formulator and with its land management authority gave birth to an institution that has the task of managing state lands including: lands that are not waqf lands, not management rights lands, not customary rights lands, not communal lands, and not forest area lands (Harsono, 2007). One of the law products that regulates agrarian resources is Law (UU) Number 6 of 2023 about The Enactment Of Regulation Of The Government In Lieu Of Law Number 2 Of 2022 On Job Creation Into Law specifically in Paragraph 1 concerning the Badan Bank Tanah in Part Four concerning Land. The regulation then gave birth to a special agency called the Badan Bank Tanah which then related to further provisions regarding its formation will be regulated in a Government Regulation, namely Government Regulation No. 64 of 2021. Badan Bank Tanah according to Government Regulation No. 64 of 2021 is a special agency that manages land with its function to carry out planning, acquisition, procurement, management, utilization and distribution of land to ensure the availability of land in the context of an equitable economy for the public interest, social interest, national development interest, economic equity, land consolidation, and agrarian reform. Badan Bank Tanah is also needed in order to meet the needs of government program land in the implementation of national strategic projects which will increase every year. The role of the Badan Bank Tanah as a land provider and manager will further facilitate the development process in

the future. National strategic programs that are currently underway include the development of special economic zones, infrastructure projects, construction projects and the development of transportation centers (Khafidzoh, 2022).

There is a theory that is very suitable for PP No. 64 of 2021 concerning the Badan Bank Tanah in this investment climate, namely the Economic Analysis of Law. The utilization of economics in legal analysis allows law makers, especially those with an economic background, to draw conclusions about human desires and various consequences in terms of law and how appropriate legal arrangements are. The Economic Analysis of Law approach departs from Jeremy Bentham's utilitarianism school which emphasizes benefits. Bentham said that a legal provision can be called a law if it can bring the greatest benefit to the greatest number of people (the greatest happiness of great numbers) (Mochtar & Hiariej, 2021). The reason economics is used in a legal approach is because economics is a rational science that has a self-interest in a world where resources are limited; modern microeconomic analysis is that rational actors will try to maximize their wealth from the limited resources available. Economic Analysis of Law answers legal problems by expressing different legal definitions and assumptions to get a picture of satisfaction and maximization of happiness. (Sugianto, 2013). Thus, it can be said that this approach is closely related to justice in law. Therefore, the law is used as economic tools to achieve maximization of happiness.

Various economic sciences can be used as a theoretical basic for analysis, but the economic science theories commonly used in legal analysis are theories derived from Posner, Cooter and Ulen. The first figure of economic science analysis of law was Richard Posner, with (3) three principles, namely value, utility, and efficiency (Posner, 2007). Posner's analysis was then expanded by Robert Cooter and Thomas Ullen, who gave birth to the principles of maximization, equilibrium, and efficiency (Cooter, 2001). Thus, to analyze the benefits of the Land Bank Regulation, Cooter and Ullen's Economic Analysis of Law will be used, namely maximization theory, equilibrium theory, and efficiency theory.

RESEARCH METHODS

The research method used to discuss and analyze the application of the economic approach theory to this law is the doctrinal legal research method. This method uses doctrine or previous legal opinions related to legal issues that are the topic of discussion. (Qamar & Rezah, 2020). So that with this doctrinal method, the basis used to discuss the theory of the economic approach to law and its application in Peraturan Pemerintah No. 64 of 2021 is literature study or through various relevant literature. (Fajar & Achmad, 2010)

Method of Collecting Data

The data collection technique used by the author in this writing is literature study. literature study is carried out by conducting research on laws, decisions of the Constitutional Court, theses and dissertations, journals and government publications on official web pages related to the object of research.

Data Analysis Method

Secondary data that has been collected through literature study is then analyzed by philosophical analysis. The data that becomes the object of research regarding the theory of the economic approach to law will be analyzed philosophically and described in the form of sentences to obtain comprehensive study results related to the theory of the economic approach to law and its implementation in the Peraturan Pemerintah No. 64 Tahun 2021 tentang Badan Bank Tanah.

RESULTS AND DISCUSSION

Economic Analysis / Approach of Law

The 1970s saw the development of a new discipline that was a breakthrough in changing the traditional view of lawyers about law, namely the discipline of "law and economics". The new view changed the view of "right and wrong" human behavior against a regulation to "risk and benefit" behavior. Law and Economics can be used as a means to analyze the effects of economics with law or the effects of law with economics. (Mochtar & Edward, 2021). According to American economist and historian Robert L. Heilbroner, after the end of World War II it was often discussed that economics technically gained a superior position over other social sciences. The superiority over other social sciences is due to the success of Newton's mathematics bringing economists to use quantitative methods (Heilbroner, 1980).

Robert D. Cooter of UC Berkeley calls the aggression of economics towards other social sciences "Economic Imperialism". Legal institutions became one of the victims of this economic imperialism, causing the language analysis commonly used by legal experts to begin to be displaced. The use of quantitative methods or techniques in legal institutions is made in such a way that the law can achieve a market economy, so that the law can take part in the process of economic development (Himawan, 1991). Legal science is considered to play an insufficient role in national development compared to economics because the language analysis used has many weaknesses. It should be understood that economic imperialism here does not mean that quantitative legal analysis is applied with complicated mathematical formulas but simply by applying simple mathematics to a case. The use of this method is expected to be able to build legal institutions as support and direction for national development. The economic approach in legal analysis and solving a legal

problem also does not stop at using numbers but can also use theories or concepts commonly used by economists. (Conboy & Adji, 2015). The utilization of economics allows legal institutions in conducting analysis to get conclusions about what human desires are and what the consequences are from the legal side and how appropriate legal arrangements should be.

There are 3 (three) basic issues in studying the economic approach to law. (Hanafi, 2001) First, issues related to the understanding and scope of economic analysis of law. Second, economic theories used as an approach in the process of analyzing legal issues. Third, the importance of applying economic analysis to law as an effort to increase the role of law in development. The Economic Analysis of Law approach is essentially the application of economic methods or principles to overcome legal problems in people's lives, both problems related to legal rules and court decisions. (Veljanovski, 1990). Thus, the economic approach can be used to analyze almost the entire legal system. There are 2 (two) economic theories borrowed from network calculus that can be used as the basis for quantitative analysis, namely: the concept of maximalization or maximization and the concept of equilibrium or balance. In addition, the concept of efficiency is also used in the quantitative rationale.

Maximization Theory. Maximization theory is an economic theory that uses the maximum possible results that can be achieved by a person in any case as a guideline. (Hanafi, 2001). Economists usually use this theory to measure the success of an economic activity, if satisfaction, profit, and capital in the maximum amount. The large number of adherents of this theory is based on people who think rationally and this rational thinking requires maximization theory (Cooter, 2000). This theory is not only needed by economic actors such as traders, but also legal institutions also use this approach to be able to have a maximum role in development through their duties. The task of legal institutions that can be a means of implementing this theory, for example, is in the process of making laws and regulations. In drafting this regulation, it must use this maximization theory so that the regulation is useful and achieves maximum results. The consideration is based on the cost & benefit of a regulation, considering the costs incurred for making and enforcing the rules whether it will be balanced or actually cause losses with the results obtained.

Equilibrium Theory. The concept of maximization that is not properly controlled will bring things beyond the limits that endanger the order of human life. Against this threat, a concept is needed to control that the development process runs in an orderly and moral manner, namely the Concept of Balance or Equilibrium. The use of the concept of maximization without balance can endanger and even derail the development plan itself, because every development process in the economic, political or educational fields will inevitably generate turmoil in society so that with the balance, the turmoil that occurs can be controlled. (Himawan, 1991).

Efficiency Theory. This theory emphasizes the usefulness of a thing (Hanafi, 2001). According to Robert Cooter in the book *Law and Economic*, there are two conditions where a process can be said to be efficient (Cooter, 2001), namely "it is not possible to produce the same amount of output using a lower-cost combination of inputs or it is not possible to produce more output using the same combination of inputs". In addition to efficiency as described by Cooter, there is an efficiency concept initiated by Vilfredo Pareto, an Italian scientist and politician in the 12th century. The concept is Pareto Efficiency which means that this efficiency concept is relative according to each preference. A condition can be said to be Pareto Efficient if it is no longer possible to change the allocation of resources to improve the welfare of economic actors (better off) without sacrificing the welfare of other economic actors (worse off) (Cooter, 2001). Alan Mitchel Polinsky illustrates how the difference in the application of efficiency theory by using the difference in the meaning of justice for jurists and economists. Lawyers in applying the concept of fairness to a piece of cake is to think about how to divide it equally while economists focus more on how to produce a large cake so that it can be enjoyed maximally by everyone. (Polinsky, 1989).

Cost & Benefit Theory. Cost-Benefit Analysis is a technique in economics that is used to analyze costs and benefits by involving the assessment and valuation of the benefits of activities to be carried out. (Echdar, 2019). Cost-Benefit Analysis compares and recommends the implementation of a policy or estimates the impact of a policy by calculating the total cost in monetary terms and the total benefit in monetary terms (Dunn, 2015). This approach can be the basis for alternative decision-making and government policy development to see the performance results of an activity. As the social situation worsens, so does the demand for policy "rationality". The government needs to increase its capability and improve the quality of policies, especially those that have the best performance. Cost-Benefit Analysis of Law is an analytical method applied to assess whether or not a proposal or rule of law is feasible (BPHN, 2013). The application of this theory aims to assist legal institutions in making policies by providing relevant reasons to consider each policy by assessing and describing the costs and benefits as well as possible risks that affect the interests of the public, private and civil society groups.

Application of the Economic Analysis/Approach of Law in PP. No. 64 of 2021

Badan Bank Tanah according to Peraturan Pemerintah No. 64 of 2021 is a special agency that manages land to carry out planning, acquisition, procurement, management, utilization and distribution of land to ensure the availability of land in the context of an equitable economy for the public interest, social interest, national development interest, economic equity, land consolidation, and agrarian reform. In particular, the Badan Bank Tanah

utilizes State Land as the object of its implementation with the intention of optimizing the utilization of state lands to realize the various interests that are the objectives of its implementation (Khafidzoh, 2022). The State Land referred to in the Badan Bank Tanah according to Article 7 of Peraturan Pemerintah No. 64 of 2021 is former land rights, abandoned areas and abandoned land, land for the release of forest areas, arising land, reclaimed land, former mining land, land on small islands, land affected by spatial change policies and land that has no control over it. Furthermore, the author will elaborate on how economic analysis of law is used in the approach of PP No. 64 of 2021 concerning the Badan Bank Tanah and specifically analyze its relationship with the Tasks and Functions of the Land Bank Agency and the Function of Providing Land for activities related to increasing investment.

Cost & Benefit Concept in the Tasks and Functions of the Badan Bank Tanah

The functions and duties of the Bank Tanah have been regulated in Chapter II of Peraturan Pemerintah No. 64 of 2021. Article 3 Paragraph (1) states that the Bank Tanah has the functions of planning; land acquisition; land procurement; land management; land utilization; and land distribution. And in carrying out these functions, the Bank Tanah is tasked with: planning long-term, medium-term, and annual activities; acquiring land that can be sourced from government stipulations and other parties; procuring land for development in the public interest or direct land acquisition; managing land from development, maintenance and security, and land control activities; utilizing land through utilization cooperation with other parties; and distributing land by carrying out land provision and distribution activities. The duties and functions of bank tanah in terms of ensuring the availability of land have been limited to public interest, social interest, national development interest, economic stabilization, land consolidation and agrarian reform.

The capital required by the Government for Badan Bank Tanah has been determined in Article 43 Paragraph (1) where to carry out its duties, functions and authorities, the Bank Tanah is given a capital of Rp2,500,000,000,000.00 (two trillion five hundred billion rupiah). The capital can be provided in the form of cash, land, warehouses and buildings, equipment and machinery, and/or other fixed assets. With such a large amount of capital disbursed by the government, what are the benefits that we can get from the badan bank tanah?

First, in terms of land acquisition for land bank assets, the government does not need to spend capital again and actually gets benefits because the acquisition of this land comes from land determined by the government consisting of state land (former rights land; abandoned areas and land; land released from forest areas; emerged land; reclaimed land; former mining land; small islands land; land affected by spatial change policies; and land that has no control over it and land from other parties originating from the Central Government; Regional Governments; BUMN; and BUMN. With the cultivation

of these lands, the state's financial burden for the maintenance of these lands is also reduced. In addition, with a clear designation and use of land, it will reduce and even prevent land disputes, especially abandoned lands. Even though these lands are certified, it is possible that if the land is abandoned, it will be controlled by other parties because it is considered no man's land (Elbert & Fernando, 2021). **Second**, in terms of land acquisition, namely land acquisition for development in the public interest or direct land acquisition. In these procurement activities, the government does not need to spend energy and costs like land acquisition in general because it has to budget very large funds to pay land compensation to residents whose land is used for the public interest. So that land acquisition for public interest development becomes faster and more efficient. It can even reduce the number of disputes related to the provision of land acquisition compensation, because almost every land acquisition activity is inevitably colored by disputes due to discrepancies in the compensation given. **Third**, Land Availability Guarantee is one of the main lives of the purpose of the land bank. Land is an asset of high economic value and is useful for the continuity of investment business activities. Prosperity is not simply born with the existence of land because prosperity is born from human activities on the land which are realized in its use and utilization. The availability of land for investors (investment) is an important and fundamental requirement for investment activities. So that with the guaranteed availability of land by badan bank tanah, it will bring in investors because they get legal certainty regarding the availability of land. Thus, the benefits obtained from the birth of this policy on land bank bodies will be far more than the costs incurred. This is in line with the cost & benefit theory in economics where legal institutions must consider the costs required and the benefits obtained and a policy will work well if the benefits obtained are far greater than the capital spent.

Maximization Concept and Balance Concept in Land Acquisition for Investors

The Job Creation Law and Presidential Regulation No. 64 of 2021 concerning the Badan Bank Tanah are legal rules born from the elaboration of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, so that all policies in it must prioritize the interests of the people without exception. Efforts to realize the people's interests in this strategic policy are to improve the investment climate and business activities in the Job Creation Law as stated in the objectives of establishing the Badan Bank Tanah, namely Equitable Economy. Thus, the existence of the Agrarian Reform agenda in the purpose of implementing the land bank by the Badan Bank Tanah is one way to maintain the mandate of Article 33 Paragraph (3) concerning the right to control the state over agrarian resources for the prosperity of the people.

Agrarian reform is considered a fundamental goal in guaranteeing the availability of land in the context of an equitable economy by Badan Bank Tanah because it takes into account that the specific purpose of Agrarian Reform is so that as much as possible all or most of the people own production assets so that they become more productive and can reduce unemployment. (Khafidzoh, 2022)

The allocation of land bank assets if we relate it to the maximization theory, the Badan Bank Tanah should use all of its land assets for high-value investment activities by large entrepreneurs in order to bring maximum benefits to the country. However, unlimited maximization will actually bring new problems. So, if we relate it to the balance theory, the inclusion of agrarian reform in the land allocation is a counterweight so that the running of the policy does not only benefit those who have more power and have a higher economic position. The amount of asset allocation of the Land Bank Agency for agrarian reform in the context of land redistribution according to Article 22 Paragraph (2) of the Government Regulation on the Badan Bank Tanah is at least 30% (thirty percent) of the state land designated for the Bank Tanah. The guarantee of land availability for agrarian reform in the Badan Bank Tanah is expected to help reduce inequality in land tenure, especially for lands used for food resources, through the provision of new land plots that can be used to improve the implementation of agrarian reform. (Khafidzoh, 2022).

CONCLUSIONS AND POLICY IMPLICATIONS

Conclusions

The Economic Analysis of Law approach is essentially the application of economic methods or principles to overcome legal problems in people's lives, both problems related to legal rules and court decisions that can be used to analyze almost the entire legal system, especially legal rules that regulate economic activities. The application of the theory of the economic approach to law used to analyze Peraturan Pemerintah No. 64 Tahun 2021 about Badan Bank Tanah is Cost & Benefit Theory dan Maximization & Equilibrium Theory. Based on the cost-benefit theory, we can find that the benefits obtained by the state through land acquisition, land procurement and guarantee of land availability by land bank agencies are greater than the capital spent. Also, the inclusion of agrarian reform in the purpose of land allocation by land bank agencies is something that balances the acquisition of land for investment activities so that the interests of small communities are also taken into account, therefore Maximization and Equilibrium Theory are also found in the analysis of this rule of law.

Suggestion

Lawmakers need to review Agrarian Reform in the purpose of land availability of land bank agencies, because land redistribution as an agrarian

reform program is carried out by granting property rights or joint property rights, while land banks provide their land with the status of Management Rights and Property Rights can only be given for certain interests which are very less accommodating the agrarian reform agenda. Preferably, agrarian reform should be given the privilege of being able to grant property rights for other purposes such as agricultural land, plantations, fisheries, and so on.

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