

LEGAL CERTAINTY OF VILLAGE ASSET LAND USED FOR SCHOOL BUILDINGS: A REVIEW OF MINISTER OF HOME AFFAIRS REGULATION NO. 3/2024

Muhammad Fauzan

Master of Law Science, Langlangbuana University

E-mail: fauzanhendramulya@gmail.com

Deni Haspada

Master of Law Science, Langlangbuana University

E-mail: denhas1661@gmail.com

Juli Asril

Master of Law Science, Langlangbuana University

E-mail: batununggalno8@gmail.com

Abstract

Village asset land has a vital role as a supporter of development and a source of village income, but there are often issues of legal certainty over its ownership and management status, especially when utilized as a school building. Therefore, a clear regulation and settlement mechanism in accordance with laws and regulations are needed so that village assets remain protected and can be optimally utilized for the public interest. This research aims to analyze the legal certainty of land ownership of village assets used as school buildings based on the Regulation of the Minister of Home Affairs Number 3 of 2024. The method used is normative juridical with a descriptive-analytical approach through the review of legislation, legal doctrine, and relevant secondary data. The results show that village land used for schools remains legally classified as village assets and must be managed in accordance with the principles of transparency, accountability, and legal certainty. The land exchange mechanism—as regulated in Articles 25 and 48A of Minister of Home Affairs Regulation No. 3 of 2024—requires replacement with land of equal or higher value, and proper certification under the village government's name. However, its implementation faces challenges, including uncertified land ownership, limited legal capacity of village officials, and bureaucratic hurdles in administrative approval, all of which hinder effective and lawful asset management and the preservation of the land's social function.

Keywords: Village assets; legal certainty; school; certification; swap

I. INTRODUCTION

Land constitutes a strategic and indispensable asset within the socio-economic and legal framework of Indonesia, a principle enshrined in Article 33 Paragraph 3 of the 1945 Constitution, which explicitly stipulates that the earth, water, and natural resources shall remain under state jurisdiction to ensure equitable utilization for the collective welfare of the populace. As a recognized legal and administrative entity, the village—functioning

as an autonomous community unit—retains the inherent authority to administer and regulate its assets, particularly village-owned land, in compliance with the statutory mandates outlined in Law No. 6 of 2014 concerning Villages and further operationalized through Minister of Home

Affairs Regulation (Permendagri) No. 1 of 2016 on Village Asset Management.¹

Village asset land has vital value as a supporter of development, a source of village income, and public facilities, such as school construction which is part of the efforts to educate the nation.² Legal uncertainty often arises when village land is used for schools without a formal transfer of rights, as seen in Cilame Village. This hinders both school development and village revenue. To address such issues, Minister of Home Affairs Regulation No. 3 of 2024 was issued to expedite the exchange of village land for public purposes, including education.

The importance of certifying village land in the name of the village government is key to ensuring legal certainty and avoiding unauthorized attempts to change the status of village land. Orderly administration and community participation in the management of village assets are also indispensable to prevent conflicts and ensure optimal benefits.³

The utilization of village-owned land for public infrastructure development, including but not limited to educational facilities such as school buildings, necessitates adherence to a formalized procedural framework involving either land exchange protocols or the lawful transfer of usage rights. This regulatory requirement, as explicitly articulated in

Articles 25 and 32 of Minister of Home Affairs Regulation No. 3 of 2024 Concerning Amendments to Minister of Home Affairs Regulation No. 1 of 2016 on Village Asset Management, mandates the provision of compensatory land parcels to maintain equitable asset distribution. Such institutionalized mechanisms serve the dual purpose of establishing unambiguous legal status regarding land tenure while preemptively mitigating potential jurisdictional conflicts that might otherwise arise between village authorities and utilizing government entities in future administrative contexts.⁴

The formalization of proprietary certification under the auspices of village governmental authority, in conjunction with the implementation of standardized rights conveyance protocols, represents a multifaceted institutional strategy designed to: (1) reinforce juridical predictability within the framework of agrarian governance; (2) establish unambiguous delineation of administrative competencies between municipal and local governing entities; and (3) preemptively mitigate interjurisdictional disputes that may arise between asset custodians (village governments), regional administrative bodies, and authorized utilization parties. This dual-pronged

¹ Zahra Idris, *Basics of Education*, Angkasa, Bandung, 1981, p. 69

² Constitution of the Republic of Indonesia Year 1945.

³ Minister of Home Affairs Regulation No. 1/2016 on Village Asset Management.

⁴ Moh. Mahfud MD, *Political Law in Indonesia*, Rajagrafindo, Jakarta, 2012, pp. 31.

administrative mechanism serves as a critical safeguard for maintaining the integrity of communal land tenure systems while ensuring compliance with contemporary legal paradigms governing rural asset management.⁵

Consequently, this scholarly investigation assumes critical significance in its multidimensional examination of: (1) the juridical parameters governing proprietary certainty concerning village-owned land assets appropriated for educational infrastructure development; (2) the systemic challenges inherent in current administrative frameworks regulating such asset utilization; and (3) the formulation of evidence-based policy recommendations to optimize governance mechanisms. The study's tripartite objectives aim to establish robust institutional protocols that ensure operational efficiency, procedural transparency, and ecological sustainability in village asset management, while maintaining strict adherence to constitutional provisions, statutory requirements, and regulatory mandates that collectively constitute Indonesia's legal framework for rural development.

II. RESEARCH METHODS

The research method used is the normative juridical method, which is an approach carried out based on the main legal material by examining theories, concepts, legal

principles and legislation that apply and are relevant to the issues studied, through the search for doctrines and legal principles. The specification of this research is descriptive-analytical, which aims to describe the object under study through the data that has been collected, then make general conclusions; the author collects data and then describes it descriptively, aiming to systematically describe and analyze the legal issues related to the management of village asset land used for school buildings. The study focuses on understanding the legal certainty of land status through interpretation of laws and regulatory frameworks. This research was conducted in stages: (a) collecting primary legal materials in the form of laws and regulations related to the problem, such as the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Regulations, Government Regulation Number 16 of 2004 concerning Land Stewardship, and Minister of Home Affairs Regulation Number 1 of 2016 concerning Village Asset.

III. RESEARCH RESULTS AND DISCUSSION

RESEARCH RESULTS

A. Village Land Management Rights and Their Legal Consequences

Within the framework of Indonesia's national agrarian law (UUPA), village land is classified as state land that is administered by

⁵ Munir Fuady, *Theory of the Modern State of Law (Rechtstaat)*, Refika Aditama, Bandung, 2009, pp.

village governments under a legal construct known as Village Management Rights (Hak Pengelolaan Desa/HPD). This legal status distinguishes such land from full ownership (hak milik), as the village does not possess proprietary rights but is instead entrusted with managerial authority. HPD permits the village to use, regulate, and derive economic benefits from the land, yet strictly prohibits its transfer or sale without prior approval from the relevant regional or central authority.⁶

The legal consequences of HPD are multifaceted. First, the village must register the land in the name of the village government with the National Land Agency (BPN), establishing a formal and traceable legal status. Second, all revenues generated from the land's utilization—whether through lease, use rights, or cooperation schemes—must be deposited into the village treasury and subjected to accountability mechanisms. Third, if the land is needed for public purposes such as educational facilities, it may only be relinquished through a swap mechanism (tukar-menukar), whereby land of equal or

higher value is provided as replacement. Thus, HPD is not merely an administrative authority, but a legally binding responsibility requiring compliance with specific statutory provisions and principles of transparency, accountability, and legal certainty.^{7,8,9,10,11,12}

B. Problems in Ownership of Village Asset Land Utilized as School Buildings

1. Land Ownership Status of Village Assets According to Village Regulations

The ownership status of village asset land is an important aspect in the management of village-owned assets to ensure legal certainty over these assets. Based on Minister of Home Affairs Regulation No. 1/2016 on Village Asset Management, land recorded as a village asset must be supported by legal proof of ownership, such as a certificate in the name of the Village Government, and must be registered and recorded in the village asset inventory book.¹³ Village asset land, which may originate from village treasury land, grants, purchases, or transfers from other parties, serves a strategic function as a resource

⁶ Rina Ekawati, *Implementation of Article 3 of Government Regulation No. 24/1997 on Land Registration in Bontang Kuala Village, North Bontang Sub-district*, Alumnus of the Faculty of Law, Mulawarman University, Vol. 5, number 1, June 2009.

⁷ Urip Santoso, *Agrarian Law & Land Rights*, Kencana, Jakarta, 2010, p. 87.

⁸ Hendra Turnip, *Juridical Review of Law Number 2 Year 2012 on Land Acquisition for Development in the Public Interest*, Thesis, Master of Law Studies Program, Postgraduate Program, Medan Area University, Medan, 2014, p. 36.

⁹ Permana, Andi, *Legal Certainty in Village Asset Management*. Journal of Social Economics and Policy 7(2), 2019. Page 152.

¹⁰ Thareq Akmal Hibatullah, These are the Rights to Land in Indonesia, <https://smartlegalnetwork.com/2018/09/ini-hak-hak-atas-tanah-yang-ada-di-indonesia/>, (accessed on April 28, 2025 at 10:30)

¹¹ Kurniawan, Budi, *Village Asset Administration in Legal and Governance Perspective*, Sinar Grafika, Jakarta, 2019, p. 43

¹² Ida Bagus Wyasa Putra, *Tourism Business Law*, Bandung, Refika Aditama, 2001, p. 85.

¹³ Prasetyo, Dwi, *Village Cash Land Certification as a Solution to Legal Certainty*, Journal of Land Law 6(1), 2021, pp. 45-58.

to support local development and improve community welfare, and is specifically managed by the village government for the public interest in accordance with Law No. 6/2014 and Permendagri No. 1/2016. In addition, the regulation of the status of bengkok land as part of village land is also regulated in Government Regulation No. 47/2015, where the proceeds from the management of bengkok land can be used as an additional allowance for the village head and village officials. Thus, clear legal status and orderly management are essential so that village assets can be optimally utilized, protected from disputes, and provide maximum benefits to village communities.¹⁴

2. Village Land Use Practices

Village asset land in Indonesia is regulated through Law No. 6/2014 on Villages and Permendagri No. 1/2016 on Village Asset Management, which authorizes village governments to manage village assets, including village treasury land, as local resources for public benefit. Article 76 of the Village Law confirms that villages have the right to maintain and manage village treasury land independently, although control over the land remains with the village government, and its ownership status cannot be traded or converted without legal permission. However, implementation in the field still faces various obstacles, such as limited resources and

administrative capacity, which means that many villages do not have proof of ownership or certificates for village treasury land, leading to legal uncertainty and potential claims from third parties. The process of certifying village treasury land is also often hampered by complicated bureaucracy and high costs, so many villages have not been able to confirm the legal status of their land, even though certification is essential so that village land ownership status is recorded at the BPN and legally protected.¹⁵

3. Case Position

Based on the results of interviews and information obtained by the author, the Cilame State Elementary School (SDN) located in Cilame Village, Ngamprah District, West Bandung Regency, was built on village-owned land (village assets) where the school has been established since 1935, at that time, the construction was carried out without a formal process of cooperation, lease, grant or release of land rights from the village government to the West Bandung Regency government, and for many years, the school continued to operate without problems. Notwithstanding the aforementioned considerations, an examination of Minister of Home Affairs Regulation No. 3/2024 (amending Ministerial Regulation No. 1/2016) reveals a specific juridical construct pertaining to Village Asset Management. As articulated in Article 1(15),

¹⁴ Lestari, Andi, *Legal Protection for Village Officials* Journal of Law and Public Policy 9(3), 2021, pp.230-240.

¹⁵ Nurcholis in his book entitled *Growth and Organization of Village Governance* (Nurcholis, 2011: 94).

the concept of 'Utilization Cooperation' embodies a contractual arrangement wherein third-party entities are granted temporary usufructuary rights over village assets in exchange for monetary remuneration. This compensatory mechanism serves the dual purpose of: (1) optimizing asset utilization during the stipulated contractual period, while (2) generating supplementary fiscal revenue streams for the village treasury. Crucially, the regulatory framework mandates that such cooperative utilization agreements must demonstrably result in quantifiable economic benefits to the village community, thereby transforming the land asset into an instrument of local fiscal empowerment rather than merely a passive holding.

Based on information from the Head of Cilame Village, Ngamprah Subdistrict, West Bandung Regency, the village land used as a school building is village land that has been recorded as a village asset and recorded in the Goods Inventory Card as a village asset where the management of the land is by the village, but the physical land is occupied by the school.

The school and the West Bandung District Education Office are aware that the school is built on village asset land, but the school does not have a legal certificate because the school is built on village asset land, so the school cannot register the land.

In this case, the village was deprived of income from the village asset land, which based on village asset management regulations, the land should be a source of additional income for the village. Not only was the village disadvantaged, but the school was also unable to develop in the case of development because in the budget submission process the school must be equipped with a legal basis in the form of a land certificate used for school buildings, but in this case the school did not have proof of ownership in the form of a certificate because the land belonged to village assets.

DISCUSSION

A. Juridical Qualification of the Cilame Village Case

The long-standing use of village asset land in Cilame Village, West Bandung Regency, for the construction and operation of a public elementary school, without any formal legal agreement, constitutes a clear example of unlawful land occupation (*onrechtmatige grondbezit*) by a government entity. Under Government Regulation No. 24 of 1997 on Land Registration and National Land Agency Circular Letter No. 16/SE/IV/2015, any form of physical control over land absent legal entitlement—such as a lease, grant, land swap, or formal cooperation agreement—constitutes a violation of legal norms, regardless of the public nature of its use.¹⁶

¹⁶ Noor Aulia Rahman, *Optimizing the Management of Regional Land Assets in Increasing*

Mamuju Regency's Original Revenue, Thesis, Hasanuddin University Makassar, 2021.

From a doctrinal perspective, this situation engages the principle of *nemo plus iuris ad alium transferre potest quam ipse habet*—no one can transfer a right greater than that which they lawfully possess. In this case, the Village Government of Cilame holds only a right of management (*Hak Pengelolaan Desa/HPD*) over the land, not full ownership. Accordingly, the West Bandung Regency government, having never acquired any valid derivative title, cannot lawfully claim or use the land. This renders its occupation *de facto* illegal.^{17,18}

B. Allocation of Legal Responsibility Between Village and Regency Governments

Legal accountability in this case is not unidirectional. Rather, both the Regency and the Village Governments share responsibilities:

1. West Bandung Regency Government may be held accountable for engaging in unlawful occupation of state land managed under HPD without proper legal basis. This violates Article 76 of Law No. 6 of 2014 on Villages, which stipulates that village assets may not be transferred or utilized without statutory compliance. Furthermore, such conduct may give rise to state liability under Article 1365 of the Indonesian Civil Code, due to economic loss suffered by the village (loss of

potential income), and may also warrant administrative sanctions or restitution.

2. Cilame Village Government also bears legal and administrative responsibility due to its failure to certify the village asset land and to initiate legal proceedings to regularize its use. This constitutes an omission of duty under Articles 37–38 of Minister of Home Affairs Regulation No. 3 of 2024, exposing the village to administrative reprimands and potential forfeiture of land if third parties succeed in asserting competing claims.

Thus, both governmental entities are legally complicit: the regency for unauthorized land control, and the village for administrative negligence.

C. Critical Assessment of Minister of Home Affairs Regulation No. 3 of 2024

Ministerial **Regulation** No. 3 of 2024, which amends Regulation No. 1 of 2016, attempts to close prior regulatory gaps, particularly in cases such as Cilame, where village asset land has been used for public purposes without formalized legal instruments. Articles 48 and 48A of the 2024 Regulation provide a legal avenue for retroactive regularization of such land uses, subject to verification by an appointed review team and approval by the Regent or Mayor. This is a significant normative improvement over the

¹⁷ Tengku Erwinsyabhana, Tengku Rizq Frisky Syabhana, *Perspectives on the Indonesian Legal State Based on Pancasila*, Faculty of Law, Muhamayah University of North Sumatra, 2018.

¹⁸ Minister of Home Affairs Regulation No. 4/2007 on Village Wealth Management Guidelines.

2016 Regulation, which lacked any such remedial mechanism. However, two major normative weaknesses persist:

1. The regulation fails to establish objective valuation standards for “equal or higher value” in land swaps. Without clearly defined benchmarks, such valuations remain vulnerable to arbitrary interpretation and potential abuse, especially in politically sensitive contexts.
2. There is no mandatory time frame for completing land certification or resolving irregular use cases. The absence of procedural deadlines risks prolonged uncertainty, undermining the effectiveness of the regulation and perpetuating administrative inertia at both the village and regional levels.

Thus, while the 2024 Regulation constitutes progress, its full potential is constrained by the absence of enforceable valuation formulas and administrative timelines.

D. Legal Alternatives for Resolving the Cilame Village Case

In light of the legal issues identified, several viable legal solutions are available to both the Village and Regency Governments:

1. Utilization Cooperation Agreement (Kerja Sama Pemanfaatan)

Under Articles 18–24 of Ministerial Regulation No. 3/2024, the village may enter into a formal cooperation agreement with the Regency Government, granting temporary

usufruct rights (*hak pakai*) over the land in exchange for annual compensation. This agreement must be based on a clear legal instrument, approved by the Village Consultative Body (BPD), and the land must first be certified in the village’s name.

2. Land Swap Mechanism (Tukar-Menukar)

A formal land exchange may be executed, whereby the Regency Government transfers an alternative plot of land of equal or greater value to the village. This mechanism requires evaluation and verification by an independent team and formal approval by the Regent. Certification of both parcels is required post-transfer.

3. Official Grant (Hibah)

If the village prioritizes educational benefit over economic compensation, it may lawfully grant the land to the Regency Government. Such a grant must comply with Article 77 of the Village Law, be formalized through a written decision by the Regional Head, and followed by registration and certification of the land in the name of the Regency Government.

4. Hybrid Model: Lease-to-Grant with Performance Conditions

A long-term lease agreement (e.g., 30 years) can be initially executed with conditions that allow for eventual conversion into a formal grant upon fulfillment of specific public-interest benchmarks, such as the construction of new educational infrastructure. This model balances village revenue concerns with long-term development goals.

5. Local Regulation on Valuation Standards

To address the lack of objective valuation criteria, the Regency Government should enact a regional regulation (Peraturan Daerah) adopting the Indonesian Appraisal Standards (SPI) as a mandatory reference for determining land value equivalence in all swap transactions involving village assets.

IV. CONCLUSION

The Regulation of the Minister of Home Affairs No. 3 of 2024 affirms that village land used for the construction of public facilities—such as school buildings—continues to be legally recognized as village assets. As such, their use must adhere to the principles of transparency, accountability, and legal certainty. The regulation introduces a land swap mechanism (*tukar-menukar tanah kas desa*) as the principal means for resolving cases where village land is used for public interest, whereby the utilized land must be compensated with another parcel of equal or greater value. This mechanism is intended to safeguard the village's rights and benefits over its assets while maintaining the land's social and developmental function.

However, while this framework is normatively sound, its practical implementation in the field remains complex and uneven. Not all villages possess the necessary administrative and legal capacity to navigate the multistage swap process, which requires coordination with the Village Consultative Body (BPD), the local government, and the Ministry of Home Affairs.

Moreover, in many rural or densely populated areas, the availability of replacement land of equivalent or greater value is limited or contested, especially where land prices have escalated or where spatial planning restricts options for suitable relocation.

These practical challenges raise critical questions about the enforceability and scalability of the land swap mechanism, particularly in under-resourced or administratively weak villages. To bridge this gap between regulatory design and implementation, further measures are needed—such as capacity-building for village officials, technical support from local governments, and clearer guidelines for land valuation and substitution.

In conclusion, while Permendagri No. 3/2024 offers a robust legal basis for the lawful use of village assets for public purposes, its success hinges on the extent to which practical constraints such as administrative readiness and land availability—are addressed through complementary policies. Only then can the regulation fulfill its dual mandate of protecting village rights and enabling sustainable public service delivery, particularly in the education sector.

REFERENCES

1. Book

Ida Bagus Wyasa Putra, *Tourism Business Law*, Bandung, Refika Aditama, 2001, p. 85.

Kurniawan, Budi, *Village Asset Administration in Legal and Governance*

- Perspective, Sinar Grafika, Jakarta, 2019, p. 43
- Lestari, Andi, Legal Protection for Village Officials Journal of Law and Public Policy 9(3), 2021, pp.230-240.
- Moh. Mahfud MD, Political Law in Indonesia, Rajagrafindo, Jakarta, 2012, pp. 31.
- Munir Fuady, Theory of the Modern State of Law (Rechtstaat), Refika Aditama, Bandung, 2009, pp. 3
- Nurcholis in his book entitled Growth and Organization of Village Governance (Nurcholis, 2011: 94).
- Urip Santoso, Agrarian Law & Land Rights, Kencana, Jakarta, 2010, p. 87.
- Zahra Idris, Basics of Education, Angkasa, Bandung, 1981, p. 69
- Permana, Andi, Legal Certainty in Village Asset Management. Journal of Social Economics and Policy 7(2), 2019. Page 152.

2. Regulations

- Minister of Home Affairs Regulation No. 4/2007 on Village Wealth Management Guidelines.
- Minister of Home Affairs Regulation No. 1/2016 on Village Asset Management.
- Minister of Home Affairs Regulation No. 3 of 2024 on Amendments to Minister of Home Affairs Regulation No. 1 of 2016 on Village Asset Management.
- Government Regulation No. 16/2004 on Land Stewardship.

3. Journal

- Hendra Turnip, Juridical Review of Law Number 2 Year 2012 on Land Acquisition for Development in the Public Interest, Thesis, Master of Law Studies Program, Postgraduate Program, Medan Area University, Medan, 2014, p. 36.
- Rina Ekawati, Implementation of Article 3 of Government Regulation No. 24/1997 on Land Registration in Bontang Kuala Village, North Bontang Sub-district, Alumnus of the Faculty of Law, Mulawarman University, Vol. 5, number 1, June 2009.

4. Website

- Thareq Akmal Hibatullah, These are the Rights to Land in Indonesia, <https://smartlegalnetwork.com/2018/09/ini-hak-hak-atas-tanah-yang-ada-di-indonesia/>, (accessed on April 28, 2025 at 10:30)
- Prasetyo, Dwi, Village Cash Land Certification as a Solution to Legal Certainty, Journal of Land Law 6(1), 2021, pp. 45-58.
- Noor Aulia Rahman, Optimizing the Management of Regional Land Assets in Increasing Mamuju Regency's Original Revenue, Thesis, Hasanuddin University Makassar, 2021.
- Tengku Erwinsyabhana, Tengku Rizq Frisky Syabhana, Perspective of the Indonesian Legal State Based on Pancasila, Faculty of Law, Muhamayah University of North Sumatra, 2018.