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Reconstructing Land Rights over Former Village Treasury Land: From Ownership to Management Right

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Abstract

Former village treasury land that becomes a regional government asset following a change in village status into a kelurahan faces a normative vacuum regarding the type of land right that should attach to it. Law Number 6 of 2014 on Villages and Law Number 23 of 2014 on Regional Government declare this transfer only declaratively, without regulating the determination and registration of the land right. This research employs normative legal research using statutory, conceptual, and case approaches, citing Supreme Court Decision Number 504 K/Pid.Sus/2013 as one of the primary legal materials. This research aims to provide normative clarity on the legal status of former village treasury land after its transfer to the regional government and to determine the type of land right that should be established over it. To that end, two problems are formulated: how the transfer mechanism operates within the land administration framework, whether the Right of Ownership may attach to former village treasury land controlled by the regional government, and what right should be established instead. Drawing on Jeremy Bentham's principle of utility as expounded in A Fragment on Government, and John Locke's theory of property, this research concludes that the declarative transfer has not yet produced a concrete legal benefit capable of sustaining the regional government's authority over the land against third parties, and that Right of ownership is incompatible with regional government because it contradicts Article 21 of the Basic Agrarian Law and the nature of state control over land. The Right of Management is the most appropriate right for such land.

Introduction

National agrarian law arranges land rights in a tiered structure. Article 16 paragraph (1) of the Basic Agrarian Law lists the types of land rights in full: Right of Ownership, Right of Cultivation, Right to Build, Right of Use, Right of Lease, Right to Clear Land, Right to Collect Forest Products, and other rights not included in the foregoing that will be established by statute, along with rights of a temporary nature as listed in Article 53. The Right of

Management is not part of that list; it derives from the State's right of control.[1] Each type of right has a different legal subject, and the Basic Agrarian Law does not allow any legal entity to hold any type of land right freely, without regard to its standing in law.

Article 21(1) of the Basic Agrarian Law states that only Indonesian citizens may hold a Right of Ownership over land.[2] Paragraph (2) provides an exception for legal entities designated by the Government, and that designation is set out in Government Regulation Number 38 of 1963 on the Designation of Legal Entities Permitted to Hold Ownership Rights over Land.[3] The list of legal entities under that regulation is limited to state-owned banks, agricultural cooperatives, religious bodies, and social organizations. Regional governments, whether provincial, regency, or municipal, are not included in that list. Normatively, regional government therefore falls outside the legal subjects entitled to hold a Right of Ownership over land.

A problem arises where regional government law regulates the transfer of village wealth to the regional government. Article 11(2) of Law Number 6 of 2014 on Villages states that all village property and revenue sources of a village that changes status into a kelurahan are transferred into the wealth/assets of the regency or municipal government, to be used for improving public welfare in that kelurahan.[4] Minister of Home Affairs Regulation Number 1 of 2016 on Village Asset Management provides an administrative framework for managing village assets while a village remains active.[5] These provisions establish that the transfer of village wealth occurs by operation of law, but they do not state explicitly what type of land right should attach to former village treasury land once it passes to regional government, nor how it should be registered with the Regency/Municipal Land Office. This kind of ambiguity is not new in the regulation of village treasury land. A study of Minister of Home Affairs Regulation Number 1 of 2016 finds that the range of land rights in national agrarian law has not accommodated the distinct position of the village, so that the appropriate type of land right for village treasury land, and its legal subject, remain normatively

[1] Republic of Indonesia, Law Number 5 of 1960 on Basic Agrarian Regulations, art. 16 paragraph (1).

[2] Republic of Indonesia, Law Number 5 of 1960 on Basic Agrarian Regulations, art. 21.

[3] Republic of Indonesia, Government Regulation Number 38 of 1963 on the Designation of Legal Entities Permitted to Hold Ownership Rights over Land.

[4] Republic of Indonesia, Law Number 6 of 2014 on Villages, as amended by Law Number 3 of 2024 on the Second Amendment to Law Number 6 of 2014 on Villages, art. 11(2).

[5] Republic of Indonesia, Minister of Home Affairs Regulation Number 1 of 2016 on Village Asset Management.

unclear.[6] If that ambiguity already exists for village treasury land while a village is still active, the problem becomes larger for former village treasury land that has passed to regional government, because the legal subject itself changes from village government to regional government.

When control over a parcel of land passes to regional government, the type of right attached to it should match the position of regional government as a public legal entity, not as an individual holder of ownership. Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Strata Units, and Land Registration[7] offers two options for government agencies and regional governments: the Right of Use and the Right of Management. The Right of Management is distinguished from other land rights in that its holder is given the authority to plan the land's allocation, to use it, and to hand part of it over to a third party under an agreement.[8] This feature is relevant to former village treasury land, which in practice is generally managed by involving a third party through a lease relationship.

Conditions on the ground do not always follow that normative construction. As a primary legal source, this study draws on Supreme Court Decision Number 504 K/Pid.Sus/2013, which examined the case of Moch. Hamim Syachroni, a former official of the Community Empowerment Institution of Karangrejo Kelurahan, Banyuwangi Regency.[9] In that case, it emerged that the former village treasury land of Karangrejo Kelurahan was leased to five parties between 2006 and 2010 without a decree of appointment and without the full lease proceeds being deposited into the regional treasury. The Surabaya District Court acquitted the defendant of all charges, holding that the conduct, although proven, fell within the domain of civil law, namely a management cooperation relationship between the Banyuwangi Regency Government and the head of Karangrejo Kelurahan; the Supreme Court upheld that reasoning at the cassation level.[10] The witness testimony cited in that case shows that, of the entire 109,283 square meters of former village treasury land in Karangrejo Kelurahan, five parcels had already been certified

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[6] Bagus Oktafian Abrianto and Muhammad Azharuddin Fikri, "Status Hak Atas Tanah Kas Desa dan Prosedur Pendaftarannya Menurut Hukum Administrasi Pertanahan," *Pandecta: Jurnal Penelitian Ilmu Hukum* 16, no. 2 (2021): 205–217, https://doi.org/10.15294/pandecta.v16i2.28208, 206–208.

[7] Republic of Indonesia, Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Strata Units, and Land Registration, art. 5 paragraph (1) and art. 49 paragraph (3).

[8] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya* (Jakarta: Penerbit Universitas Trisakti, 2008), 271–275.

[9] Supreme Court of the Republic of Indonesia, Decision Number 504 K/Pid.Sus/2013, June 3, 2015, 3–5.

[10] *Ibid.*, 14, 31.

in the name of the Banyuwangi Regency Government, while the rest remained in the certification process, with no record of what type of right was stated on those certificates.[11]

The problem reflected in that case is not isolated. The change of village status into a kelurahan has occurred in many parts of Indonesia, and each such change carries consequences for the former treasury land previously owned by the village concerned. A study on the legalization of village land in Sleman Regency finds that mismatches between national and regional regulations of village land can create legal uncertainty in the legalization and certification process.[12] A similar pattern of unclear authority over the management of village land, which opens room for unauthorized use, can also be found in the management of bengkok land, which, under Minister of Home Affairs Regulation Number 1 of 2016, forms a separate category of village asset, distinct from village treasury land. Both cases, however, show that the absence of administrative supervision attached to a registered right opens a gap for unauthorized parties to use the land without any functioning mechanism for collecting what is owed.[13] If the type of land right attached to former village treasury land is not properly determined and registered, the kind of administrative unclarity seen in Supreme Court Decision Number 504 K/Pid.Sus/2013 may recur in other regions, leaving a gap in management authority that unauthorized parties can exploit. This is the urgency behind the present study: to provide normative clarity on the legal status of former village treasury land as a regional government asset.

A review of the applicable laws and regulations shows a normative vacuum. No regulation technically governs the registration of former village treasury land after a village changes status into a kelurahan, including what type of right must be established in the name of the regional government. Minister of Home Affairs Regulation Number 19 of 2016 on Guidelines for the Management of Regional Government Property[14] governs asset management from the side of regional financial administration. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 on Procedures for the Determination of Management

[11] *Ibid.*, 23.

[12] Dimas Bayu Candra Prasetya, Dian Aries Mujiburohman, and Yohanes Supama, "Dinamika Legalisasi Tanah Desa di Kabupaten Sleman, Yogyakarta: Pengaturan, Pelaksanaan, dan Implikasinya," *Widya Bhumi* 4, no. 2 (2024): 136–158, https://doi.org/10.31292/wb.v4i2.105.

[13] Abdullah, "Tinjauan Hukum Pemanfaatan Tanah Bengkok oleh Mantan Kepala Desa X di Kecamatan Gunung Jati," *Equivalent: Jurnal Ilmiah Sosial Teknik* 1, no. 2 (2019): 59–69, https://doi.org/10.46799/jequi.v1i2.6, 64–66.

[14] Republic of Indonesia, Minister of Home Affairs Regulation Number 19 of 2016 on Guidelines for the Management of Regional Government Property.

Rights and Land Rights[15] governs the determination of rights from the side of land administration. The two regulations run along separate tracks and do not refer to each other in the context of the former village treasury land. This is the legal gap addressed in this study. A study on village asset management under Minister of Home Affairs Regulation Number 1 of 2016 finds that legal certainty over asset ownership is one of the obstacles village governments face in practice, showing that this gap is not confined to a single region.[16]

Academic studies on village treasury land have so far been written mostly from a criminal-law perspective, particularly on corruption in its management, or from the perspective of village treasury land that remains under village status. Few studies address the mismatch in the type of land right attached to former village treasury land after it passes to the regional government, or draw on court decisions as a primary legal source to analyze land administration problems. This gap is the research gap on which the present study is built.

Based on the foregoing, this study addresses two problems. First, how does the mechanism for transferring former village treasury land into a regional government asset operate within the applicable land administration framework, and what are the legal consequences if that mechanism is not followed by the determination and registration of a right? Second, can a Right of Ownership attach to former village treasury land controlled by regional government, and what type of land right should be established instead?

The analytical framework used to answer both problems rests on two complementary lines of thought. Jeremy Bentham's principle of utility, as set out in A Fragment on Government, is used to test whether the declarative transfer of village wealth has produced a concrete legal benefit.[17] John Locke's theory of property is used to test whether the character of a Right of Ownership fits the position of regional government.[18] The substance of both lines of thought is set out in the discussion, placed within the framework of Indonesian positive law: the Basic Agrarian Law, its implementing regulations, and the general principles of good governance set out in Law Number 30 of 2014 on Government Administration.

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[15] Republic of Indonesia, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 on Procedures for the Determination of Management Rights and Land Rights.

[16] Harpinsyah and Maryanti, "Pengelolaan Aset Pemerintah Desa Berdasarkan Peraturan Menteri Dalam Negeri Nomor 1 Tahun 2016," *Jurnal Politik dan Pemerintahan Daerah* 5, no. 1 (2023): 1–11, https://doi.org/10.36355/jppd.v5i1.107.

[17] Jeremy Bentham, *A Fragment on Government*, ed. F. C. Montague (Oxford: Clarendon Press, 1891), 160–163.

[18] John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 287–291.

Methods

This study uses normative legal research with a statutory, conceptual, and case approach. Normative legal research, as defined by Peter Mahmud Marzuki, is a process of finding a legal rule, legal principle, or legal doctrine to answer the legal issue at hand.[19] The case approach draws on relevant parts of Supreme Court Decision Number 504 K/Pid.Sus/2013 as a primary legal source illustrating the land administration problem in former village treasury land, not as an object of criminal-law study. The other primary legal materials used are the laws and regulations in force at the time of the study. Secondary legal materials consist of textbooks, law journals, and court decisions relevant to the issue under study, while tertiary legal materials consist of legal dictionaries and encyclopedias used as supplementary sources. In normative legal research, legal materials take the place that data occupies in empirical research, so that the resulting analysis is prescriptive rather than merely descriptive.[20] The analysis is directed toward a prescriptive conclusion on the type of land right most appropriate for former village treasury land controlled by the regional government.

Results and Discussion

The Mechanism for Transferring Former Village Treasury Land into a Regional Government Asset and Its Implications for Land Administration

The rule on transferring village wealth to the regional government when a village changes status into a kelurahan is not new. Before Law Number 23 of 2014 took effect, a similar rule was contained in Law Number 32 of 2004 on Regional Government, which Supreme Court Decision Number 504 K/Pid.Sus/2013 cites as the basis for the Banyuwangi Regency Government's control over the former village treasury land of Karangrejo Kelurahan.[21] Law Number 32 of 2004 has since been revoked by Law Number 23 of 2014 on Regional Government. The transfer of village wealth is now governed explicitly by Article 11(2) of Law Number 6 of 2014 on Villages, which states that all village property that changes into kelurahan property becomes the wealth/assets of the regency or municipal government.[22] The change of village status into a kelurahan itself is governed by Article 11(1) of Law Number 6 of 2014, and Law Number 23 of 2014 on Regional Government places the

[19] Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017), 35.
[20] *Ibid.*, 181.
[21] Supreme Court of the Republic of Indonesia, Decision Number 504 K/Pid.Sus/2013, *Op. Cit.*, 2.
[22] Republic of Indonesia, Law Number 6 of 2014 on Villages, as amended by Law Number 3 of 2024 on the Second Amendment to Law Number 6 of 2014 on Villages, art. 11(2).

kelurahan as part of the sub-district apparatus.[23] This rule is declaratory. It states what happens, and even sets a deadline, but it does not regulate how the transfer is to be carried out in the land administration procedure.

Read through Jeremy Bentham's thought; the declaratory nature leaves a serious problem. In A Fragment on Government, Bentham holds that the duty to obey the law is measured by its benefit to society: society is bound to obey the law only so long as obedience is more beneficial than resistance to it, and the principle of utility is the only sufficient reason, independent of any higher reason, for every practical matter.[24] Applied to the problem of former village treasury land, the rule in Article 11(2) of Law Number 6 of 2014, which states that village wealth becomes regional wealth, does not yet provide a concrete legal benefit because no legal instrument yet supports the regional government's authority to enforce its right over that land against third parties. Without the determination of a right and its registration with the Regency/Municipal Land Office, the transfer is only a change in the status of wealth in the sense of government administration; it is not yet a transfer of a land right in the sense of agrarian law.

A land right under the Basic Agrarian Law system requires a separate legal act to come into being: determination of the right by the competent official and its registration, which results in a certificate as proof of the right.[25] Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 governs the procedure for determining a Right of Management and other land rights for government agencies, including the requirements for an application, land inspection, and issuance of a decision determining the right. This ministerial regulation was enacted to implement, among others, Article 18 of Government Regulation Number 18 of 2021, which orders the procedure and requirements for the application, granting, and registration of a Right of Management to be regulated in a ministerial regulation. Within Government Regulation Number 18 of 2021 itself, Article 10 paragraph (1) provides that a Right of Management originating from State land is established by a decision of the Minister, and Article 11 provides that the right must be registered with the Land Office, comes into existence upon registration, and is evidenced by a certificate.[26] The

[23] Republic of Indonesia, Law Number 23 of 2014 on Regional Government, as amended by Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, art. 229.

[24] Bentham, *A Fragment on Government*, *Op. Cit.*, 160–163.

[25] Harsono, *Hukum Agraria Indonesia*, *Op. Cit.*, 277–279.

[26]Republic of Indonesia, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 on Procedures for the Determination of Management Rights and Land Rights; Republic of Indonesia, Government

transfer of village wealth into regional wealth under Law Number 6 of 2014 and Law Number 23 of 2014 should therefore be followed by three interdependent administrative acts: an inventory of former village treasury land parcels by regional government, an application to the Regency/Municipal Land Office for determination of the type of right, and registration of the right, resulting in a certificate in the name of regional government. Without these three acts, the legal status of former village treasury land remains unsettled, even though government administration already treats it as a regional asset.

Supreme Court Decision Number 504 K/Pid.Sus/2013 shows the consequence of this unsettled state. The former village treasury land of Karangrejo Kelurahan had been treated as an asset of the Banyuwangi Regency Government since Law Number 32 of 2004 took effect, but its physical management remained at the kelurahan level without effective supervision from the regency government.[27] This allowed a person without a decree of appointment to present himself as manager, set his own lease price, and collect lease proceeds, with no one effectively stopping him for four years.[28] That gap did not arise from an absence of rules on the status of the wealth, but from the absence of a concrete determination of a land right in Bentham's sense. The regency government's right over that land existed in a normative-declaratory sense but not in a positive-law sense that could be enforced against third parties.

Another factor contributing to this gap is the lack of connection between the two legal instruments that should complement each other. Minister of Home Affairs Regulation Number 19 of 2016 governs the procedure for inventory, valuation, and safeguarding of regional assets, including land assets, from the side of financial administration and regional property.[29] This regulation places a duty on regional government to administratively safeguard its assets, but it does not regulate how that safeguarding relates to the determination of land rights at the Land Office. Conversely, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 governs the determination of rights from the side of land administration, but does not regulate how that determination relates to the inventory duty under Minister of Home Affairs Regulation Number 19 of 2016. As a result, two administrative tracks run separately for the same

Regulation Number 18 of 2021 on Management Rights, Land Rights, Strata Units, and Land Registration, art. 10, art. 11, and art. 18.

[27] Supreme Court of the Republic of Indonesia, Decision Number 504 K/Pid.Sus/2013, Op. Cit., 2–3.

[28] *Ibid.*, 16–17.

[29] Republic of Indonesia, Minister of Home Affairs Regulation Number 19 of 2016 on Guidelines for the Management of Regional Government Property.

object, former village treasury land, with no regulation specifically bridging them for the context of a village changing status into a kelurahan.

This problem can also be explained through the concept of the State's right of control, which underlies every land right in the Basic Agrarian Law. The State's right of control is laid down in Article 2 of the Basic Agrarian Law. Article 2 paragraph (1) provides that the earth, water, and airspace, including the natural riches contained therein, are at the highest level controlled by the State as the organization of power of the entire people. Article 2 paragraph (2) details the content of that authority: regulating and administering the allocation, use, supply, and maintenance of the earth, water, and airspace; determining and regulating the legal relationships between persons and the earth, water, and airspace; and determining and regulating the legal relationships between persons and legal acts concerning the earth, water, and airspace. Article 2 paragraph (3) directs that all of this authority be exercised for the greatest prosperity of the people, and Article 2 paragraph (4) allows its implementation to be delegated to autonomous regions and to adat law communities, as long as this is needed and does not conflict with the national interest.[30] This authority is not given to the State in the sense that the State owns the land the way a holder of a Right of Ownership owns land, but in the sense that the State regulates and manages land for the greatest welfare of the people.[31] It is worth stressing that 'owning' and 'controlling' are two different concepts in national agrarian law. In this construction, the State stands in a public-law (publiekrechtelijk) position: the State acts as a governing body that regulates and administers land, not as an owner (eigenaar) in the civil-law sense, so the legal relationship between the State and land under Article 2 of the Basic Agrarian Law is public in character.[32] Treating land as State property would mean adopting the domeinverklaring principle, which the Basic Agrarian Law itself rejects, because the State's right of control is not the same as State ownership.[33] The Right of Management is a delegation of part of the State's right of control to a particular government agency or legal entity; put differently, it is a fragment of the State's right of control that carries a public character, distinct from private rights in civil law.[34] This understanding is also affirmed in a study of cooperation agreements built on a Right of Management, which describes the Right of

[30]Republic of Indonesia, Law Number 5 of 1960 on Basic Agrarian Regulations, art. 2.

[31]Harsono, *Hukum Agraria Indonesia*, *Op. Cit.*, 280.

[32]*Ibid.*

[33] Iwan Permadi, "Konstitusionalitas Keberadaan Bank Tanah dalam Pengelolaan dan Penguasaan atas Tanah oleh Negara," *Jurnal USM Law Review* 6, no. 1 (2023): 291–309, https://doi.org/10.26623/julr.v6i1.6678, 298–301.

[34] Harsono, *Hukum Agraria Indonesia*, *Op. Cit.*, 280.

Management as a derivative of the State's right of control.[35] Understood through the framework of the State's right of control, the regency government's position over former village treasury land should be read as a delegation of regulatory and management authority, not as ownership in the sense of a Right of Ownership. This reading supports the Right of Management as the appropriate type of right, and it also explains why recording former village treasury land as a Right of Ownership in the name of regional government, if that is what some of the certificates in Karangrejo Kelurahan show, is a mismatch that goes beyond a mere administrative problem, because it conflicts with the basic structure of the relationship between the State and land under the Basic Agrarian Law itself.

Another consequence of leaving the determination of the right unsettled concerns supervision and regional financial accountability. Income from managing regional assets, including land lease proceeds, is one source of regional own-source revenue that must be managed under regional financial rules. Where the status of a land right is unclear, the obligation of the party using the land to deposit the proceeds into the regional treasury also becomes unclear, since there is no legal basis to refer to for the amount and procedure of that deposit. This can be seen in Supreme Court Decision Number 504 K/Pid.Sus/2013, where deposits to the regional treasury were made only for the first two years under a cooperation agreement, while in later years no deposits were made and no collection mechanism was in operation.[36] The unclear status of the land right therefore has implications not only for land administration but also for broader regional financial matters.

The inventory step referred to here is not a stand-alone administrative record but the first link in a chain of interdependent legal acts. The inventory produces a list of land parcels for which a right must be applied for; the application produces a decision by the competent official on the type of right granted; and that decision forms the basis for registering the right, which produces a certificate. If any one link in that chain is not carried out, the next link cannot proceed, and the land remains in an unsettled status, even though it has been factually controlled by regional government for years. This is precisely the condition of part of the former village treasury land in Karangrejo Kelurahan, some of which has been certified while the rest

[35] Iqbal Maulana, Moh. Fadli, and Herlindah, "Pengaturan Jangka Waktu yang Berkeadilan atas Perjanjian Kerja Sama kepada Pihak Ketiga Hak Pengelolaan di Atas Tanah Ulayat," *Tunas Agraria* 7, no. 3 (2024): 285–302, https://doi.org/10.31292/jta.v7i3.352, 295.

[36] Supreme Court of the Republic of Indonesia, Decision Number 504 K/Pid.Sus/2013, *Op. Cit.*, 5–6.

remains in process, with no clear deadline for when that process should be completed.[37]

The absence of a fixed deadline allows this unsettled condition to persist for a long time. As long as the process of determining and registering the right remains incomplete, regional government has no legal instrument to assert its authority against a party using the land without lawful permission. This differs from a situation where the land right has been determined and registered, since regional government can then use the certificate as the basis for deciding who is entitled to use the land and on what basis. The absence of a mechanism to enforce a deadline for inventory and registration is therefore part of the normative gap that needs to be filled, so that the transfer of former village treasury land into a regional government asset does not remain at the declaratory stage indefinitely.

This gap is also relevant to national land administration order. Land registration that is fully completed, including for land controlled by regional government, is part of the effort to secure legal certainty in land matters, which is the very purpose of land registration.[38] Former village treasury land left in an unsettled status creates problems not only for the regional government concerned but also potentially for third parties dealing with that land, such as a tenant acting in good faith who is later confronted with uncertainty over who actually has authority to agree. In the broader context of state/regional assets, incomplete certification has been shown to cause social conflict and protracted land disputes, as found in a study on PT KAI assets in a prolonged dispute with local communities over uncertified state land.[39] Complete and certified land registration is a concrete effort to achieve legal certainty in land rights, including certainty as to the subject, object, and status of the right, which is the main purpose of the Basic Agrarian Law and the government's land registration program.[40] A study on land buyers whose sale and purchase deeds were not promptly registered with the Land Office finds that incomplete registration leaves the buyer's position over the land without legal certainty until the transfer of right is actually recorded, and recommends that Government Regulation Number 18 of 2021 be supplemented with norms on data maintenance and updating after land

[37] Ibid., 23.

[38] Harsono, *Hukum Agraria Indonesia*, Op. Cit., 277–279.

[39] Icha Choerunnisa, Maman Sudirman, and Benny Djaja, "Kepastian Hukum Terhadap Barang Milik Negara yang Belum Dilakukan Sertipikasi Sebagai Upaya Mengamankan Aset Negara," *Justitia: Jurnal Ilmu Hukum dan Humaniora* 6, no. 2 (2023): 628–647, https://doi.org/10.31604/justitia.v6i2.628-647, 630–633.

[40] Arif Tanri, Bambang Eko Turisno, and Adya Paramita Prabandari, "Kepastian Hukum Hak Atas Tanah Melalui Pendaftaran Tanah Sistematis Lengkap," *Notarius* 13, no. 2 (2020): 777–787, https://doi.org/10.14710/nts.v13i2.31166, 779–781.

registration.[41] That recommendation is also relevant to former village treasury land, since the same gap, a transfer that has occurred under government administration law but is not yet reflected in land data, lies at the core of the problem examined in this study. Settling the status of the right over former village treasury land therefore benefits not only regional government as the holder of the right, but also third parties dealing with that land, consistent with the function of land registration in providing legal certainty to all interested parties.

On this basis, it can be concluded that the mechanism for transferring former village treasury land into a regional government asset, as regulated under Law Number 6 of 2014 and Law Number 23 of 2014, is declaratory and contains no technical norms on the determination and registration of land rights. This incompleteness is the main cause of the gap in management authority seen in the Karangrejo Kelurahan case, and it may recur in other regions that undergo a change of village status into kelurahan without adequate land administration follow-up.

The Incompatibility of a Right of Ownership in the Name of Regional Government and the Need to Establish a Right of Management over Former Village Treasury Land

The second problem starts from the witness testimony in the Hamim Syachroni case, namely that part of the former village treasury land of Karangrejo Kelurahan had already been certified in the name of the Banyuwangi Regency Government, without stating what type of right was recorded on the certificate.[42] This unclarity matters because the type of right recorded on a certificate determines what authority regional government holds over the land, including the authority to lease it to a third party.

As discussed above, Article 21 of the Basic Agrarian Law limits the subject of a Right of Ownership to Indonesian citizens and legal entities designated under Government Regulation Number 38 of 1963.[43] Regional government is not among the legal entities so designated. If the certificate held by the Banyuwangi Regency Government over the former village treasury land of Karangrejo Kelurahan is a Right of Ownership, that certificate was issued to a legal subject that does not meet the requirements set by the Basic Agrarian Law. A Right of Ownership is hereditary, the strongest, and the most

[41] Firman Floranta Adonara, Chrisdrianto Aji Prakoso, and A'an Effendi, "Legal Protection for Land Buyers whose Sale and Purchase Deeds are Not Registered at the Land Office," *Aurelia: Jurnal Penelitian dan Pengabdian Masyarakat Indonesia* 3, no. 2 (2024): 1349–1367, https://doi.org/10.57235/aurelia.v3i2.2725, 1360–1363.

[42] Supreme Court of the Republic of Indonesia, Decision Number 504 K/Pid.Sus/2013, Op. Cit., 23.

[43] Republic of Indonesia, Law Number 5 of 1960 on Basic Agrarian Regulations, art. 21.

complete right, and that character belongs to the concept of individual ownership, not to the concept of control by a public legal entity over land allocated for public purposes.[44] A study on the status of an Ownership Right issued over land already held under a Right of Management identifies a comparable problem: the character of a Right of Ownership as the strongest and most complete right becomes ambiguous when set against land originating from the State's right of control, because issuing the Right of Ownership does not automatically end the legal relationship with the holder of the right derived from State control.[45] From a technical land-administration standpoint, issuing a Right of Ownership over a parcel previously held under a Right of Management means that the prior Right of Management must first be relinquished or extinguished, as follows from Government Regulation Number 18 of 2021, specifically Article 12 paragraph (3), which provides that a Right of Management may only be relinquished where a Right of Ownership is granted, where the land is relinquished for the public interest, or under other statutory provisions, and Article 14 paragraph (1), which lists the grant of a Right of Ownership among the causes that extinguish a Right of Management.[46] In other words, a parcel of land cannot simultaneously hold the status of Right of Management and Right of Ownership.[47] If the former village treasury land of Karangrejo Kelurahan were certified directly as a Right of Ownership in the name of regional government without first passing through a Right of Management, the land would lose, from the outset, the character of the State's right of control that should attach to it, and the resulting ambiguity would be greater than the ambiguity of a Right of Ownership issued over a Right of Management examined in that study.

John Locke's theory of property offers a further explanation for why a Right of Ownership does not suit regional government. Locke argues that a person's right over a thing arises from the labor mixed into that thing, and that the right is exclusive to the person who performed the labor.[48] Yet Locke also places government not as the exclusive owner of resources but as a

[44] Urip Santoso, *Hukum Agraria: Kajian Komprehensif* (Jakarta: Kencana, 2012), 102–106.

[45] Alwaahab Agirda Nugraha Effendi and Akhmad Darajati Setiawan, "Legal Certainty on Land Ownership Rights Above Management Rights," *IPMHI Law Journal* 3, no. 2 (2023): 194–205, https://doi.org/10.15294/ipmhi.v3i2.67824, 198–200.

[46] Republic of Indonesia, Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Strata Units, and Land Registration, art. 12 paragraph (3) and art. 14 paragraph (1).

[47] Hukumonline, "Bisakah Tanah Hak Pengelolaan Menjadi Hak Milik?," https://www.hukumonline.com/klinik/a/bisakah-tanah-hak-pengelolaan-menjadi-hak-milik-lt64c132fd346cd/ (accessed June 13, 2026).

[48] Locke, *Two Treatises of Government*, *Op. Cit.*, 287–291.

trustee managing resources for the common good, subject to the limit that such management must not reduce what remains available to others in need.[49] The exclusive, individual character of ownership described by Locke differs from the character of regional government's control over former village treasury land, which is allocated for the benefit of the kelurahan and the surrounding community. From the standpoint of both the Basic Agrarian Law and Locke's theory of property, a Right of Ownership is therefore not the appropriate instrument for regional government to control former village treasury land.

The next question is what type of right should be established instead. Government Regulation Number 18 of 2021 offers two options for government agencies and regional governments: the Right of Use and the Right of Management.[50] A Right of Use authorizes its holder to use and/or take the yield of land controlled by the State or owned by another party, including for official purposes. It does not, however, authorize the holder to grant a derivative right to a third party over that land. A holder of a Right of Use cannot grant a Right to Build or another Right of Use over its land to a third party. A Right of Management, by contrast, derives from the State's right of control, part of which is delegated to its holder, including the authority to plan the allocation and use of the land, to use the land for its own functions, and to hand part of the land over to a third party under an agreement, while allowing that third party to obtain a derivative right over it.[51] A normative study of village treasury land likewise concludes that the right closest to the needs of village treasury land is one sourced from a Right of Management, not a Right of Ownership, given the land's function in administering government and serving local community interests.[52]

This character of the Right of Management fits the practical needs of managing former village treasury land, which in practice does involve handing part of the land to a third party through a lease relationship, as seen in the Karangrejo Kelurahan case. If the regency government establishes former village treasury land as a Right of Management, the lease relationship between regional government and the third party gains a clear legal basis: an agreement for the use of land built on a Right of Management, as regulated under Government Regulation Number 18 of 2021, specifically Article 7

[49] *Ibid.*, 292–295.

[50] Republic of Indonesia, Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Strata Units, and Land Registration, art. 5 paragraph (1) and art. 49 paragraph (3).

[51] Harsono, *Hukum Agraria Indonesia*, Op. Cit., 280.

[52] Abrianto and Fikri, "Status Hak Atas Tanah Kas Desa dan Prosedur Pendaftarannya," *Op. Cit.*, 213–215.

paragraph (1), which authorizes the holder of a Right of Management to use its land itself or to work it in cooperation with another party, and Article 8, under which that cooperation takes the form of a land utilization agreement (perjanjian pemanfaatan tanah) whose minimum contents, from the identity of the parties to the tariff and/or annual fee and sanction clauses, are listed in Article 8 paragraph (2).[53] A study on third-party cooperation agreements over a Right of Management stresses that certainty over the duration and terms of such an agreement matters to prevent loss to both the holder of the Right of Management and the third party working the land.[54] With that legal basis, regional government has clear authority to decide who may use the land, what amount must be deposited, and how supervision is carried out, narrowing the room for an unauthorized party to pose as manager, as seen in the Hamim Syachroni case.

The question of legal subject also bears on the duration and character of the legal relationship attached to each type of right. A Right of Ownership has no time limit and is hereditary, so conceptually it is designed to keep passing to the heirs of its holder. Granting a Right of Ownership to regional government empties that construction of its meaning: regional government has no heirs, and where a region is split or its boundaries change, there is no clear mechanism for 'passing down' the right. That unclarity shows that a Right of Ownership, designed for an individual subject, lacks an adequate framework for resolution when its holder is a public government institution. The Right of Management has no such limitation, since it attaches to a government agency for as long as that agency still needs the land to carry out its duties and functions.[55] This feature fits the position of former village treasury land, an asset whose control may change according to the needs of government administration, better than a Right of Ownership, which places the land as though in a permanent legal relationship detached from the governmental function attached to it.

Establishing a Right of Management over former village treasury land already certified under an unsuitable type of right requires a separate administrative step. Government Regulation Number 18 of 2021 and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 provide that a Right of Management is established through an application to the Regency/Municipal Land Office, accompanied by documents proving the applicant agency's

[53] Republic of Indonesia, Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Strata Units, and Land Registration, art. 7 and art. 8.

[54] Maulana, Fadli, and Herlindah, "Pengaturan Jangka Waktu yang Berkeadilan atas Perjanjian Kerja Sama," Op. Cit., 298–300.

[55] Harsono, *Hukum Agraria Indonesia*, Op. Cit., 280.

control and intended use of the land.[56] A study on certifying state property over otherwise-certified land parcels finds that where the legal subject of a land right changes, for instance through a transfer between government agencies, a mechanism for changing the right under Government Regulation Number 18 of 2021 is needed, without having to go through first-time land registration if the physical data of the parcel remains unchanged.[57] Government Regulation Number 18 of 2021 itself sets out a mechanism for relinquishing a land right. Article 2 paragraph (3) of that regulation counts land arising from the relinquishment or surrender of a right among the categories of State land, and the relinquishment is made by and before the competent official and reported to the Minister, as provided among others in Article 45 paragraph (3) for the Right to Build and Article 60 paragraph (5) for the Right of Use. Through that route, the holder of an unsuitable right can relinquish it so that the land reverts to State land, which regional government can then apply to have established as a Right of Management by a decision of the Minister under Article 10 paragraph (1) and registered at the Land Office under Article 11.[58] The same logic can apply to former village treasury land already certified as a Right of Ownership in the name of regional government. What is needed is not simply a new application but a correction of the juridical data, changing the type of right from Right of Ownership to Right of Management, while keeping the physical data, location, area, and boundaries of the already-registered parcel unchanged. Such a correction requires cooperation between the regional government's asset division, which holds the inventory data under Minister of Home Affairs Regulation Number 19 of 2016, and the Regency/Municipal Land Office, which has authority to change juridical data in the land book and certificate. Without that cooperation, the error in the type of right made at first registration risks being carried indefinitely in land administration.

From an accountability standpoint, establishing a Right of Management also clarifies who is responsible for managing the land. A Right of Management is recorded in the name of a specific government agency, so when a problem arises in its management, including the failure to deposit lease proceeds seen in the Karangrejo Kelurahan case, it is clear which agency

[56] Republic of Indonesia, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 on Procedures for the Determination of Management Rights and Land Rights.

[57] Zahra Ats Tsaurah, Fokky Fuad, and M. Nazir Salim, "Penyelesaian Sertipikasi Barang Milik Negara pada Bidang Tanah Bersertipikat Lainnya," *Tunas Agraria* 6, no. 3 (2023): 220–236, https://doi.org/10.31292/jta.v6i3.243, 228–230.

[58] Republic of Indonesia, Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Strata Units, and Land Registration, art. 2 paragraph (3), art. 10, art. 11, art. 45 paragraph (3), and art. 60 paragraph (5).

should supervise and answer for it.[59] That clarity is absent where the status of the land right is not firmly established, because supervision then becomes scattered among different parties, from the kelurahan and sub-district to the regional work unit handling assets, with no single party legally answerable for the land as holder of the right.

The urgency of establishing a Right of Management can also be explained through the general principles of good governance under Article 10 of Law Number 30 of 2014 on Government Administration, which include, among others, the principles of legal certainty, care, and accountability.[60] A study on optimizing regional government assets finds that legal audit, that is, verification of the legal status of regional assets, significantly affects asset optimization, more so than mere physical inventory, because assets without legal certainty cannot be optimally used to raise regional own-source revenue.[61] A study on the authority of regional finance and asset bodies finds that managing regional assets/property must follow the principles of functionality, legal certainty, efficiency, and accountability, where the principle of legal certainty requires accuracy in the quantity and value of regional property, while the principle of accountability requires that every asset-management activity be answerable by government to the public.[62] In the context of former village treasury land, the principle of legal certainty means that any control by regional government over a parcel of land must rest on a clear legal basis, knowable to every interested party. The principle of care requires regional government to act diligently in managing its assets, including ensuring that the status of the land right it controls has been correctly established. The principle of accountability requires that the results of managing that asset can be accounted for to the public through regional financial mechanisms.

None of these three principles was met in the Karangrejo Kelurahan case. The unclear type of right over the former village treasury land left the regency government without a careful basis for supervising its use, so that lease proceeds over several years were not fully deposited into the regional treasury

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[59] Supreme Court of the Republic of Indonesia, Decision Number 504 K/Pid.Sus/2013, Op. Cit., 5–6.

[60] Republic of Indonesia, Law Number 30 of 2014 on Government Administration, art. 10.

[61] Arlisa Mustika Noviyati and Rifki Khoirudin, "Analisis Optimalisasi Aset Pemerintah Daerah di Daerah Istimewa Yogyakarta," *Journal of Economics Assets and Evaluation* 1, no. 2 (2023): 1–11, https://doi.org/10.47134/jeae.v1i2.115, 7–9.

[62] Supardi Suleman, Rustam AS. Akili and Ramadhan Kasim, "Analisis Kewenangan Badan Keuangan dan Aset Daerah dalam Pengelolaan Keuangan di Kabupaten Boalemo," *Rechtsnormen: Jurnal Komunikasi dan Informasi Hukum* 2, no. 1 (2023): 16–20, https://doi.org/10.56211/rechtsnormen.v2i1.280, 17–18.

and could not be properly accounted for.[63] Had the former village treasury land been established as a Right of Management from the outset, all three principles would have had a clear basis for implementation, since a Right of Management gives regional government a legal framework to regulate, supervise, and account for the use of its land by a third party.

On this basis, it can be concluded that a Right of Ownership is not suitable for former village treasury land controlled by regional government, whether viewed from the restriction on legal subjects in Article 21 of the Basic Agrarian Law or from the exclusive, individual character of ownership in Locke's thought, which does not fit the function of State control over land held for public benefit. The Right of Management, as regulated under Government Regulation Number 18 of 2021, is the type of right best suited to the character of managing former village treasury land, because it authorizes the regional government to hand over the use of its land to a third party on a clear legal basis, consistent with the principles of legal certainty, care, and accountability under Law Number 30 of 2014.

Conclusions

Based on the discussion of the two problems above, this study draws three conclusions. First, the mechanism for transferring former village treasury land into a regional government asset, as regulated under Article 11(2) of Law Number 6 of 2014, is declaratory and has not yet produced an enforceable land right in the sense intended by Bentham's principle of utility in A Fragment on Government, because it is not followed by a legal instrument that gives regional government's control over that land a concrete benefit against third parties. Second, a Right of Ownership is not suitable for former village treasury land controlled by regional government, whether based on the restriction on legal subjects in Article 21 of the Basic Agrarian Law or on the exclusive, individual character of ownership in Locke's thought, whereas the Right of Management under Government Regulation Number 18 of 2021 is the most suitable type of right. Third, this gap in the determination of the right is the main cause of the gap in management authority seen in the Karangrejo Kelurahan case, as examined in Supreme Court Decision Number 504 K/Pid.Sus/2013, and it may recur in other regions, changing village status into kelurahan without adequate land administration follow-up.

Based on these conclusions, three recommendations follow. First, the Ministry of Home Affairs and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency need to draw up joint technical regulation bridging Minister of Home Affairs Regulation Number 19 of 2016 and

[63] *Ibid.*, 5–6.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021, particularly on the procedure and deadline for determining a right over former village treasury land after a change of village status into kelurahan. Second, regional governments already holding a certificate over former village treasury land under a type of right inconsistent with Article 21 of the Basic Agrarian Law need to correct the juridical data through the local Land Office, changing the type of right to a Right of Management under Government Regulation Number 18 of 2021. Third, regional governments need to make the Right of Management the legal basis for every agreement on the use of former village treasury land by a third party, so that the authority, rights, and obligations of each party have legal certainty, and the proceeds from using that land can be accounted for in accordance with the general principles of good governance.

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