

The Dynamics of Village Treasury Land Management to Provide Legal Certainty and Benefits

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Abstract

The management of village treasury land in Sukolilo Village faces various challenges that deviate from the provisions, especially related to the issue of securing and utilizing village assets. This study aims to examine legal management such as securing and utilizing village treasury land in Sukolilo Village in order to provide legal certainty and benefits for the community. This study uses an empirical or socio-legal method, with a sociological approach to examine the implementation, legal dynamics, and challenges of managing village treasury land in Sukolilo Village, East Java, Indonesia. Regarding security, the land certification process that is designated as part of the village treasury land in Sukolilo Village is still incomplete. Regarding its utilization, buildings utilized by outside parties do not provide economic benefits to the village because they do not have official permits from the village government. The absence of village regulations or directions from the village leadership also creates a legal vacuum. The Sukolilo Village Government needs to immediately register village treasury land and enter into legal agreements stipulated through village regulations. Expansion of the utilization of village treasury land can be done by building tourist villages, utilizing village potential by involving various community groups.

Keywords: Village Treasury Land; Management; Legal Certainty; Benefits.

Introduction

Soil or terrestrial terrain stands as an indispensable resource crucial for all organisms, particularly humans, providing the fundamental substrate for a spectrum of human endeavors encompassing agriculture, fisheries, animal husbandry, industrial activities, and habitation. As a communal resource, land assumes a multifaceted role, functioning both as a societal asset facilitating various social activities conducted upon it and as a developmental capital asset necessitating

judicious and equitable management practices.¹ Village treasury land represents a specific category of village assets earmarked for village advancement and concurrently serves as a communal resource for the local populace. Across Java, it is denoted by various terms such as *bengkok* land, *sanggan*, *tititama*, *suksara*, and *bondo desa* land, while in Bali, it is identified as *druwe desa*, and in Madura, it is recognized as *catoh* land.

Following the Minister of Home Affairs Instruction Number 26 of 1992, concerning Changes concerning the Status of *Bengkok* Land and Similar to Village Treasury Land, the governance, supervision, and administration of *bengkok* land and comparable territories are now integrated within the village treasury land legal framework.² Presently, the management of village treasury land is governed by Minister of Home Affairs Regulations Number 1 of 2016 concerning Village Asset Management (hereinafter referred to as Minister of Home Affairs Regulations Number 1 of 2016).³ Under Article 6 of those provision, land controlled by the village, designated for the facilitation of governance, development, and the well-being of the village community. Such land cannot be utilized as collateral nor transferred to any individual or entity except for purposes that serve the public interest.

Under Article 7 of the Minister of Home Affairs Regulations Number 1 of 2016, the administration of village treasury land, a component of village assets, encompasses a range of managements including planning; acquisition; usage; utilization; security; maintenance; revocation; transfer; administration; reporting; evaluation; coaching; supervision; and control. The village head, with the approval of village officials, holds the overarching authority over these responsibilities.

¹ Felishella Earlene and Benny Djaja, "Implikasi Kebijakan Reforma Agraria Terhadap Ketidaksetaraan Kepemilikan Tanah Melalui Lensa Hak Asasi Manusia," *Tunas Agraria* 6, no. 2 (June 26, 2023): 152–70, <https://doi.org/10.31292/jta.v6i2.223>.

² Estri Pamungkasih and Sasmito Jati Utomo, "Studi Regulasi Dampak Perubahan Sistem Pemerintahan Desa Dalam Pengelolaan Aset Eks Tanah Kas Desa," *Kartha Rahardja: Jurnal Pembangunan Dan Inovasi* 4, no. 1 (2022): 23–32, <https://ejurnal.malangkab.go.id/index.php/kr/article/view/59>.

³ Minister of Home Affairs of The Republic of Indonesia, "Regulation of the Minister of Home Affairs of The Republic of Indonesia Regulations Number 1 of 2016 Concerning Village Assets Management" (2016), <https://peraturan.bpk.go.id/Details/111552/permendagri-no-1-tahun-2016>.

Consequently, it may be advisable for the village head to pursue legal measures to optimize the utilization of village assets through appropriate and sustainable management practices that benefit the local village community.

Sukolilo Village, located in Jabung District of Malang Regency, East Java, Indonesia, possesses land parcels that have yet to be officially certified on behalf of the Sukolilo Village Government. According to Article 6 of Minister of Home Affairs Regulations Number 1 of 2016, village assets in the form of land ought to be registered under the village government's name. Contrary to this requirement, the current management of these land parcels is inadequate, and they remain uncertified under the Sukolilo Village Government.

The land designated as village treasury is presently being used as a public facility by a third party and is beyond the village's control. Furthermore, there is a procedural nonconformity in the use of the village treasury land as regulated in Minister of Home Affairs Regulations Number 1 of 2016, as no formal agreement on its utilization has been ruled by either village regulations or village head regulations. Therefore, the utilization of these lands cannot adhere to Article 11 Section 2 of the Minister of Home Affairs Regulation Number 1 of 2016, which stipulates that village assets may take the form of renting, borrow-to-use arrangements, cooperative use, build-to-handover, or build-to-handover schemes. This condition has resulted in a legal void concerning the governance of these village treasury lands, thus the Sukolilo village government has been deprived of its authority to manage the village treasury land effectively which may garner contributions for the enhancement of the village economy.

Based on those problems, a legal analysis of the management of village treasury land based on Minister of Home Affairs Regulations Number 1 of 2016 concerning Village Treasury Land in Sukolilo Village is required. The aim is to discover various dynamics of problems and to find attempts that need to be implemented to manage village treasury land in Sukolilo Village to achieve legal certainty and benefits for the residents of Sukolilo Village.

Research Method

This study employs an empirical or socio-legal approach with a sociological perspective to examine the dynamics and challenges associated with managing village treasury land. Conducted in Sukolilo Village, Jabung District, Malang Regency, East Java, Indonesia, the research collects primary data through interviews and field observations. Secondary data is sourced from books, academic journals, scholarly works, and relevant research findings.

Result and Discussion

Implementation of Village Treasury Land Utilization in Sukolilo Village, Jabung District, Malang Regency.

In Sukolilo Village, the village treasury land includes what was previously designated as *bengkok* land, serving two primary functions: wage for village officials (known as *ganjaran land*) and provision of public facilities. The compensation land consists of agricultural plots or cultivated land distributed throughout various locations in Sukolilo Village, the yield of which supports the welfare of village officials. The specific uses of wage land for village official are outlined as follows:

Table 1
Village Treasury Land as *Ganjaran* Land

Usage	Land Area (in M ²)
Head village	5.700
Head village	15.000
Head village	5.350
Head of public welfare affairs	6.480
Head of general affairs	4.750
Head of Planning Affairs	4.900
Head of government department	5.162
Head of Financial Affairs	5.062
Village secretary	5.112

Village secretary	7.350
Head of Service Section	5.750
Gandon hamlet chief	5.062
Kampung Anyar hamlet chief	5.112
Gandon hamlet chief	5.750
Bendo hamket chief	4.050

Source: Secondary data, 2024

Numerous parcels of village treasury land remain uncertified yet have been repurposed as public facilities, such as village offices, mosques, the Military Subdistrict Command office, village maternity huts, and schools, all utilized by external entities. Additionally, certain sections of the village treasury lands are employed as temporary housing for residents of Gunung Jati village in Jabung District, Malang Regency. This support is extended by the Sukolilo Village Government to accommodate residents who have been displaced from their village due to land appropriation by other parties. The allocation of village treasury land use areas includes the following:

Table 2
Village Treasury Land as Public Facilities

Usage	Land Area (in M ²)
Ahmad Yani Madrasah Aliyah (private school)	1.576
Ahmad Yani Madrasah Tsanawiyah (private school)	1.700
Military sub-district commander office	540
Sukolilo elementary school	2.535
Village treasury land (not yet utilized)	532
Village treasury land (not yet utilized)	230
Village treasury land (not yet utilized)	180
Village treasury land (not yet utilized)	14 plots of land each measuring 180 meters

Village treasury land (not yet utilized)	225
Village treasury land (not yet utilized)	87
Kas Desa	7.840
Village treasury land (not yet utilized)	49
Annur Mosque	900
Dharmawanita kindergarten	1.050
Village maternity cottage	465
Village office	963

Source: Secondary data, 2024

On March 4, 2024, an interview with Ali Masyar, the Head of Sukolilo Village in Jabung District, Malang Regency, disclosed that the total area of village treasury land in Sukolilo Village amounts to 114,630 square meters. Each plot of village treasury land has been assigned an SPPT Pajak Bumi Bangunan P2 (Tax Notification Letter for Rural and Urban Land and Building Tax) number. Nevertheless, the village government has encountered several challenges and obstacles in certifying the land, such as:

a) The Sukolilo village government has to impose a considerable amount of funds on the registration of the village treasury land.

One of the primary challenges is the substantial expense linked to land registration, encompassing required fees as well as supplementary costs such as charges for land staking, transportation, and food allowances for operators. It is important to highlight that the projected cost is considerable, particularly given the extensive village treasury land area of 114,630 square meters.

b) Obstacles of village treasury land management

First, there is ambiguity regarding the legal framework governing the use of village treasury land as public facilities, as it does not conform to the provisions outlined in Article 11 Section 2 of Minister of Home Affairs Regulation Number 1 of 2016. This regulation specifies that village asset utilization may take the form of renting, borrow-to-use arrangements, cooperative use, build-to-handover, or build-to-handover schemes. The utilization of village treasury land does not adhere to an agreement process and official permission that

established through village regulations or village head regulations and leads to legal vacuum; thus, the Sukolilo Village Government fails to derive any economic benefits from the village treasury land and its building.

It should be noted that a section of the village treasury land is currently being utilized as a military subdistrict command office managed by the Indonesian army as a part of state institutions and being utilized as a public facility managed by a third party. Moreover, it currently being utilized as temporary residential building land for the residents of Gunungjati Village, Jabung District, Malang Regency. As a result, the classification of those utilization status cannot be determined in accordance with Article 11 Section 2 of the Minister of Home Affairs Regulation Number 1 of 2016.

Second, it may be worth considering that there is a limited amount of village funds in Sukolilo Village available to develop and manage village treasury land. Therefore, conducting a legal analysis and exploring innovative management strategies for village treasury land is needed, aligned to the potential of the village area.

The Head of Sukolilo Village stated that the challenges encountered by the village government related to Articles 6 and 7 of Minister of Home Affairs Regulation Number 1 of 2016, which are essential for ensuring legal certainty of village assets and accruing benefits for the village of Sukolilo. Two main issues that require resolution pertain to the utilization and security of village assets, which ought to be addressed to prevent the potential emergence of agrarian conflicts. To achieve these goals, it is advisable to establish a village asset management system, such as the village treasury land certification process specified in Article 6, Section 1-2 of Minister of Home Affairs Regulation Number 1 of 2016.

“Article 6

- (1) Village assets in the form of land are certified on behalf of the Village Government.
- (2) Village assets in the form of buildings must be accompanied by proof of ownership status and administered in an orderly manner.”

The certification of village land assets aims to provide legal protection for village treasury land and ensure the physical existence and legality of land objects. In addition to land certification, it may be advisable to consider conducting a legal review of the use of village assets, as stated in Article 7 of Minister of Home Affairs Regulation Number 1 of 2016. This could potentially ensure effective management of village assets and provide benefits for village residents, the Sukolilo Village Government and other parties that utilize the village treasury land.

Legal Analysis of Village Treasury Land Registration in Sukolilo Village

a) The Urgency of Registering Village Treasury Land to Attain Legal Certainty

In terms of terminology, the phrase land registration originated from the term *cadastre* (in Dutch *Kadaster*), which is a technical record that details the size, location, value, and ownership of an area of land.⁴ The term *cadastre* originated from the Latin phrase *capitastrum*, which denotes a record or unit established for Roman land tax. The concepts of these two phrases combine to suggest that a cadastre is a record of land, its worth, and the rights holders for tax reasons.

The Indonesian land registration system is based on the Torrens System, which was discovered by Robert Richard Torrens from Australia. This system enables the public to easily access land ownership information without the need for manual searches or verification of ownership rights on existing deeds. As a result, any legal action involving a plot of land must be recorded as a written deed, which is then registered at the land office as juridical data.⁵ This is intended to promote legal certainty and ensure the registration of land rights for both legal objects and subjects.

⁴ Heni Rizanah, "Keabsahan Sertipikat Sebagai Alat Bukti Yang Terbit Karena Pendaftaran Sistematis Lengkap (PTSL) Dalam Prespektif Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah," *LAW Proscientist: Journal of Law Profesional Scientist* 1, no. 1 (2022): 15–22, <https://journalproscientist.com/index.php/lp/article/view/6%0A>.

⁵ Listyowati Sumanto, "The Future On Publication System Of Land Registration In Indonesia," *International Journal of Scientific and Technology Research* 9, no. 3 (2020): 1399–1404, <https://www.ijstr.org/paper-references.php?ref=IJSTR-0320-31247>.

The land registration system was carried out using two approaches, as stipulated in Government Regulation Number 24 of 1997 concerning Land Registration.⁶ **Firstly, through a systematic approach**, as regulated by Article 1 Section 10 of Government Regulation Number 24 of 1997, i.e. the first cadastral registration, which is carried out simultaneously and includes all cadastral objects that have not yet been registered in the area or part of a village. The Minister determines the place of cadastral registration systematically based on the recommendation of the head of the regional office and it is financed from the central government or regional government budget or independently by the municipality with the approval of the Minister. **The second is the sporadic approach**, i.e. the first registration of one or more cadastral objects in the area of a village/sub-district individually or en masse. Sporadic registration is carried out on applications relating to land plots owned by the applicant, so that any work associated with the land registration application is borne by the land registration applicant.⁷

The significance of land registration within a community lies in its crucial role in attaining legal certainty. Legal certainty stands as a prerequisite in the administration of justice, ensuring that individuals seeking recourse (*justiciabelen*) can expect to receive the anticipated outcomes of justice and order, devoid of arbitrary interventions.⁸ This underscores the notion that legal certainty prevails when the law provides unequivocal clarity on matters pertinent to concerned individuals or entities. On the contrary, the absence of legal certainty gives rise to apprehension, particularly regarding the potential ramifications of land disputes on specific stakeholders.

⁶ Government of the Republic of Indonesia, “Regulation of Government of The Republic of Indonesia Number 24 of 1997 Concerning Land Registration” (1997), <https://peraturan.bpk.go.id/Details/56273/pp-no-24-tahun-1997>.

⁷ Ledy Wila Yustini, “Kekuatan Hukum Sertifikat Hak Atas Tanah Yang Pendaftarannya Secara Sporadik Berdasarkan PP PP No 24 Tahun 1997,” *Justicia Sains: Jurnal Ilmu Hukum* 7, no. 2 (November 29, 2022): 386–403, <https://doi.org/10.24967/jcs.v7i2.1984>.

⁸ Siti Halilah and Mhd. Fakhurrahman Arif, “Asas Kepastian Hukum Menurut Para Ahli,” *Siyasah: Jurnal Hukum Tata Negara* 4, no. 2 (2021): 56–65, <http://www.ejournal.anadwah.ac.id/index.php/Siyasah/article/view/334>.

Gustav Radbruch proposed the legal objectives, which delineates three fundamental principles of law: justice, legal certainty, and societal benefit.⁹ He contended that individual justice serves as the cornerstone for attaining legal justice, thereby establishing a structural hierarchy of justice, certainty, and finality as the primary objectives of legal systems. When legal finality is intertwined with collective progress, it must adhere to principles of justice and legal certainty to forestall arbitrary actions.¹⁰ Pursuing justice involves the utilization of objective, precise, and tangible legal mechanisms devoid of speculation or subjective biases that may engender injustice or arbitrariness.¹¹ Radbruch's concept of legal certainty serves as a safeguard for registered land parcels against arbitrary actions by malevolent parties seeking to contest ownership, particularly in cases involving village-owned lands utilized for governmental bureaucratic purposes, where ownership

Achieving legal certainty regarding land includes legal certainty about subjects who hold the land rights, the object or the land itself namely the land's location, the area of the land, which includes the length and width of the land and the boundaries of the land. Providing legal certainty on the status of village land may also encourage progress for the village itself, including:

- a) To strengthen the village economy, as the status of registered village treasure land has further flexibility of use that can contribute to the welfare of the local village community;
- b) To safeguard the environment, because there is a definite relation between the right holder and the object of the right, which can encourage the right holder to do things related to the conservation of the environment, for example, on

⁹ Rini Fathonah and Daffa Ladro Kusworo, "The Paradigm of Applying Zero Verdict Based on Principles Legal Certainty, Justice, and Benefit," *Hang Tuah Law Journal*, April 11, 2023, 32–44, <https://doi.org/10.30649/htlj.v7i1.138>.

¹⁰ Bernard L. Tanya, Yoan N. Simanjuntak, and Markus Y. Hage, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2010).

¹¹ Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Crepido* 1, no. 1 (July 31, 2019): 13–22, <https://doi.org/10.14710/crepido.1.1.13-22>.

valuable or arable land, the sustainability of which is always maintained so that it continues to produce crops; and

- c) To discourage or diminish land disputes, such as between community members, between communities and village officials, and between villages and the state.

The imperative of the Land Registry to the Government lies in its role of providing legal assurance concerning both the entities and objects involved, as well as their interrelations such as tax issue. Moreover, it serves to actualize the following objectives:

- a) Facilitating governmental access to data concerning land and its associated structures, thereby enabling the assessment of applicable taxes for each parcel of land, including its buildings.
- b) Fulfilling the obligation of maintaining orderly land administration as stipulated by Presidential Decree No. 7 of 1979 pertaining to the Third Five-Year Development Plan (Rencana Pembangunan Lima Tahun or REPELITA). This encompasses the establishment and enforcement of legal, administrative, land use, and environmental regulations.¹²
- c) Contributing towards the realization of the Government's target of registering 126 million land parcels by the year 2025.¹³

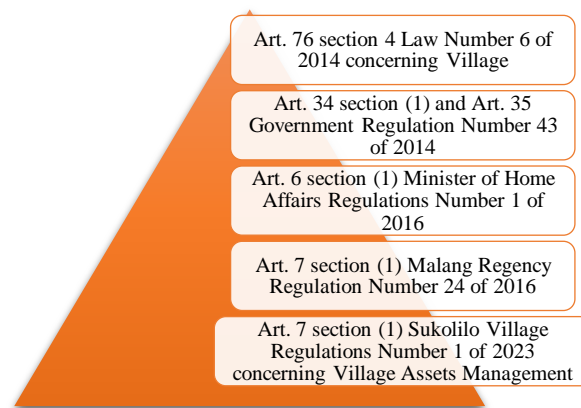
According to **Lawrence M. Friedman**, a legal system is conceived as a complex organism entity characterized by the interplay among its structural, substantive, and cultural components.¹⁴ Realizing the fundamental aspect of legal certainty necessitates the consideration of three essential elements in the establishment of a legal system, namely:

¹² U. Nurzia, "Pengaruh Catur Tertib Pertanahan Dalam Pendaftaran Tanah Di Kota Singkawang," *JURNAL RISET INDRAGIRI* 12, no. 3 (December 6, 2023): 183–95, <https://doi.org/10.61069/juri.v12i3.63>.

¹³ Ady Thea DA, "Menteri ATR/BPN Target PTSL 126 Juta Bidang Tanah Terealisasi 2025," *Hukum Online*, 2023, <https://www.hukumonline.com/berita/a/menteri-atr-bpn-target-ptsl-126-juta-bidang-tanah-teralisasi-2025-lt6471f0b547a42/>.

¹⁴ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975).

The first is the legal structure, i.e. the legal institutions that support the law itself, such as legislation, legal institutions and legal instruments. In the scope of village treasury land, the legal institutions that have a role are the Agrarian Affairs Ministry and Spatial



Planning/National Land Agency, the Ministry of Home Affairs, the Governor, the Regional Head of the National Land Agency, the Regent/Mayor, the Head of the Regency/City National Land Agency, the Village Head and his apparatus, and Village Head. As for the regulations used in the 1945 Constitution of Republic Indonesia; Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles; Law Number 32 of 2004 concerning Regional Government; Government Regulation Number 72 of 2005 concerning Villages; Government Regulation Number 24 of 1997 jo. Government Regulation Number 18 of 2021 concerning Land Registration; Local regulation; and Village Regulations.

The regulations regarding the certification of Sukolilo's village treasury land have been regulated in a hierarchy, as follows:

Figure 1
Regulation Hierarchy of Village Treasury Land Registration

Source: Secondary data, 2024

As depicted above, the government has delineated explicit regulations governing the certification of village assets under Article 76 Section 4 of Law Number 6 of 2014 concerning the Village, particularly pertaining to land as a village asset, which must be certified on behalf of the village government.¹⁵ This regulatory

¹⁵ Government of the Republic of Indonesia, "Law of The Republic of Indonesia Number 6 of 2014 Concerning Village" (2014), <https://peraturan.bpk.go.id/Details/38582/uu-no-6-tahun-2014>.

framework is intended to establish legal certainty and safeguard the rights of landholders, notably the Sukolilo Village Government. Consequently, expedient registration of land holdings within the Sukolilo Village treasury is imperative, necessitating collaborative efforts from both the Sukolilo Village Government and the Malang Regency Land Agency. The Head of Sukolilo Village affirms the perspicuity of regulations concerning the registration of village treasury land, expressing confidence in their practical implementation. The stakeholders involved to the management of village treasury land include the Sukolilo Village Government, governmental entities such as the Malang Regency Land Agency, and certified cadastral surveyors.

Secondly, the legal substance, i.e. the substantive content of enacted laws that govern societal conduct, is the main principal in establishing justice and legal certainty. The Sukolilo Village Government has legalized Sukolilo Village Regulation Number 1 of 2023 regarding Village Asset Management (hereafter referred to as the Sukolilo Village Regulation on Village Asset Management).¹⁶ Under Article 7 Section 1 of the Sukolilo Village Regulation on Village Asset Management regulates that village assets, specifically village treasury land excluding Village Original Assets, undergo official certification under the purview of the Village Government. These regulatory provisions are characterized by clarity and enforceability, thereby may advocating for the expeditious execution of village treasury land registration. It is envisaged that this proactive measure will engender heightened legal certainty in the management of village assets, particularly village treasury land, thus conferring benefits upon both the village community and the Sukolilo Village Government.

Third, the legal culture encompasses the professionalism exhibited by legal practitioners as they perform their duties and the level of public awareness regarding legal compliance. In this context, the relevant stakeholders include the Sukolilo Village Government, the Malang Regency Land Agency, and certified

¹⁶ Sukolilo Village Government, “Sukolilo Village Regulation Number 1 of 2023 Concerning Village Management Asset” (2023).

cadastral surveyors. These entities are responsible for executing all phases of land registration, including:

- 1) The meticulous and systematic inventory of village assets is conducted continuously to compile accurate data that reflects the actual field conditions, including land ownership and usage, data collection on mapped locations based on a map projection system to prevent overlapping certificates, and calculating the number of land parcels and measuring field areas, all managed within an information system.
- 2) The verification of land parcels in alignment with existing data and the establishment of boundaries.
- 3) The application process for registration with the Malang Regency Land Agency.
- 4) The subsequent determination and issuance of certificates.

The registration of privately owned land is not prone to significant issues when the land's attributes, such as location, boundaries, and area, are well-defined, along with any structures and vegetation present on the land. Similarly, when the type and status of land rights, as well as the identity of the land rights holder, are unambiguous and free from disputes, the process of land registration becomes more straightforward. This is achievable as long as the physical and juridical data related to the land are clear and uncontested. The registration of land associated with customary or village contexts, such as village treasury land, presents distinct challenges and complexities that impede the land registration process.¹⁷

The certification of village treasury land serves as a measure to safeguard its integrity against potential losses or transfers to other entities, thereby preventing land disputes. Failure to register village treasury land may result in persistent agrarian issues, including disputes among community members over ownership boundaries, conflicts between the community and governmental institutions,

¹⁷ Flauangelia Herisli Wattimena, Jenny Kristiana Matuankotta, and Novyta Uktolseja, "Implikasi Hukum Pendaftaran Atas Tanah Adat (Tanah Dati) Terhadap Pemegang Hak Lainnya," *Pattimura Law Study Review* 1, no. 1 (2023): 302–19, <https://doi.org/10.47268/palasrev.v1i1.10852>.

tensions between village communities and the state, and inequitable exchanges of village treasury land (*ruislag*), among other concerns.

Obstacles to Village Treasury Land Registration Fees in Sukolilo Village and Solutions

The financial challenges faced by Sukolilo Village in the certification of village treasury land represent a barrier that the village is unable to address independently. Cost affordability is the one of principle of land registration as outlined in Article 2 of Government Regulation Number 24 of 1997. This concept encompasses the ability of parties to afford land registration expenses, as well as the affordability of service fees related to land registration, with particular consideration for the needs and financial capacity of economically disadvantaged groups to ensure they can manage both components of the costs.

- a) In essence, the registration fee for village treasury land constitutes an element of the village asset protection strategy, which the Village Government must undertake, and is funded through the Village Revenue and Expenditure Budget under Article 19 of Minister of Home Affairs Regulation Number 1 of 2016. However, the affordability of these fees presents a significant challenge in the land registration process for village treasury land in Sukolilo Village, due to the extensive land area, which is perceived to entail high processing costs throughout the registration phases from pre- to post-registration.

The government has undertaken various initiatives to expedite land registration, including the National Agrarian Program (PRONA), which was launched in 1981 and became a central program of the National Land Agency between 2007 and 2009. PRONA was designed as a large-scale land certification effort that offered low-cost registration to applicants.¹⁸ While PRONA has been implemented in Sukolilo Village, its focus has been limited to privately owned land

¹⁸ Musleh Herry, "Implementasi Program PRONA Bagi Masyarakat Ekonomi Lemah," *De Jure: Jurnal Hukum Dan Syar'iah* 4, no. 2 (December 30, 2012): 187–200, <https://doi.org/10.18860/j-fsh.v4i2.2987>.

and did not encompass to village treasury land. In cases where land registration is conducted on a sporadic scheme, the entire financial burden falls upon the applicant. This encompasses fees for survey, inspection, measurement, and mapping services, classified as Non-Tax State Revenue. Additionally, there are supplementary expenses, such as accommodation, transportation, food, and other miscellaneous charges for operators or cadastral surveyor which there is often ambiguity regarding transparency and accountability.¹⁹ Therefore, alternative systematic registration efforts are essential to address cost-related barriers. It is advisable for the Sukolilo Village Government to engage in a systematic registration program facilitated by the government to avoid transferring the complete cost burden to the Village Revenue and Expenditure Budget.

In addition to PRONA scheme, the Sukolilo Village Government may consider proposing the Complete Systematic Land Registration (Pendaftaran Tanah Sistematis Lengkap or PTSL) program to the government. As regulated in Article 4 of the ATR/BPN Ministerial Regulation Number 6 of 2018 concerning Complete Systematic Land Registration, this initiative targets all land parcels indiscriminately, including village treasury land, customary law community land, forest areas, and transmigration land, among others.

In terms of the costs associated with preparing for Complete Systematic Land Registration (PTSL), the Joint Decree of 3 Ministers Number 25/SKB/V/2017 concerning Funding for Systematic Land Registration Preparations, stipulates a mandatory fee of IDR 150,000 in the Java-Bali region.²⁰ This fee is charged to applicants and is used to finance document preparation activities, procurement of stakes and stamps, and the operational activities of sub-district or village officers.

¹⁹ Amudi H. Butarbutar et al., "Transparansi Dan Akuntabilitas Dalam Kebijakan Penentuan Tarif Biaya Transportasi Dan Akomodasi Dalam Pendaftaran Tanah Pertama Kali Di Kantor Pertanahan Kabupaten Toba Samosir," *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 1 (2023): 35–51, <https://jurnal.locusmedia.id/index.php/jkih/article/view/40/37>.

²⁰ The Ministry of Villages Development of Disadvantaged Regions and Transmigration, Ministry of Home Affairs, and The Ministry of Villages Development of Disadvantaged Regions and Transmigration, "Joint Decree Number 25/SKB/V/2017 of 2017 Concerning Funding for Systematic Land Registration Preparations" (2017), <https://jdih.atrbpn.go.id/peraturan/detail/1121/surat-keputusan-bersama-nomor-25-skb-v-2017-tahun-2017>.

The mandatory costs may be subject to adjustment through a deliberation mechanism between the applicant and the committee, with the details transparently and accountably documented in the form of minutes of deliberation. This process determines the specifics of PTSL preparation financing, including the types of activities, the quantities of goods and services required, and the associated costs.

In Malang Regency, these provisions are governed by Malang Regent Regulation Number 14 of 2018, which outlines The Financing for Complete Systematic Land Registration Preparation Charged to The Community.²¹ Additionally, the Malang Regency Government has eliminated the payment of Land and Building Rights Acquisition Fees to further reduce land registration costs and alleviate the financial burden on applicant village governments.²²

Under Article 19 of Minister of Home Affairs Regulation Number 1 of 2016, the certification of village treasury land, which serves as conclusive evidence of ownership status, constitutes a protective measure for village assets that must be executed by the village head and other village officials. The associated costs may be covered by the Village Revenue and Expenditure Budget. To facilitate this at the village government level, Article 43 of the Sukolilo Village Regulation was enacted, stipulating that all financial obligations related to the orderly administration of village asset management shall be borne by the Village Revenue and Expenditure Budget.

The considerable expanse of village treasury land engenders the presumption that the costs associated with the registration process are substantial, spanning from pre-registration to post-registration. Furthermore, the Sukolilo Village Government is hopeful for a fee reduction policy from the regional government to facilitate the immediate registration of village treasury land. As articulated by the Head of Sukolilo Village, given the perceived high costs, the Sukolilo Village Government

²¹ Malang Regency Government, "Malang Regent Regulation Number 14 of 2018 Concerning The Financing for Complete Systematic Land Registration Preparation Charged to The Community" (2018), <https://peraturan.bpk.go.id/Details/120880/perbup-kab-malang-no-14-tahun-2018>.

²² Yudistira Satya Wira Wicaksana, "Pemkab Bebaskan BPHTB Program PTSL," Jawa Pos Radar Malang, 2023, <https://radarmalang.jawapos.com/malang-rama/811788023/pemkab-bebaskan-bphtb-program-ptsl>.

would be hoping for additional support from the Malang Regency Land Agency. This assistance is necessary to estimate the expenses associated with village treasury land registration per area, enabling the Sukolilo Village Government to adjust and draft an appropriate and transparent of Village Revenue and Expenditure Budget.

Legal Analysis of Village Treasury Land Management in Sukolilo Village, Jabung District, Malang District To Provide Legal Security and Benefit

a) Authority and Efforts to Manage Village Treasury Lands That Have Not Been Certified on Behalf of the Sukolilo Village Government

The authority to administer village treasury land as an integral part of village assets serves as a means for village governance to augment the village's own-source revenue, thereby conferring advantages to the village as stipulated in Article 72 Section 1 Law Number 6 of 2014 concerning Village. Therefore, the village head and officials are entrusted with the responsibility of overseeing all aspects of village asset management. This process must adhere to principles of legal certainty, transparency, functionality, efficiency, accountability, and value certainty, as outlined in Article 3 of the Minister of Home Affairs Regulation Number 1 of 2016.

The village government, as part of the foundational tier of the governmental system, plays an imperative role in carrying out development initiatives, administering governance, and providing services to the community. Consequently, it is essential to legally formalize and effectively manage village assets to maximize benefits for the village community. This underscores the importance of managing village treasury land as part of village assets to promote the empowerment of village communities in the management of village financial resources.²³ Management of village treasury land encompasses a range of activities, including overseeing its administration, registration, utilization, and maintenance. Before the utilization, the management of village treasury land must undergo a process of land provision,

²³ Sri Hajati et al., *Buku Ajar Politik Hukum Pertanahan* (Surabaya: Airlangga University Press, 2023).

encompassing planning, execution, and resolution of legal status, ultimately culminating in the issuance of a certificate.²⁴

The direct responsibility for safeguarding and managing the existence of village treasury land rests with the village head and their apparatus.²⁵ As the state representative, the village head is charged with providing legal protection in managing village treasury land and is vested with authority while simultaneously operating within prescribed limitations to manage village assets. This includes formulating policies for village asset management, determining the usage, protection, and transfer of village assets, and engaging in deliberation with the Village Consultative Body to prevent overstepping their authority.²⁶

The Head of Sukolilo Village may make decisions regarding the management and utilization of village treasury land that have been mutually agreed upon following consensus with the Village Consultative Body. The outcomes of the utilization of village treasury land are subsequently managed within the Village Revenue and Expenditure Budget and can be allocated to finance village development and administrative governance. This entire process must adhere to accountability measures, including a comprehensive report on the management of village treasury land and the application of the village Revenue and Expenditure Budget. Currently, the economic returns from the use of village treasury land in Sukolilo Village are primarily confined to agricultural or cultivated land, which generates income or allowances for the village head and village officials. Conversely, structures situated on village treasury land that are not used for cultivation do not yield significant economic benefits, thereby failing to deliver clear advantages to the residents of Sukolilo Village.

²⁴ Lailatul Jannah, Mega Tri Herawati, and Istiana Rachmawati, "Tinjauan Yuridis Terhadap Pendaftaran Dan Penerbitan Sertipikat Tanah Bengkulu," *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 439, <https://doi.org/10.23887/jkh.v7i1.31768>.

²⁵ Umi Supraptiningsih, "Upaya Hukum Dalam Perlindungan Tanah Kas Desa," *Yuridika* 25, no. 3 (2010): 259–68, <https://e-journal.unair.ac.id/YDK/article/view/257>.

²⁶ Intan Nevia Cahyana, "Kebijakan Pemanfaatan Tanah Kas Desa (TKD) Dan Upaya Perlindungan Hukumnya Bagi Masyarakat Dan Pemerintah Desa Sukasari Kabupaten Pandeglang Yang Memberi Keadilan, Kesejahteraan, Kemanfaatan Dan Kepastian Hukum," *Hukum Pidana Dan Pembangunan Hukum* 1, no. 2 (April 2019): 1–10, <https://doi.org/10.25105/hpph.v1i2.5550>.

Historically, the utilization of village treasury land for the construction of public facilities was largely undertaken before the certification of such land. As a result, the status and management authority are ambiguous over the use of village treasury land due to unclear procedural guidelines, thereby it is not in accordance with the proper use of village treasury land as outlined in Article 11 Section 2 of Minister of Home Affairs Regulation Number 1 of 2016. This provision permits the land's use in various ways, such as:

- 1) Renting;
- 2) leasing;
- 3) cooperative utilization;
- 4) building for handover, or building for use.

Once village treasury land has been certified on behalf of village government, its utilization must align with those regulation. On the other hand, the management of uncertified village treasury land must also be governed by an appropriate Village Regulation or local Village Head Regulation to ensure legal certainty in managing village assets. This approach aims to establish orderly administration and more focused management of village treasury land. An illustrative case of regulating the use of uncertified village treasury land through village regulations can be found in Gandu Village, Ponorogo Regency. The Gardu Village government has enacted Gandu Village Regulation Number 4 of 2008 regarding the Utilization of Village Cash Land for Village Market purposes.²⁷

The Sukolilo village head in an interview on March 4, 2024 has expressed concerns regarding the ambiguous status of village treasury land that has been long utilized by external entities, such as the Army territorial unit which operates as a military subdistrict command office. This situation involves state institutions, leading to uncertainties regarding the utilization of land that technically falls under village assets but is occupied by state-owned buildings. Given the involvement of a state institution, village officials are hesitant to address the issue of reclaiming

²⁷ Bagus Oktafian Abrianto and Muhammad Azharuddin Fikri, "Status Hak Tas Tanah Kas Desa Dan Proses Pendaftarannya Menurut Hukum Administrasi Pertanahan," *Pandecta* 16, no. 2 (2021): 205–17, <https://doi.org/10.15294/pandecta.v16i2.28208>.

land rights on the village treasury land from the possession of the Indonesian Army, as they perceive themselves to lack the authority to challenge a state entity.

The land utilized by the Indonesian Army in Sukolilo Village is an uncertified village asset. But in principle, the management of village treasury land must be under the purview of the Sukolilo Village Government because those land is categorized as village assets. The legal framework governing this land use remains unclear because its utilization is without either prior legal agreement or official village permission which resulting in legal vacuum. Moreover, it cannot be classified according to Article 11 Section 2 of Minister of Home Affairs Regulation Number 1 of 2016, which encompasses various forms of land use. Thus, the Sukolilo Village Government does not benefit economically from the land or the buildings on it.

The head of Sukolilo Village stated that in the region surrounding Sukolilo Village, issues have arisen concerning the control of village treasury land by state institutions. Residents of Gunungjati Village in Jabung District, Malang Regency, East Java experienced expulsion due to the National Air Force's appropriation of village land in the absence of ownership certificates. In response, the Sukolilo Village Government offered temporary housing on land belonging to the village treasury. Reflecting on these issues, the Sukolilo Village Government seeks the return of the village treasury land controlled by the military subdistrict command to village ownership. The government proposes that the land be certified in the village's name and that a utilization mechanism, as outlined in Article 11 Section (2) of Minister of Home Affairs Regulation Number 1 of 2016, be implemented. This approach aims to provide legal certainty for the village treasury land as well as economic contributions and enhance the village's original income, ultimately fostering local economic development.

The school and village maternity hut which were established by village elders several years ago, were anticipated to serve as public facilities benefiting the residents of Sukolilo Village. At the time, these utilizations were undertaken neither prior legal agreement nor official village permission regarding the use of the village treasury land. As such, the utilization of these buildings does not align with the

categorization outlined in Article 11, Section (2) of Minister of Home Affairs Regulation Number 1 of 2016.

The approach to the utilization mechanism of village treasury land should adhere to Article 11 Section 2 of Minister of Home Affairs Regulation Number 1 of 2016. To regulate the utilization of buildings on village treasury land through a village regulation, it is necessary to assess whether their function serves the public interest, enabling a thorough examination of the needs of Sukolilo Village residents and facilitating a more precise determination. Buildings located on village treasury land ought to be employed under these regulations and agreements established between the village and third parties who would to utilize village treasury land. This strategy aims to channel the profits from such usage agreements into the village budget, ultimately contributing to the prosperity of the village.

Both schools and maternity huts that are linked with resident's usage may be regulated by a rental or loan-to-use as regulated in Article 11 of Minister of Home Affairs Regulation Number 1 of 2016. Similar to the approach taken by Pamengkang Village with SMP Negeri 2 Mundu in Cirebon Regency.²⁸ Likewise, the military subdistrict command office building may be subject to a rental arrangement. However, if such an approach is not feasible, assets used by the military subdistrict command may be transferred through an exchange (*ruislag*) in the form of replacement land or equivalent monetary compensation based on fair market value, as determined by an appraiser which regulated under Articles 33-37 of Minister of Home Affairs Regulation Number 1 of 2016.

Sukolilo village government offered provisional housing assistance to residents of Gunungjati Village, utilizing village treasury land for this temporary purpose. Given that housing is a fundamental necessity, a compassionate approach is required; consequently, the Sukolilo Village Government cannot abruptly relocate the residents of Gunungjati Village. Legal actions or humane interventions are

²⁸ Euis Yuliasari, "Pelaksanaan Perjanjian Sewa-Menyewa Terhadap Tanah Kas Desa Yang Dilakukan Pemerintah Desa Pamengkang Dan SMP Negeri 2 Mundu Kabupaten Cirebon" (Universitas Sultan Agung, 2022), https://repository.unissula.ac.id/26342/1/2130200027_fullpdf.pdf.

essential to accommodate the needs of the people of Gunungjati Village while also fulfilling the village's responsibilities in managing the village treasury land, which currently serves as temporary housing for the residents of Gunungjati Village.

A preventive approach to securing village treasury land involves clarifying to the residents of Gunungjati Village that the land in question is village treasury land under the jurisdiction of the Sukolilo Village government. Consequently, village residents do not have the authority to perpetually utilize the village treasury land and its standing buildings and have to relocate. If village residents decline relocation, coercive measures such as issuing warning letters to the village community can be implemented, given the limited authority village residents hold over the land. This problem basically cannot be solved alone by the Sukolilo village government, village officials may also liaise with the Malang Regency Government to seek assistance for Gunungjati village residents, such as offering housing solutions similar to the subsidized housing program in areas without village treasury land status.

Third parties who do not generate income for the village through the utilization of village treasury land ought to be informed of the regulatory framework governing the use of village land assets, which includes a procedural agreement mechanism aligned with the utilization request that is transparent and beneficial for all parties. Income derived from the use of village treasury land is classified as village revenue and must be incorporated into the Village Revenue and Expenditure Budget, with an appropriate accountability mechanism in place for its management.

To address the challenges in Sukolilo Village concerning the use of village treasury land by third parties, effective communication is essential to clarify that the land in question is village asset land, and thus all forms of its management fall under the jurisdiction of the village government. If needed, the village government may employ a mediator to engage with third parties utilizing village treasury land, aiming to mitigate the risk of disputes over control of these lands.

From a legal perspective, the Sukolilo Village Government must establish Village Regulations or Village Head Regulations that specify the management and utilization of village assets on each area of village asset land. This is necessary to

ensure legal order, administrative efficiency, and legal certainty in managing village assets. Furthermore, the use of village treasury land must involve an agreement mechanism executed transparently and with accountability and should be incorporated into village regulations. The agreements also must be determined fairly and contain matters that must be regulated for the common good. This is necessary to clarify the legal status of the following matters:

- 1) Utilization mechanisms of village treasury land,
- 2) Involved parties,
- 3) The object (the land),
- 4) The duration of the agreement,
- 5) Dispute resolution,
- 6) Force majeure,
- 7) Building and facility completion must be accompanied by a Building Construction Permit (Izin Mendirikan Bangunan or IMB) in the name of the village government.

Legal Framework for Governing Village Treasury Land Management to Provide Benefits for Sukolilo Village

The authority to manage and utilize village assets, particularly land, lies with the village government. However, in Sukolilo Village, an issue has arisen due to third parties utilizing village treasury land without any legal agreements or official permits from the village government. As a result, the land which can essentially be used for the prosperity does not contribute any economically to the village resident, as it is used by external parties rather than being utilized for the benefit of the resident. Furthermore, this situation leads to suboptimal management of village treasury land, as the budget for managing these assets, including the certification of village treasury land and mechanisms for asset monitoring, is limited.

To optimize the management of village treasury land, collaboration with external parties, alongside coordination with village officials, is essential for the efficient utilization and development of the land. Apart from that, the involvement of external parties, such as universities or companies through corporate social

responsibility (CSR) mechanisms, is vital in building sustainable tourist villages and empowering the community while upholding CSR principles.²⁹ One notable method of utilizing village treasury land is the development of creative and innovative tourism villages. This initiative hopefully may generate revenue for the village through legal utilization under Article 2 Section 1 of Minister of Home Affairs Regulation Number 1 of 2016 to provide benefits to the community through cooperative management and utilization of tourist areas.

To realize legal order in the management of tourism that utilizes village treasury land, it is essential to create a framework for drafting village regulations concerning the Village Medium Term Development Plan (RPJMDes), Village Government Work Plan (RKPDDes), and draft village regulations on tourism villages. The formulation of these legal drafts must involve various stakeholders to ensure that all village residents can continue to sustainably develop the village and effectively utilize their village treasury land to achieve benefits. Hence, the discussion of these legal drafts should proceed through the Village Development Deliberation mechanism, which involves the Village Consultative Body (BPD), the Village Head, as well as other entities such as Village-Owned Enterprises, Tourism Awareness Groups (Pokdarwis), youth organizations, the general public, and MSMEs.

The utilization of village treasury land may be adapted to the potential, typology, geographical attributes, and demographic factors. Sukolilo Village, with a population exceeding 6,000 individuals and encompassing an area of 337.8 hectares at an elevation of 600 meters above sea level, possesses notable agricultural commodities such as rice, corn, sugar cane, and oranges, all of which exhibit high quality due to the cool climate and robust irrigation systems.³⁰ Hence, Sukolilo Village officials must assess and map the potential of each area of village treasury land to align its management with the village's strategic plans and

²⁹ Ni Made Widani et al., "The Role of Corporate Social Responsibility in the Sustainability of Tourism Village," *INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND ANALYSIS* 06, no. 09 (September 26, 2023), <https://doi.org/10.47191/ijmra/v6-i9-56>.

³⁰ Desa Sukolilo, "Potensi Desa Sukolilo," Pemerintah Desa Sukolilo, 2023, <https://www.desasukolilo.com/profil>.

characteristics. This approach aims to secure sustainable benefits and promote community empowerment.

An instance of utilizing village treasury land through innovative tourism management can be observed in several examples that implemented in several village governments:

- 1) D'Ganjaran agrotourism and fishing pond, managed by the Sambilulu Village-Owned Enterprise in Sidoarjo Regency, engages local village residents in trading activities and employs them as administrators and workers in the agrotourism region.³¹
- 2) Durensewu Village in Pandaan District, Malang Regency, has been transformed into a tourist village, overseeing the management of the Telogo Sewu swimming pool, the Red Mosque, various dining establishments, and collaborative production ventures with local factories.³²
- 3) Gajahrejo Village in Purwodadi District, East Java, has established fishing ponds and swimming pools for children and adults, all under the governance of the tourism awareness group (Pokdarwis).³³
- 4) Nanggalamekar Village in Cianjur Regency boasts creative tourism centered around a sunflower garden, managed by a collaboration among Pokdarwis, youth organizations, Village-Owned Enterprises, PKK groups, and village officials.³⁴

³¹ Dhimas Ginanjar, "Agrowisata D'Ganjaran, Tanah Kas Desa Yang Berubah Jadi Tempat Wisata," Jawa Pos, 2024, <https://www.jawapos.com/wisata-kuliner/01298971/agrowisata-dganjaran-tanah-kas-desa-yang-berubah-jadi-tempat-wisata>.

³² Zaki Zubaidi, "Sukses Kelola Aset, Durensewu Kondang Jadi Desa Wisata Di Pasuruan," Jatim Now, 2023, <https://jatimnow.com/baca-64014-sukses-kelola-aset-durensewu-kondang-jadi-desa-wisata-di-pasuruan>.

³³ Jawanto Arifin, "Desa Gajahrejo Rintis Desa Wisata Dengan Bangun Kolam Pancing Pemandian Di Tanah Kas Desa," Radar Bromo, 2019, <https://radarbromo.jawapos.com/pasuruan/1001593074/desa-gajahrejo-rintis-desawisata-dengan-bangun-kolam-pancingpemandian-di-tanah-kas-desa>.

³⁴ Asep Miftahul Falah et al., "Pengembangan Wisata Kreatif Berbasis Bunga Matahari Melalui Pendekatan Permakultur Di Desa Nanggalamekar Kabupaten Cianjur," *Semesta* 2, no. 2 (2022): 91–98, <https://semesta.upnjatim.ac.id/submissions/index.php/semesta/article/view/90>.

CONCLUSION

The management of village treasury land in Sukolilo Village encounters challenges concerning asset security and utilization, which is contrary to the regulations outlined in Minister of Home Affairs Regulation Number 1 of 2016. Specifically, the issue of securing village treasury land assets in Sukolilo Village arises from the absence of registration under the village government's name, leading to legal uncertainty regarding the land's legality. Moreover, the utilization of village treasury land deviates from the prescribed mechanism delineated in Article 11 Section (2) of Minister of Home Affairs Regulation Number 1 of 2016, as it is undertaken by third parties without proper legal authorization and lacks regulation through village ordinances. Consequently, the village government lacks control over the utilization of village treasury land, depriving the village of potential economic benefits from its use.

In order to attain legal certainty, the Sukolilo village government should engage in the registration of village treasury land utilizing the Complete Systematic Land Registration (PTSL) process, a government-facilitated mechanism aimed at alleviating the financial burden on the village. The utilization of village treasury land necessitates clear delineation through effective communication strategies, alongside formalizing all modes of land utilization through official agreements stipulated in village regulations, thereby fostering legal certainty. Expanding the utilization of village treasury land could entail establishing a tourist village, leveraging the village's inherent potential by collaborating with diverse community groups to provide benefits for residents.

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