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# The Role of Land Banks in the Customary Land Management Rights of Customary Law Community Units

Sri Susyanti Nur<sup>1</sup>, Herry M. Polontoh<sup>2</sup>, Andi Evi Anggraeni<sup>3</sup>.

<sup>19</sup>  
<sup>1</sup>Faculty of Law Hasanuddin University, Indonesia, [srisusyanti23@gmail.com](mailto:srisusyanti23@gmail.com).

<sup>234</sup>  
<sup>2</sup>Faculty of Law of Cendrawasih University, Indonesia, [88mherry@gmail.com](mailto:88mherry@gmail.com).

<sup>3</sup> Doctoral Program Faculty of Law Hasanuddin University, Indonesia, [evhy.jief@gmail.com](mailto:evhy.jief@gmail.com).

## Abstract

Management powers are control powers of the authorities whose authority is partially given to the bearer of management rights. Management rights can originate from both state and customary land. One of the Management Rights authorities on state land is the Land Banks, while the Customary Law Community Unit/KMHA authorizes the Management Rights on customary land. Customary Land is property belonging to the region beneath customary law community governance, which persists but is not tied to specific land rights. These lands can be granted Cultivation Rights, Building Use Rights, and Usage Rights to third-party collaborators based on a Land Utilization Agreement. Management Rights on state land by Land Banks have been regulated under the Law on Job Creation. However, Management Rights on customary land have not been further regulated after the administration and registration of the customary land. This can weaken the existence of the KMHA and its customary land because the essence of the Management Right is the right to control from the state so that the land has the status of state land to cooperate with third parties. It is normative research, employing a legislative and conceptual approach then analysed qualitatively and presented descriptively. The results showed that: Land Banks based on government functions can play the role of; Dynamizer, Facilitator, and Capacitor to accompany the KMHA in managing Customary Land Management Rights. Through land development activities, the Land Banks can carry out the management function of customary land assets. These activities are designed to increase land use and utilization that can meet life's needs and business operations from an economic, social, and physical standpoint. This will allow the Land Banks to later collaborate with third parties to support investment. The land bank's mission is intended to secure the availability of land with no throwing up the right to customary land towards the benefit of the Customary Law Community.

**Keywords:** Land Banks, Management Rights, Customary Land

## 1. INTRODUCTION

Indonesia is a country that was created on August 17, 1945, and it formally has a very vast area that is separated into islands<sup>1</sup>. According to data from the Central Statistics Agency, the number of islands in Indonesia is 17,504 islands<sup>2</sup>. Land is an asset that humans may utilize to conduct numerous living activities. The quantity of land or space accessible on the ground

<sup>1</sup> Muhammad Mutawalli Mukhlis et al., "Regional Government According to the 1945 Constitution: Ideas Refinements and Law Reform," *Journal of Law and Legal Reform* 5, no. 2 (2024): 495–530.

<sup>2</sup> Muhammad Mutawalli Mukhlis, "Tanggung Jawab Negara Terhadap Dikawasan Pesisir Pantai," *YUDISIA : JURNAL PEMIKIRAN HUKUM DAN HUKUM ISLAM* 12, no. 1 (2021): 1–16.

<sup>14</sup> of the Earth is highly limited, but the human desire for fresh land or space keeps on growing<sup>3</sup>. The property Bank is an official government institution with specific jurisdiction (*sui generis*) to manage property on state property and land from third parties, based on Management Rights/MR. The urgent need to set up a land bank following the passing of Law No. 11 of 2020 on Job Creation (amended to Law No. 6 of 2023 on Job Creation/LJC), in Articles 125 to 135 mandates the establishment of a new institution in the form of the Land Bank Agency as a solution to answer the problem of land availability as a container for investment activities in Indonesia, and for the implementation of these provisions, Government Regulation No. 64 of 2021 on the Land Bank Agency (GR Land Bank) was formed. Dengan adanya hal ini, maka diketahui bahwa negara membutuhkan hukum dan begitupun sebaliknya, dimana hukum dijalankan melalui otoritas negara<sup>4</sup>.

<sup>3</sup> In Article 129 paragraph (1) of the LJC Article 40 paragraph (1) of the GR Land Bank, it is established that land administered by the land bank is assigned management rights (MR). Management rights have the authority to regulate through the state, and the implementation power is partially assigned to its bearer. Furthermore, management rights are regulated in Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration/GR No. 18/2021, Article 4 states that management rights are derived from both state and customary land. Based on the LJC, GR Land Bank, and GR 18/2021, mentioned above, the Land Bank and the KMHA as the holders of Management Rights.

State land is an object of Management Rights according to Article 7 GR Land Bank can come through; a. ex-rights land; b. vacant territory and land; c. woodland released land; d. emerging land; e. reclamation land; f. ex-mining land; g. land of tiny islands; h. land impacted by territorial reform measures; and i. land over which no control exists. Land objects from other parties can go through the process; a. buy; b. receiving grants/donations or equivalent; c. exchange; d. renunciation of rights; and e. acquiring other lawful forms.

Customary land situated in the region governed by the society of customary law, to be registered it requires several stages, namely: 1) through the determination of the KMHA as the Subject of Customary Land; 2) KMHA can submit an application for designation of customary land, also obtain a Certificate of Management Rights. This is regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 14 of 2024 (Reg. ATR/BPN No.14/2024), in Article 15 paragraph (1) which states that:

“Registration of customary land rights that have been recorded in the List of Customary Lands (DTU) as referred to in Article 13 paragraph (1) may involve submitting an application for management rights by KMHA to the Minister”.

Furthermore, Article 16 paragraph (2) states that:

<sup>3</sup> Muhammad Mutawalli Mukhlis et al., “Implementation of FLEGT Licensing Scheme in Deforestation Law Enforcement: Improvements and Handling in Indonesia,” *Jurnal Hukum Unissula* 39, no. 2 (2023): 130–56, <https://doi.org/10.26532/jh.v39i2.32210>.

<sup>4</sup> Muhammad Mutawalli Mukhlis, *NEGARA HUKUM KEDAULATAN DAN DEMOKRASI (Konsep Teori Dan Perkembangannya)*, 1st ed. (Surabaya: Pustaka Aksara, 2023).

“Regarding customary land as referred to in paragraph (1), KMHA **may cooperate with third parties** based on an agreement in accordance with the provisions of statutory regulations.”

Basically, there are 2 (two) activities within the scope of **Reg. ATR/BPN No.14/2024**, namely:

1. Customary land administration activities consist of inventory and identification activities, measurement, recording, and publication of the List of Customary Lands (DTU),
2. Registration of Customary Land includes the issuance of MR certificates for Customary Legal Community Units.

Since 2024, there have been several KMHA that have registered customary land and obtained Management Rights Certificates, but the question is “**How do Customary Law Community Units/KMHA manage their customary land after the granting of Management Rights?**”, “**How to cooperate with third parties based on land use agreements?**”.

<sup>57</sup> According to Maria SW. Sumardjono “The attitude and actions of the government to issue Management Rights certificates for KMHA are optional, it is evidence of respect for the rights of customary law communities”.<sup>5</sup> However, the granting of MR certificates for KMHA is not done automatically; rather, it must be based <sup>16</sup> the application of KMHA who have a thorough understanding of management rights and **cooperation in the use of customary land with third parties**. This might make it more advantageous for investors while weakening the presence of communities with customary law and its customary property. The next question is “Isn't it better for land banks that have the advantage of managing assets in the form of state land, to also manage customary land as KMHA assets in the form of Joint Ventures? Can collaboration with third parties based on the Customary Land Utilization Agreement between the Land Bank-KMHA-Investor?”.

This requires a separate arrangement regarding the mechanism of business cooperation with other parties, by placing each party in the same position, especially the position of KMHA as a legal subject over its customary land, so that later it will obtain certainty of rights over its customary land, and its utilization, and the results obtained as assets managed to improve the welfare of KMHA. The goal of this study is to investigate the legal connection that may be utilized as the foundation for the Customary Land Utilization Agreement between the Land Bank-KMHA-Investor.

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<sup>5</sup> Maria SW. Sumardjono, “Administration and Registration of Customary Land,” *Kompas*, June 19, 2024, <https://www.kompas.id/baca/opini/2024/06/18/antara-pengadministrasian-tanah-dan-pendaftaran-tanah-ulyat>.

## 2. ANALYSIS AND DISCUSSION

### 2.1. Land Bank and its authorities

Land Bank is derived by two acronyms: *land banking* and *land banks*. *Land banking* may often be transcribed into Indonesian as "perbankan tanah", and this serves to denote operations linked to land banks. At the same time, the word *land banks* serves to characterize an organization or collaboration of entities which are engaged in the sector of land acquisitions.<sup>6</sup> Land banking practices have been carried out in several countries, although with various names and methods adjusted to the needs of each country. The terms *Land Readjustment* are used in Japan and Germany, *Land Banking* in Taiwan, and *Land Polling* in Australia.<sup>7</sup>

The following are some definitions of land banks:

**Frank S. Alexander**, "*land banking is the process or policy by which local governs acquire surplus properties and convert to production use or hold the for long-term strategic public purposes. Land banks are public authorities or special purpose not-for-profit corporation that special in land banking activities, land banking can be undertaken by other public agencies, and not all communities need to create a separate land bank*"<sup>8</sup>

**Jack Demen**, "*Land Banking is a structural acquisition and temporary management of land in rural areas by an impartial State agency, with the purposes redistribute and/or lease out this land with a view to improve the agricultural structure and/or to reallocate the land for other purposes with a general public interest.*"<sup>9</sup>

According to Sri Susyanti Nur, the definition and activities of a Land Bank can be:

- a) Land banks in the public domain as a governmental tool to deal with urban redevelopment, conserve natural areas, and maintain the value of land in select locations;
- b) In theory, land banking is the activity of buying or buying land in order to develop or improve it to satisfy potential growth requirements.<sup>1</sup>
- c) Land banking is a notion connected to the access of land for the aim of offering public facilities for dwellings, industries with land management, controlling the land market, and avoiding land speculation.<sup>10</sup>

The Land Bank is granted particular authority to ensure accessibility of land in the context of an equal finances, for the public fascination, societal needs, national development preferences, equitable economic development, land combining, and agricultural reform. The presence of the land bank is expected to: 1) realize the objectives of Article 33 Paragraph (3) of the 1945 Constitution; 2) be a tool that efficiently and effectively implements diverse land

<sup>6</sup> Fatimah Al Zahra, "Land Bank Regulation Idea to Realize Equitable Management of State Land Assets," *Jurnal Ilmiah Administrasi Publik*, Vol. 3, No. 2 (2017): 93.

<sup>7</sup> Sri Susyanti Nur. "Legal Aspects of Urban Land Provision in the Form of Land Banks to Support Sustainable Urban Development," (PhD diss., Postgraduate Program Dissertation University of Hasanuddin, Makassar, 2009), 199.

<sup>8</sup> Frank S. Alexander. *Land Banks and Land Banking* (Center for Community Progress, Washington, 2004), 1.

<sup>9</sup> Jack Dامن. "Land Banking in The Netherlands in Context of Land Consolidation," Danish Ministry of Agriculture-FOA (International Workshop in Tonder, Denmark, March 17-20, 2004), 1.

<sup>10</sup> Sri Susyanti Nur, Op.Cit. 205-206.

policies and supports regional development; 3) manage land acquisition, control and utilization fairly and reasonably in implementing development, and 4) overcome Indonesia's land-related problems, particularly the availability of land for investment purposes.<sup>11</sup>

In Indonesia, the presence of the Land Bank Agency is essential for the implementation of infrastructure development, where the land acquisition process is sometimes hampered by the availability of land in physical and legal forms. During the administration of President Joko Widodo, it was recorded in the Annual Report of the Agrarian Reform Consortium (AR KPA 2022) that there had been at least 32 agrarian conflict eruptions and 11 of them were related to National Strategic Projects (PSN). The conflict's area reached 102,752 hectares and affected 28,795 families. In September 2023, there was a clash between residents of Rempang, Batam Island, and the police due to plans to build an industrial, service, and tourism area called Rempang Eco City on this customary land.<sup>12</sup> Furthermore, according to the Annual Report of the Indigenous Peoples' Alliance of the Archipelago (AMAN), throughout 2023 at least 2,578,073 hectares of customary areas were seized in the name of investment accompanied by violence and criminalization experienced by 247 people who were injured, and more than 100 people experienced the destruction of their homes in the name of conservation.<sup>13</sup> Saidunyi Nyuk, the Director of East Kalimantan AMAN, told VOA that there are still several issues related to the release of land for local communities and indigenous peoples in Penajam Paser Utara, East Kalimantan, in the Indonesian Capital City/IKN land case, regarding compensation for land cultivated by residents that has not been paid off.<sup>14 15</sup>

Land banks in managing land assets using the principles of transparency, accountability, and non-profit are regulated in Article 127 of the LJC, related to the function of land banks as regulated in Article 3 paragraph (1) GR 64/2021, namely:

- 1) Planning (Article 5 GR No.64/2021); The Land Bank carries out planning covering long-term (25 years), medium-term (5 years) and annual (1 year) activities.
- 2) The Land Bank obtains land (Article 6 to Article 8 GR No.64/2021) originating from the results of Government and/or Other Party Determinations. Land gathered as the outcome of Government Determinations involves State Land coming from previous rights land, neglected regions and land, forestry discharge land, resulting land, reclamation land, ex-mining land, small island land, land that is affected by territorial change policies, and land that has no intended use on. Land acquired by third parties gets carried by the process of acquiring, obtaining loans or gifts, swapping, relinquishing rights, and other authorized types of acquire. Land from Other Parties

<sup>11</sup> Ellen Setiadi, "Land Bank in Law No. 11 of 2020 Concerning Job Creation "What are the Benefits for the Community, ask the willingness of the people?"; (Papers on Webinar in Faculty of Law, Christian University of Indonesia, Wednesday, July 7, 2021).

<sup>12</sup> Andi Evi Anggraeni. "The Essence of Land Banks in Land Management of Former Land Rights." (PhD diss., Postgraduate Program Dissertation University of Hasanuddin, Makassar 2024), 172.

<sup>13</sup> Maria SW Sumardjono. *Kompas*, June 19, 2024. Op.Cit.

<sup>14</sup> Ghita Intan. "Ahead of Jokowi's Retirement, Land Acquisition in IKN Not Yet Complete," *VOA Indonesia*, October 8, 2024. <https://www.voaindonesia.com/a/jelang-jokowi-pensiun-pembebasan-lahan-di-ikn-belum-tas/7814903.html>.

<sup>15</sup> Muhammad Mutawalli Mukhlis et al., "The Conference of Parties-27 (COP-27) Agreement as an Instrument of State Policy in Handling Deforestation: A Comparative Study of Sweden and Indonesian Governments," *Law Reform* 19, no. 1 (2023): 1–24, <https://doi.org/10.14710/lr.v19i1.52926>.

is the land originating from the Central Government, Regional Government, State-Owned Enterprises, Regional-Owned Enterprises, Business Entities, Legal Entities, and the Community.

- 3) Land Acquisition (Article 9 GR No. 64/2021); The Land Bank conducts land purchase operations through the Land purchase stage method for advancement of the public concern, or direct land acquisition. This is regulated in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest (Law No. 2/2012), Article 123 of the Job Creation Law (JCL), and Government Regulation Number 19 of 2021 (GR 19/2021) concerning the Implementation of Land Acquisition for Development in the Public Interest.
- 4) Land management (Article 10 to Article 13 GR No.64/2021); The Land Bank manages land via operations such as expansion, repair, safety, and monitoring. Land development is a process to maximize the benefits and utilization of land gained by the Land Bank for practical uses that can ideally satisfy the demands of life and commercial operations on the basis of social, economic, and physical. Land development operations take place out according to the adequacy of the territorial plan. Land development may take advantage of developing infrastructure and amenities for industrial, tourist, agricultural, cultivation, unique economic regions, and additional economic areas which encourage the Land Bank's activities. The Land Bank can develop infrastructure and amenities on its own or in conjunction with the government of the nation, regional governments, and various other partners.
- 5) Land utilization (Article 14 GR No. 64/2021); The Land Bank utilizes land via collaboration with partners while maintaining its core values of advantage and prioritization. **The Land Bank's land usage collaboration with other parties might take the shape of purchasing and trading, leasing, commercial cooperation, grants, swaps, and other types of agreements agreed upon by the parties.**
- 6) and distribution (Article 15 GR No.64/2021); Land distribution by the Land Bank consists of land provision and distribution activities. Land provision serves the public concern, welfare, economic fairness, developmental concern, consolidated land concern, and reforming agriculture. Land distribution is in accordance with the provisions of laws and regulations. Land distribution is meant to be adequate for ministries/institutions, local governments, cultural and religious groups, and community groups as defined by the federal government.<sup>16</sup>

Based on article 4 of GR No. 64 of 2021 that "The land bank agency is transparent, accountable, and non-profit", the performance of the land bank agency must be open to anyone, especially the community. A non-profit land bank if associated with its public authority, and if collaborated, the land bank can enter into a land utilization agreement by distributing land to support investment activities, in matters related to the special authority of the land bank. Many nations that have set up land banks, including the United States and the Netherlands, have their own models that are tailored to the unique circumstances of each nation. According to Sri Susyanti Nur, the different kinds of land banks are connected to their authority:<sup>17</sup>

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<sup>16</sup> Andi Evi Anggraeni. Op-Cit.80-84

<sup>17</sup> Sri Susyanti Nur. Op.Cit. 300-301

1. *General Land Bank*, especially for the availability of land to assist government actions, such as public interest, social purpose, national development interest, equitable economic status, land reorganization, and agricultural reform.
2. *Special Land Bank*, especially for collaboration between the authorities and the commercial sector.

The table below lists a number of regulations related to Land Banks, Management Rights, and Form of Cooperations:

**Table 1. Regulations on Land Banks, Management Rights, and Forms of Cooperation**

No.	Regulation	Subject	Object	Form of cooperation
1.	Law of Job Creation	<p><b>Article 125 Paragraph (1)</b> The Central Government shall establish a land bank agency; Paragraph (2) The land bank agency, mentioned in paragraph (1), is a specific agency that oversees land.</p> <p><b>Article 137 Paragraph (1)</b> Part of the state's authority to control land in the form of land may be given management rights to:</p> <ol style="list-style-type: none"> <li>a. Central government agencies</li> <li>b. Regional governments;</li> <li>c. Land bank agencies;</li> <li>d. State-owned/Regional-owned Enterprises</li> <li>e. State/Regional-owned Legal Entities; or</li> <li>f. Legal Entities appointed by the Central Government.</li> </ol>	<p><b>Article 129 Paragraph (1)</b> Land maintained by the land bank agency is granted management rights.</p> <p><b>Article (2)</b> Rights on land above the management rights as referred to paragraph (1) can be given Business Use Rights, Building Use Rights, and Use Rights.</p>	Land Asset Management is directed to the utilization of land in cooperation with other parties and to be distributed to the specified parties. Land bank management rights can be cooperated and above it can be given Building Use Rights, Cultivation Use Rights, Usage Rights from other parties.
2.	GR Land Banks	<p><b>Article 2 Paragraph (1)</b> This Government Regulation establishes a Land Bank.</p>	<ul style="list-style-type: none"> <li>• <b>Article 40 Paragraph (1)</b> Land administered by the Land Bank is assigned Management Rights in line with the stipulations of legislative rules.</li> <li>• <b>Article 8 Paragraph (1)</b> land from other parties as referred to Article 6 letter b comes from               <ol style="list-style-type: none"> <li>a. Central government;</li> <li>b. Regional government;</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Article 2 letter e</b>, the Land Bank has the task of utilizing land through utilization cooperation with other parties.</li> <li>• <b>Article 14 Paragraph (2)</b> cooperation on utilization with other parties as intended in paragraph (1) takes the form of: a. buy and sell; b. rent; c) business cooperation; d) grants; e. exchange;</li> </ul>



			<p>c. State-owned enterprises;  d. Regional-owned enterprises;  e. Business entities;  f. Legal entities;  g. <b>Community</b></p>	<p>and other agreed forms.  • <b>Article 36 Paragraph (2)</b> cooperation as referred to paragraph (1) may be carried out with the Central Government, Regional Government, State Institutions, State-Owned Enterprises, Regional-Owned Enterprises, Business Entities, State-Owned Legal Entities, State Legal Entities, Private Legal Entities, Communities, Cooperatives, and/or other legitimate parties.  Paragraph (3) In order to carry out the collaboration described in paragraph (2), <b>the Land Bank can accept land as an investment and administer it through Business collaboration.</b></p>
3.	GR Management Rights, Land Rights, Apartment Units, and Land Registration	<p><b>Article 5 Paragraph (1)</b> Management rights derived from state property are awarded to:  a. Central government agencies;  b. Regional governments;  c. State-owned enterprises/regional-owned enterprises;  d. State-owned legal entities/regional-owned legal entities;  e. Land bank agencies;  f. Legal entities appointed by the central government.</p> <p><b>Article 5 Paragraph (2)</b> Management rights related to customary land are granted to customary law groups.</p>	<p><b>Article 10 Paragraph (1)</b>  A Ministerial Decree determines management rights on State Land or Customary Land.  <b>Article 11 Paragraph (3)</b> Management Rights holders receive a certificate as confirmation of ownership.</p>	<p>• <b>Article 8 Paragraph (1)</b> Management rights where the occupancy and possession of all or part of the land is for private enjoyment or in partnership with another party as addressed to in Article 7 paragraph (1) letter b could be provided Business Use Rights, Building Use Rights, and/or Use Rights over authority in line with their purpose and operation, to:  g. Management Rights Holders as long as regulated in the Government Regulation;  h. Further individuals, when the Management Rights land is part of a land usage contract.</p>

## 2.2. Customary Land Management Rights

The word customary law community is a transliteration of the Dutch word *rechtsgemeenschappen*, and this was first employed by Ter Haar Bzn in his work title "*Beginselen en Stelsel van Adat Recht*". The Concept of Customary Law Ter Haar Bzn defines society as a collection of individuals who have been organized, established in a particular area, and have their own authority and riches in the shape of either apparent or intangible goods. Each members experience life according to the law of nature as a normal thing and neither have an urge or propensity to dissolve the link that is now established or dissolve it in the possibility of separating away from the tie permanently.<sup>18</sup>

As subjects of customary land law, customary law communities have the nature of "*Geeenschap*", associations formed naturally due to genealogical and territorial elements. The constitutional recognition of Customary Law Communities is in Article 18 B Paragraph (2) of the 1945 Law, As a consequence of the additional amendment declaring that the state acknowledges and upholds KMHA and their customary liberties as long as they are still living and in line with community growth and the unitary state of the Republic of Indonesia values which are governed in the law. The provisions of Article 18 B paragraph (2) 1945 are strengthened by the provisions of Article 28 I paragraph (3) of the 1945 Law that cultural and traditional community identities are respected in line with developments in the era and civilization.

The confirmation of the KMHA as the holder of Management Rights based on Reg. ATR/BPN No.14/2024 is a form of recognition and protection by the Government. KMHA is recognized with its traditional rights based on special original rights including its authority over the territory and natural resources contained therein. Constitutionally, its existence must meet the legal requirements, namely:

- a. As long as it still exist
- b. According to the evolution of history and humanity
- c. In line with the ideals of the unitary state of the Republic of Indonesia;
- d. governed by law

Table 2 below lists the current rules regarding the recognition of Customary Law Community Units/KMHA and their customary land.:

**Table 2. Regulations on Customary Law Communities and customary land**

No.	Regulation	Subject	Object	Implementation
1.	Regulation of Minister of Home Affairs No. 52 of 2014 concerning Guidelines for the Recognition and Protection of	• Article 1 Number 1 Customary Law Communities are Indonesian Citizens who have unique characteristics, live in groups harmoniously	Customary Territory is customary land in the form of land, water and/or waterbody along with the natural resources contained therein with certain boundaries, owned,	Article 5 Paragraph (2) Identification as referred to in paragraph (1) is carried out by examining:

<sup>18</sup> Husen Alteng. "Legal Dynamics in the Recognition and Protection of Customary Law Communities' Rights to Land" (Laksbang Pressindo, Yogyakarta, 2010). 31.

	<b>Customary Law Communities</b>	<p>Customary Law Communities tend to be Indonesian citizens who possess particular features, belong to harmonious groups in accordance with customary laws, possess connections with ancestors roots and/or prevalent residency, possess a close connection to land and their surroundings, and have a system of values that governs financial, social, political, culturally, and judicial structures, as well as how a specific area is used to subsequent generations to generation.</p> <ul style="list-style-type: none"> <li>• <b>Article 2</b> Governors, regents, and mayors respect and safeguard customary law communities.</li> </ul>	<p>Customary Territory is a surface area and/or body of water with particular borders that is owned, used, and maintained in an inherited and environmentally friendly way to meet the requirements of the community by inheriting to previous generations or asserts for control in the manner of <b>customary land</b> or customary forests.</p>	<ul style="list-style-type: none"> <li>a. The history of the Customary Law Community;</li> <li>b. Customary territory;</li> <li>c. Customary law;</li> <li>d. Wealth and/or customary object;</li> <li>e. Customary government institutions/system</li> </ul>
2.	Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency of the Republic of Indonesia Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Indigenous Communities	<p><b>Article 1 Paragraph (2)</b> A Customary Law Community Unit/KMHA is an assortment of individuals whose are obligated by their customary legal system as joint citizens of a juridical entity because to a prevalent place location or ancestry, who also possess typical organizations, resources, and/or typical items that are collectively held, in addition to a system of values defining customary institutions and guidelines.</p>	<ul style="list-style-type: none"> <li>• <b>Article 1 Paragraph (4)</b> Customary Land Rights of Customary Law Communities, or whatever is known by a different name and subsequently known to as Customary Land, is land which occurs in the region ruled by customary law communities that in actuality continues to exist and is not tied to specific land rights.</li> <li>• <b>Article 15 (I)</b> Customary Land Areas that have been recorded in the List of Customary Lands as referred to in Article 13 paragraph (1) may be submitted for management rights by the Customary Legal</li> </ul>	<p><b>Article 4</b></p> <ul style="list-style-type: none"> <li>• Paragraph (1) Administration of Customary Land Rights shall be carried out as long as they still exist as referred to in Article 2 paragraph (1)</li> <li>• Paragraph (2) Administration of Customary Land Rights as referred to in paragraph (1) shall be carried out to record Customary Land in the List of Customary Land.</li> <li>• Paragraph (3) Stages of land administration for Customary Land include: <ul style="list-style-type: none"> <li>a. Inventory and identification;</li> <li>b. Measurement and mapping; and</li> </ul> </li> </ul>

			<p>The Customary Legal Community Unit may apply to the Minister for management rights over Customary Land Areas that were previously documented in the List of Customary Lands related to in Article 13 paragraph (1).</p>	<p>c. Recording of The List of Customary Land.</p> <p><b>Article 16</b></p> <ul style="list-style-type: none"> <li>• <b>Paragraph (1)</b> Customary Land Areas without submitted confirmation of management rights by the Customary Law Community Unit/KMHA shall continue to have the status of Customary Land.</li> <li>• <b>Paragraph (2)</b> with the regard to Customary Land as referred to in Paragraph (1), <b>the Customary Law Community Unit/KMHA may cooperate with third parties based on an agreement</b> in accordance with the provisions of law and regulations.</li> </ul>
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The administration and registration of customary land have been started since 2024, carried out in several provinces, including West Sumatra, Kalimantan, Bali, and Papua. The administration and registration of customary land began with research to determine the Customary Law Community as regulated in the Regulation of the Minister of Home Affairs Number 52 of 2014 (Permendagri 52/2014) concerning Guidelines for the Recognition and Protection of Customary Law Communities. Based on Article 4 of Permendagri 52/2014, it is emphasized that the Recognition and protection as referred to in Article 2 are carried out through the following stages: a. identification of Customary Law Communities; b. verification and validation of Customary Law Communities; and c. Determination of Customary Law Communities.

The results of the above activities are as follows according to Article 5:

- (1) Regent/Mayor through the Sub-district Head or other equivalent position carries out identification as referred to in Article 3 letter a by involving customary law communities or community groups.
- (2) Identification as referred to in paragraph (1) is carried out by examining carefully:
  - a. History of Customary Law Communities;
  - b. Customary territory;
  - c. Customary law;
  - d. Customary wealth and/or objects; dan

e. Customary government institutions/systems

Minister of Home Affairs Regulation No. 52/2014 is a guideline in determining KMHA to strengthen their position as legal subjects regarding their traditional rights, this is in line with the constitution and also in line with the UN Declaration on the Rights of Customary Law Communities, as regulated in Article 26:<sup>19</sup>

- (1) Indigenous cultures subsequently claims to the land, areas, and assets that they hold or inhabit historically, as well as the land, areas, and assets that they have utilized or obtained;
- (2) Indigenous communities retain an obligation to control, employ, establish, and regulate their ancestral land, areas, and assets, in addition to those acquired by other methods.

### **1.3. The Role of Land Banks in the Customary Land Management Rights of Customary Law Community Units/KMHA**

Management Rights are not regulated in Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) as a land right, later after the Job Creation Law was formed, management rights were strengthened by being regulated in Article 136 - Article 142, Paragraph 2 (Strengthening Management Rights). The definition of management rights is stated in Article 136 of the Job Creation Law, "Management rights are the right to control from the state, the implementation authority of which is partly delegated to the rights holder". **In essence**, management rights are granted on state land, so land rights must first be released to the state in order to become state land, therefore management rights can only be granted to lands that are directly controlled by the state (state land).

The Job Creation Law does not mention that management rights can come from customary land, however in the regulation of GR No. 18/2021 which is the implementing regulation of the Job Creation Law, Article 5 paragraph (2) states that "Management rights originating from customary land are assigned to the customary law community". According to Irawan Soerodjo, the addition of management rights objects from the customary rights of Customary Law Communities is not appropriate because the essence of granting Management Rights comes from the State's Right to Control.<sup>20</sup> Therefore, GR 18/2021 adds norms that are not regulated in the Job Creation Law. According to Maria SW. Sumardjono, "the determination of customary rights to management rights actually reduces the authority of customary law communities that is inherent in them, to "part of the state's authority delegated to customary law communities". Customary law communities do not actually need the delegation of state authority. Furthermore, according to Maria SW Soemardjono, there are several corrections to GR 18/2021 as homework for the government, namely:<sup>21</sup>

<sup>19</sup> UN Declaration on the Rights of Indigenous Peoples. Asian Indigenous Women, accessed January 31<sup>st</sup> 2025, <https://www.asianindigenouswomen.org/index.php/indigenous-womens-human-rights/unpfii/77-united-nations-declaration-on-the-rights-of-indigenous-peoples-1/file>.

<sup>20</sup> Irawan Soerodjo, "Land Law of Land Management Rights (MR) (Existence, Regulation and Practice" (LaksBang Mediatama, Yogyakarta, 2021), 41.

<sup>21</sup> Maria SW, Sumardjono. Op.Cit. *Kompas*.

1. Change the wording of Article 5 GR 18/2021 by adding the word "can" so that it is as follows: MR originating from customary land can be assigned to the Customary Law Community;
2. It is necessary to formulate the authority of the KMHA as the holder of management rights whose character is different from other MR subjects, according to Article 5 Paragraph (1) GR 18/2021. The authority of MR holders as regulated in Article 7 is not compatible to be assigned for the KMHA;
3. The granting of MR Certificates for KMHA is not done automatically, **but only based on the application of KMHA who have a thorough understanding of management rights.**

Considering the two statements above, it should be emphasized that Management Rights are not physical land rights, it is only legal in nature. Land rights must be applied to control and use the land. Before using its customary land or collaborating with a third party, KMHA must first apply for land rights. The third party should also apply for land rights to use part of Management Rights land according to its designation. The use of land that can be granted a third party can be in the form of Cultivation Rights, Building Rights, and Usage Rights. In this case, KMHA as the holder of the management rights can directly perform land use agreements with another party. However, considering that these management rights have only been implemented (in 2024), KMHA should be assisted by the government in this case, which can be done by involving the role of the land bank.

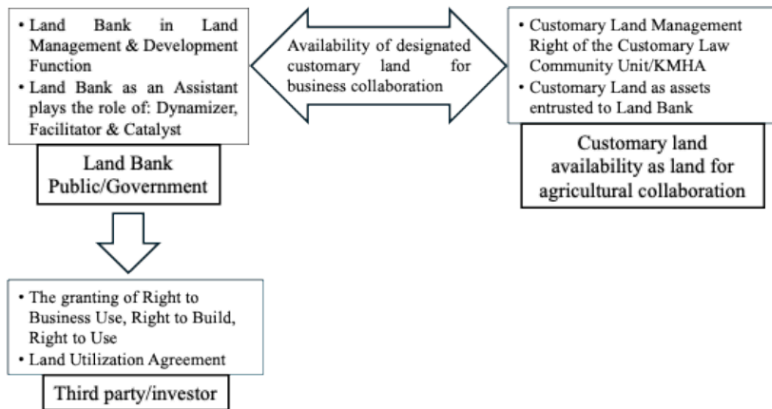
Land banks play a crucial role in providing land, to be distributed to the third parties based on land utilization agreements. Land banks can only manage state land and land from other parties, such as the community (Article 8 Paragraph (1) GR 64/2021), then Article 14 Paragraph (2) states that **cooperation in utilization with other parties can be in other forms agreed upon** such as stated in Article 36 Paragraph (3) that **"in carrying out cooperation, the Land Bank can accept deposits in the form of business cooperation"**.

Land use by a third party must be preceded by a land transfer agreement between the applicant and the holder of the management rights. Making a written agreement is important for both parties because it contains the rights and obligations of each party. The agreement on the use of customary land can be made directly by KMHA, or it can also be assisted by government, in this case involving the Land Bank. The land bank as a special body can assist KMHA, as a **dynamizer, facilitator, and catalyst.**

The role of the Land Bank can be described as follows:

1. **Dynamizer**; as a driving force in increasing the empowerment capacity of KMHA, increasing innovation and utilization of technology, and increasing community capacity in managing customary land as agricultural or plantation land.
2. **Facilitator**; providing facilities and infrastructure, implementing education and training, counseling and mentoring, and providing technical skills;
3. **Catalyst**; carry out coordination, improve performance so that Community Units can independently manage customary land as an asset for investment to improve shared welfare.

According to Articles 10 to 13 of GR No.64/2021, the Land Bank's role is to manage land through "Land Development," which includes building infrastructure and facilities for Industrial Areas, Tourism Areas, Agriculture, Plantations, Special Economic Zones, and other Economic Zones that support the Land Bank's operations. In this situation, the Land Bank can help the KMHA construct specific areas on customary land as objects of management rights, such as Agricultural Areas, Plantations, or other Economic Zones, which can subsequently assist the land bank in locating land for collaboration with third parties. Business cooperation can be built by the land bank with KMHA in the availability of land complete with facilities and infrastructure, so that it can become an object in the land utilization agreement with third parties, and if the term of the land rights has expired, the customary land will return to the KMHA as an asset in the customary area. The goal of this legal partnership is to benefit the KMHA so that it can eventually be run independently by the KMHA.



**Picture 1.** Legal Relationship of the Role of Land Banks over KMHA Customary Land Management Right

### 3. CONCLUSION

Land Bank is a special agency of the central government that is given special authority (*sui generis*) in managing assets in the form of state land and land from other parties, based on the Management Rights/MR. It can provide assistance to the Customary Law Community Unit/KMHA in managing Customary Land as an Object of Management Rights for Customary Land. The Land Bank's role as a Special Government Agency can be used to assist KMHA by functioning as a dynamizer, facilitator, and catalyst.

Land Bank can obtain land from other parties, such as the community. Land Bank can receive land deposits and manage them in the form of Business Cooperation, which allows Land Bank to conduct business collaboration with Community Units/KMHA that entrust their land to be managed, developed, and ready to cooperate with third parties.

Through the role of the Land Bank, the Customary Law Community Unit/KMHA will be able to manage its customary land as an object of Management Rights independently as a joint asset located in the customary area.

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