

Administrative Violations And Legal Disputes In The Management Of Bengkulu Land By The Village Government

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Abstract

Land Bengkulu is land that is controlled by the state and can be utilized by those who want to devote themselves as administrators in a village as a form of appreciation. The Bengkulu land is managed by the village head, village secretary, and village officials. However, in its management, it often causes conflicts related to the right to use and land ownership. This research examines the management of Bengkulu land related to the village head's decree on the contract of Bengkulu land that exceeds his term of office. The purpose of this study is to determine the juridical review of the village head's decision on the contract of Bengkulu land based on Permendagri No. 1 of 2016 and Peraturan Desa related to village assets. The method used in this research is a qualitative empirical research method, which is carried out by means of interpretation of legal materials that have been collected and reinforced by direct statements from village officials (community). The results of this study conclude that one of the village assets is a village asset whose management needs juridical protection, the village head concerned meets the elements of a state administrative dispute based on Article 12 Permendagri Number 1 of 2016 concerning the management of village assets which exceeds the length of the lease while the maximum rental limit is 3 years and Article 10.

Keywords: Bengkulu Land, Village Devices, Bengkulu Land Contracts

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Introduction

Abuse of Authority in the Management of Village Assets in the Form of Tanah Bengkulu in Several Villages in Indonesia. The abuse of authority in the management of village assets, particularly in the form of tanah Bengkulu (village land allocated to village officials), has occurred in several villages across Indonesia.¹ This misuse includes the sale and transfer of ownership rights to third parties, except for purposes of public interest, and the construction of permanent structures on tanah Bengkulu, which is prohibited. One form of such abuse is the transfer of lease rights that is not conducted in accordance with proper procedures. To date, there is no regulation requiring village governments to formalize lease

¹ Fattahilah Fahmi, "Penyalahgunaan Fungsi Tanah Kas Desa Di Kecamatan Banguntapan Kabupaten Bantul Daerah Istimewa Yogyakarta," *Jurnal Lex Renaissance* 1, no. 2 (July 18, 2016), <https://doi.org/10.20885/JLR.vol1.iss2.art1>.

agreements for tanah bengkok with third parties in written form. In practice, village communities often lease tanah bengkok from certain village officials without any formal written agreement. Ideally, such agreements should specify the duration of the lease in alignment with the term of office of the village official, or the tenure over the tanah bengkok, and should clearly state that the lease is limited to the official's term. Alternatively, lease agreements should be made in the name of the village government.² The proceeds from the leasing of village assets, including tanah bengkok, are intended to serve as additional revenue for the village treasury and used for the benefit of the village. In some villages, the management of tanah bengkok is delegated to individual village officials. Consequently, those officials hold authority over the land during their term of office, subject to specific regulations and restrictions concerning the management of village funds. However, this delegation of authority does not grant village officials unrestricted control over the land; they are still obliged to report all outcomes to the village government. The widespread abuse in the management of village assets has contributed to the gradual depletion of village property over the years. According to a survey conducted by ACFE Indonesia (2020), misappropriation involving village assets ranks second after corruption, with a reported rate of 20.9%.

According to Law Number 6 of 2014 concerning Villages, a village—including customary villages or other similarly named entities, hereinafter referred to as "Village"—is a legal community unit with territorial boundaries that is authorized to regulate and manage governmental affairs and the interests of the local community, based on community initiatives, origin rights, and/or traditional rights that are recognized and respected within the governance system of the Unitary State of the Republic of Indonesia. In its administration, the village government consists of a village head assisted by village officials (*perangkat desa*) who are granted the authority to govern and manage their territory and serve the interests of the community, in accordance with the Law on Villages. In this regard, the village has the authority to manage its territory and has its own source of revenue, known as Village Original Revenue (*Pendapatan Asli Desa*), in addition to village funds provided by the central government. These resources are categorized as village assets. Village assets are defined as goods owned by the village that originate from the village's original wealth, acquired through the Village Revenue and Expenditure Budget (*APBDes*), or obtained through other legitimate means. The management of these assets is regulated by Minister of Home Affairs Regulation Number 1 of 2016 on the Management of Village Assets,

² Tanja Herdt and Arend R. Jonkman, "The Acceptance of Density: Conflicts of Public and Private Interests in Public Debate on Urban Densification," *Cities* 140 (September 2023): 104451, <https://doi.org/10.1016/j.cities.2023.104451>.

which serves as a guideline for managing village property. According to this ministerial regulation, village assets are categorized into several types, including: (1) Village Treasury Land (Tanah Kas Desa), (2) Communal Land (Tanah Ulayat), (3) Village Markets, (4) Livestock Markets, (5) Boat Moorings, (6) Village Buildings, (7) Fish Auction Facilities, (8) Village-Owned Forests, and (9) Other assets owned by the village and managed by village apparatus (pamong desa), namely the village officials. Village officials are authorized to utilize village assets, including Tanah Kas Desa, as a form of additional income or compensation. One such form of Tanah Kas Desa that may be utilized by village officials is tanah bengkok. Although tanah bengkok is not explicitly mentioned in Law Number 6 of 2014, it is implicitly included as part of the income-generating efforts (hasil usaha) referred to in the law. Tanah bengkok is traditionally recognized as land allocated to village officials as a form of remuneration during their tenure, and its utilization is regulated as part of the broader management of village assets.

Tanah bengkok refers to land granted as compensation to village officials, such as the Village Head (Kepala Desa), Village Secretary (Sekretaris Desa or Carik), and heads of other village departments. For the purposes of this paper, the terms Village Head (Lurah Desa) and Pamong Desa are collectively referred to as village officials (perangkat desa).³ The provision of tanah bengkok serves as an additional form of appreciation for individuals who dedicate themselves to serving and managing village administration. Tanah bengkok is regulated under the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Revocation of State Land Rights and Management Rights (Permen Agraria/1999). It is defined as land under the control of the state that may be utilized as a form of appreciation for village officials in recognition of their service and performance. The management of tanah bengkok by the village head, village secretary, and other village officials functions as a form of additional salary. The size of the land allocated to each official varies depending on the extent of the village's land assets and the position held by the respective official.

Tanah bengkok was first introduced during the era of Javanese kingdoms as a form of salary granted to royal court employees (pegawai kraton). Linguistically, the term bengkok means "not in its original form" or "diverted from its initial purpose." Over time, tanah bengkok came to be classified into three categories, each serving a specific function within village governance: Tanah Lungguh – Land allocated as a form of salary or compensation for village officials during their

³ B.F Sihombing, *Evolusi Kebijakan Pertanahan Dalam Hukum Tanah Nasional*, Cet. I (Jakarta: Toko Agung, 2004).

tenure, Tanah Kas Desa – Village treasury land, designated for communal purposes and the general interests of the village, Tanah Pengerem-Arem – Land reserved as a form of security or guarantee for the retirement or post-service welfare of village officials.⁴

Paremono Village was selected as the observation site due to its practice of utilizing tanah bengkok as an additional form of compensation for village officials, which include the village head, village secretary, regional heads, and heads of administrative divisions. The village has enacted a local regulation governing the allocation of tanah bengkok, namely Village Regulation Number 2 of 2007 concerning the Management of Village Assets. Despite this regulation, disputes have arisen regarding the distribution of tanah bengkok. These disputes are primarily related to inconsistencies in the land area allocated, which do not align with the provisions set forth in the aforementioned village regulation. The discrepancies are attributed to the reduction in land area, resulting in a mismatch between the regulated allocation and the actual land distributed.

Paremono Village employs a village secretary who is not a member of the state civil apparatus (Aparatur Sipil Negara/ASN), yet still receives a portion of tanah bengkok similar to other technical and territorial village officials. The village also provides government-covered social security facilities, such as BPJS (Social Security Administration). Paremono Village possesses a total asset area of 40.5 hectares, comprising both buildings and agricultural land. Of this, 30.5 hectares are allocated for agricultural use, while the remaining area is designated for public facilities. The agricultural land is distributed among the village head, village secretary, and other village officials, based on specific land area allocations as outlined in the Village Regulation (Peraturan Desa/Perdes) and the village record book (buku desa). However, in practice, the current village secretary receives only 60% of the designated land area. This discrepancy is due to the previous village secretary leasing out portions of the tanah bengkok beyond the duration of their term of office, thereby limiting the available land for the current official.

This study focuses on the relationship between administrative violations and the emergence of state administrative disputes in the management of tanah bengkok, a topic that has not yet been extensively explored. Legal studies on tanah bengkok generally discuss ownership and legal status in broad terms. However, this research specifically highlights the aspect of administrative violations and the practical dynamics of tanah bengkok management by village governments in accordance with applicable laws and regulations. By employing a normative

⁴ Abdul Wahhab, "Adat Land (Bengkok) Transition Process in Indonesian Land Law," *UNNES LAW JOURNAL* 5, no. 2 (2019), <https://doi.org/https://doi.org/10.15294/ulj.v6i1.8236>.

juridical approach, this study offers a new contribution to the understanding of an increasingly relevant and evolving issue.

Problem Formulation

Based on the background of the problem described above, the issues to be examined in this study are as follows:

1. What are the forms of administrative violations in the management of tanah bengkok by the village government?
2. What are the causes of the reduction of village assets due to leasing to third parties?
3. What is the mechanism for resolving legal disputes related to administrative violations in the management of tanah bengkok by the village government?

Research Methodology

Legal research is an activity aimed at obtaining a deep understanding and generally consists of two methods: normative legal research and empirical legal research. Normative legal research is based on secondary data and literature sources.

Empirical legal research, on the other hand, is based directly on data obtained from the community. In this study, the researcher employs the normative juridical method, which is a legal research method that focuses on positive legal norms—both written and unwritten—as the object of study. It can be concluded that the normative juridical approach is a process of examining legal norms, legal principles, direct statements from the community, and other literature sources, all of which are aimed at finding solutions to the legal events being studied.

This approach is also used to identify administrative violations and potential legal disputes arising from deviations from legal norms. Therefore, the research utilizes literature studies in analyzing the case under investigation, supported by direct statements from the community. The process begins with an analysis of whether the legal event in question complies with existing regulations. It is followed by an assessment of the event, which is then linked to the applicable legal norms and reinforced by the community's statements. The data collection process is carried out using specific methods tailored to the research questions, including interviews, observations, and documentation to gather as much information as possible.

The data used by the researcher refers to Minister of Home Affairs Regulation Number 1 of 2016, supported by other relevant legislation and direct statements from the village secretary regarding the distribution of village assets in the village used as the research object.

Discussion

1. Administrative Violations in the Management of Village Land by the Village Government

Tanah Bengkulu (bengkok land) is part of village wealth that is managed and utilized by the village government, as regulated by the Village Law, to achieve the welfare of village residents in accordance with the government's aspirations as stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. Governance is carried out in accordance with Article 18 of the 1945 Constitution, which states that the state recognizes and respects the existence of local governments, community interests, and rights acknowledged within the framework of the Indonesian government system.

Law Number 5 of 1960 concerning Basic Agrarian Principles further affirms the rights and authority over land, serving as a general guideline for land utilization across regions in Indonesia, including state-owned land. This historical foundation influences the development of the tanah bengkok land management system that remains recognized to this day. Legally, this is governed under Article 41 of the Basic Agrarian Law (UUPA), which defines right of use (*hak pakai*) as the right to use and/or collect the produce from land controlled directly by the state or from land owned by another party, granting authority and obligations as stipulated in the land use decree or agreement with the landowner. This right does not constitute a lease or land management agreement, as long as it does not contradict the provisions of the law.

Following the enactment of the Basic Agrarian Law (UUPA), tanah bengkok was converted into a right of use (*hak pakai*) in accordance with the provisions of the UUPA, specifically under the Conversion Article IV. The objective of the enactment of the Basic Agrarian Law is to provide legal certainty and establish fundamental rights over land ownership. Therefore, the management and ownership of tanah bengkok should be documented in the village's C Land Register Book (*Buku C Desa*) as legal proof of ownership.⁵

⁵ Mukmin Zakie Amanda Nurdiana Puspitasari, "Kedudukan Tanah Kas Desa Setelah Berlakunya Peraturan Gubernur Istimewa Yogyakarta Nomor 34 Tahun 2017 Tentang Pemanfaatan Tanah Desa (Studi Di Kelurahan Argomulyo , Kapanewon Cangkringan, Kabupaten Sleman)" 2, no. 6 (2024): 285–300, <https://journal.uii.ac.id/psha/article/view/37953>.

Boedi Harsono explains that land tenure rights possess individual characteristics and are classified into primary and secondary rights. Included in primary land tenure rights are ownership rights (hak milik), right to cultivate (hak guna usaha), and right to build (hak guna bangunan), which are granted by the state and regulated under Article 6 of the Basic Agrarian Law (UUPA). Meanwhile, secondary land tenure rights include the right to build and right of use (hak pakai) granted by the landowner, as well as pledge rights (hak gadai), profit-sharing cultivation rights (hak usaha bagi hasil), lease rights (hak sewa), and others, as outlined in Article 37 of the UUPA.⁶ This classification relates to land tenure rights, where the UUPA regulates these rights in an individual context. However, in the context of village asset management, land tenure rights are further elaborated to refer to non-individual rights, aimed at serving the public interest.

Villages are granted the right to control village assets, and village governments are granted the right to utilize these assets in accordance with the provisions of Law Number 6 of 2014 on Villages and Government Regulation Number 43 of 2015 on Technical Implementation Provisions. Tanah bengkok (village compensation land) is considered part of the village's assets and must be utilized for development and public interest. According to Winardi, the characteristics of tanah bengkok include: (1) The land is controlled by the village and considered part of the community; (2) The management of the land is carried out by the Village or Village Head/Lurah; (3) The revenue generated from the land is used to meet the needs of the Village Head and village officials; and (4) Once the term of office of the Village Head or officials ends, the management of the land returns to the village.⁷

Tanah bengkok functions as a source of income for village officials and apparatus who have the right to enjoy the benefits derived from this land, provided they are still officially holding their positions. In other words, once the official or village apparatus has completed their term of office, the tanah bengkok reverts to the village treasury and must cease to be managed, especially if it has been managed with the assistance of a third party.⁸ This transfer also replaces the income previously received by the village apparatus, where tanah bengkok will be substituted with allowances, fixed salaries, or other legitimate income provided by

⁶ Boedi Harsono, *Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*, Edisi Revi (Jakarta: Djambatan, 1999).

⁷ Y.A Ohoiwutun et al., "Konflik Kepentingan Dalam Pengelolaan Tanah Kas Desa Tinjauan Hukum Terhadap Penebangan Tanaman Di Desa Pace, Kabupaten Jember," *Jurnal ISO: Jurnal Ilmu Sosial, Politik Dan Humaniora* 4, no. 2 (November 26, 2024), <https://doi.org/10.53697/iso.v4i2.1894>.

⁸ Dwi Winarto, "Legitimasi Pengelolaan Tanah Bengkok Desa Di Indonesia," *Syntax Literate ; Jurnal Ilmiah Indonesia* 9, no. 2 (February 12, 2024): 1063-76, <https://doi.org/10.36418/syntax-literate.v9i2.14642>.

the government.⁹ Based on Minister of Home Affairs Regulation Number 4 of 2007 concerning the management of tanah bengkok assets, Article 15 prohibits the sale of village land except for public interest purposes. However, leasing is still permitted under a contract, maintaining tanah bengkok as a source of village income.

The assets owned by Paremono Village cover an area of 40.5 hectares, divided into buildings and agricultural land. Of this, 30.5 hectares consist of agricultural land, while the remainder includes a school leased by the Magelang Regency Education and Culture Office, as well as public facilities such as a mosque, cemetery land, roads, and others. The 30.5 hectares of tanah bengkok are recorded in the village's Book C, including details on land parcels, boundaries, and locations of village assets.¹⁰ The distribution of tanah bengkok in Paremono Village holds permanent legal force and is regulated under Village Regulation (Perdes) Number 2 of 2007 concerning the management of village assets.

The total land area owned by Paremono Village is distributed differently among the Village Head, the Village Secretary (Carik), and other village officials. The tanah bengkok allocated as additional salary for the Village Head covers 3.5 hectares, while the Village Secretary receives rights to 2.25 hectares. The remaining land is evenly distributed among the territorial officials and technical staff. Territorial officials receive 3.5 kesuk (4,000 m²), and technical staff or kaur receive 4 kesuk (4,000 m²). These amounts are nominal averages, but the final allocation depends on availability. However, some of the agricultural tanah bengkok plots have not yet been certified with land titles.

The tanah bengkok used for public facilities that already have land certificates is utilized as a public elementary school by the Education Office under a right-to-use agreement.

In reality, the village secretary only received bengkok land measuring 1.5 hectares, which is 1 hectare less due to reductions from the previous official's allocation. The outgoing village secretary at the end of their term leased the bengkok land to a third party for 10 years. This repeated violation of village asset rights was caused by claims from the previous official and an extended contract with the third party that exceeded both the maximum allowable contract period

⁹ Dewi Risnawati, "Pengelolaan Aset Desa Dalam Upaya Meningkatkan Kesejahteraan Di Desa Krayan Bahagia Kecamatan Long Ikis Kabupaten Paser," *EJournal Ilmu Pemerintahan* 5, no. 1 (2017): 199–212.

¹⁰ Syihabudin Sya'ban S.P. and Hanafi Tanawijaya, "Eksistensi Tanah Bengkok Setelah Berubahnya Pemerintah Desa Menjadi Pemerintah Kelurahan (Studi Kasus Di Wilayah Kelurahan Kelapa Dua Dan Kelurahan Bencongan, Kecamatan Kelapa Dua, Kabupaten Tangerang)," *Jurnal Hukum Adigama* 2, no. 2 (2019): 558, <https://doi.org/10.24912/adigama.v2i2.6575>.

and the official's term of office. A village head's decree in the form of a contract exceeding one year should not be issued or can be revoked because it violates the procedural regulations that limit the decision period to one year. However, in practice, this issue frequently occurs, resulting in the bengkok land not being fully returned at the end of the official's term. Consequently, there is a continual reduction of village assets.¹¹

The bengkok land is handed over after the official inauguration, accompanied by a village head's decree regarding the management of the bengkok. According to Village Regulation Number 2 of 2007 concerning the management of village assets, the land may be leased to a third party for a maximum of one year, with the possibility of annual contract extensions, provided that the land's function is not changed or transferred without the village government's permission. In principle, the bengkok land is managed by village officials based on their rights as village apparatus, and its use is regulated and distributed by the village head. Over time, the management of bengkok land has increasingly involved third parties. These third parties act as active managers of the land, whether agricultural land or buildings. However, with the rising land prices, bengkok land has increasingly led to disputes, such as claims asserting that government land is ancestral land or contracts exceeding one year, even surpassing the term of office of the village officials involved.

The village government, consisting of the village head (referred to by other titles as well) and supported by village officials as elements of village governance¹² holds the authority to control and manage bengkok land for the purpose of providing allowances or income sources for the village head and village officials. The Right of Management (Hak Pengelolaan) refers to the right to control state land, not only for the direct use of the holder but also to grant certain rights to third parties.¹³ The utilization of bengkok land is adapted to the form of the land, including its condition, location, and the amount of land owned by each village. In general, bengkok land is used for agriculture, the yields of which can be used to benefit the village. Additionally, bengkok land may be transferred for the benefit of third parties or for village interests, provided that in cases involving third

¹¹ Fitri Windradi Rizki Yudha Bramantyo, "Peran Kepala Desa, Perangkat Desa Dan Lembaga Musyawarah Masyarakat Desa Dalam Kedudukannya Sebagai Pemerintah Desa Terhadap Perencanaan Pembangunan Desa," *Jurnal Transparansi Hukum* 5, no. 1 (2020): 152-67, <http://ojs.unik-kediri.ac.id/index.php/transparansihukum/article/view/3632%00Ahttp://ojs.unik-kediri.ac.id/index.php/transparansihukum/article/download/3632/2435>.

¹³ Ali Achhmad Chomzah, *Hukum Pertanahan*, Cet I (Jakarta: Prestasi Pustaka, 2002).

parties, there must be regulations ensuring that such transfers are advantageous to the village.¹⁴

According to the Minister of Home Affairs Regulation No. 1 of 2016 concerning Village Asset Management, Article 2 stipulates that the types of village assets consist of: original village assets, village-owned assets purchased or acquired at the expense of the Village Budget (APBDesa), village assets obtained through grants and donations or similar sources, village assets acquired through the implementation of agreements/contracts and/or based on statutory provisions, the results of inter-village cooperation, and other legally obtained assets. Original village assets themselves are classified into 11 types as stated in Article 2 paragraph (2) of the Minister of Home Affairs Regulation No. 1 of 2016, one of which is Tanah Kas Desa (Bengkok Land).¹⁵ The authority over Tanah Kas Desa (bengkok land) lies with the village head, who delegates a portion of this authority to village officials. The management of village assets is based on the principles of public interest, functionality, legal certainty, transparency, efficiency, effectiveness, accountability, and certainty of economic value. The management of village assets must be productive and result-oriented to increase village income. Therefore, in making decisions, the village head is prohibited from causing harm to the public or using their authority for personal gain.

Article 11 paragraphs (1) to (3) of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2016 concerning Village Asset Management stipulates that: a. the utilization of village assets may be directly used to support the administration of village governance; b. there are several forms of village asset management; and c. the utilization of such village assets must be regulated in a Village Regulation, particularly regarding the leasing of village assets.¹⁶ Village asset management can take several forms, including leasing, lending for use, cooperation in utilization, and build-operate-transfer or build-transfer-use schemes. In terms of leasing, the maximum duration is limited to three (3) years and may be extended, provided that the lease agreement includes, at a minimum: the parties bound by the agreement, the object of the agreement, the type, area or quantity of goods, the amount of rent and duration, the tenant's

¹⁴ 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>.

¹⁵ Andi Ghalib and Bukhari Yasin, "Tindakan Hukum Pemerintah Desa Terhadap Pemanfaatan Tanah Kas Desa Oleh Masyarakat Yang Tidak Memiliki Hak," *Justitiable Universitas Bojonegoro* 5, no. 2 (2023): 1-16.

¹⁶ Linda Oksafiana, Suparno Suparno, and Anggit Wicaksono, "PEMANFAATAN ASET DESA DALAM UPAYA MENINGKATKAN PENDAPATAN DESA," *Jurnal Suara Keadilan* 18, no. 2 (April 2, 2019), <https://doi.org/10.24176/sk.v18i2.3205>.

responsibilities including operational and maintenance costs, the rights and obligations of the parties, and other necessary terms and conditions.¹⁷

The utilization of village assets to ensure legal certainty is regulated through village regulations, specifically in the form of a Village Head Decree. This decree outlines the acquisition of village wealth, including the Village Budget (APBDes), as well as other legally obtained revenues for the benefit of village governance. Since each village possesses different quantities and areas of assets, there is a need for specific village regulations that provide technical guidelines in accordance with Minister of Home Affairs Regulation (Permendagri) No. 1 of 2016 concerning the management of village assets. Such village regulation is formulated as a Village Head Decree that stipulates the quantity of assets owned, their utilization, and the allocation to the village officials entitled to manage them. For example, Paremono Village enacted Village Regulation (Perdes) No. 2 of 2007 concerning asset management to govern its local assets.

Obstacles faced by village officials that potentially lead to violations in asset management are closely related to the quality of asset utilization and the professionalism of its management. The ambiguity surrounding the sources of village financing related to asset utilization and the suboptimal functioning of the Village Consultative Body (BPD), which is mandated to work in collaboration with the Village Head in drafting village regulations for the management and utilization of village assets, contribute to these challenges. This issue is addressed in Article 77 paragraph 3 of Law No. 6 of 2014, which stipulates that the management of village-owned assets shall be discussed by the Village Head and the BPD based on the procedures regulated by Government Regulation.¹⁸

The reduction in land area, referred to as “deletion,” must be understood as the removal of village assets from the village investment register due to a change of ownership, destruction, or other causes. According to Article 49 of Minister of Home Affairs Regulation (Permendagri) No. 1 of 2016 concerning the management of village assets, a change of ownership is not permitted for personal use, except in cases of land exchange for public interest. Thus, a change of ownership refers to the transfer of responsibility from the village to the district or municipal government, typically when the asset becomes a facility owned by the local government. However, the reduction of land area concerning tanah bengkok

¹⁷ Zakiah Noer and Muchyidin Muchyidin, “PEMANFAATAN TANAH KAS DESA DALAM BENTUK PERJANJIAN SEWA MENYEWA,” *Jurnal Pro Hukum : Jurnal Penelitian Bidang Hukum Universitas Gresik* 9, no. 2 (December 23, 2020), <https://doi.org/10.55129/jph.v9i2.1199>.

¹⁸ Abdullah, “Tinjauan Hukum Pemanfaatan Tanah Bengkok Oleh Mantan Kepala Desa X Di Kecamatan Gunung Jati,” *Equivalent Jurnal Ilmiah Sosial Teknologi* 1, no. 2 (2019): 59–69, <https://doi.org/10.46799/jequi.vii2.6>.

(village compensation land) in Paremono Village, which was received by village officials in office, did not occur due to such legal grounds. Instead, it resulted from contractual agreements that exceeded the official term limits of the previous village officials.

1. Causes of Village Asset Depreciation Due to Leasing to Third Parties

The lease agreement was formalized in a decree issued by the village head based on approval from the Village Consultative Body (BPD).¹⁹ The reduction in ownership of the tanah bengkok (village land allocated for village officials) occurred because the land had been leased to a third party for a period exceeding the term of office of the previous village official. As a result, approximately 1 hectare of land allocated to the village secretary was no longer received. The third party had been granted a lease over the tanah bengkok by the former village official for a duration of about 10 years, even though at the time, the official was nearing the end of their term and has since passed away. This lease agreement was based on a prior decree of the then-serving village head.

Tanah bengkok that is utilized through leasing based on a village head's decree cannot be converted to other land functions without the current village head's approval. This is regulated under the Village Law as part of efforts to protect village assets and ensure they generate income for the village treasury. However, the land that was leased for 10 years has now been turned into a residential property, which is also being used for operating a food business.

The management of village assets falls under the responsibility and authority of the village head, assisted by the village secretary and other village officials. The village head is one of the village officials responsible for ensuring and supervising the maintenance of tanah bengkok (village land designated for official use), which is considered a village asset, in order to ensure its preservation and prevent legal violations. The village head also holds the authority to manage village land, including issuing village head decrees for contractual agreements with third parties, subject to approval by the Village Consultative Body (BPD).²⁰ However, a village head decree related to such a contract included the leasing of tanah bengkok beyond the duration of the village head's term of office. As a result, the village asset, in this case the tanah bengkok, experienced a reduction in the land

¹⁹ Fajar Wirawan, Nanik Sutarni, and Muhammad Fauzan Hidayat, "PENGELOLAAN TANAH KAS DESA OLEH KEPALA DESA BERDASARKAN PERATURAN MENTERI DALAM NEGERI NOMOR 1 TAHUN 2016 TENTANG PENGELOLAAN ASET DESA (Studi Kasus Di Desa Pusporenggo Kecamatan Musuk Kabupaten Boyolali)," *Jurnal Bedah Hukum* 6, no. 2 (2022): 140–52, <https://doi.org/10.36596/jbh.v6i2.684>.

²⁰ Agung Basuki Prasetyo, "Mengenal Karakteristik Pengaturan Tanah Bengkulu Di Indonesia," *Law, Development and Justice Review* 1, no. 1 (2018): 97–104, <https://doi.org/10.14710/ldjr.v1i1.3821>.

area received by the current village secretary. This contradicts existing village regulations, as the lease period exceeded the term limit of the village official. The reduction in land area was measured by comparing it to what was received by the previous village secretary before the lease was granted. This should have been a matter of concern for the current village head, who has the authority to annul any contractual agreement involving village land that exceeds the official's term of office and violates the intended legal function of such contracts. In principle, the lease term for tanah bengkok should be limited to a maximum of one year, with the possibility of extension. However, this issue has created a new legal complication due to a unilateral claim over the land and a lease term that far exceeded the official's period of service, resulting in a loss of tanah bengkok area allocated to the current village apparatus.

The lease duration is regulated under the Regulation of the Minister of Home Affairs (Permendagri) Number 1 of 2016 concerning Village Asset Management, which stipulates that the maximum lease period is three years and may be extended. However, this provision is further clarified in the village regulation (Perdes), which limits the lease period to only one year with the possibility of extension. This limitation is closely related to the annual planning and reporting obligations outlined in the Village Government Work Plan (RKPDesa), which is used in the formulation of the Village Budget (APBDes). Consequently, the usage status of the leased asset must be determined annually through a village head decree.

A lease is a contractual agreement in which one party grants another the right to use a property for a specified period in exchange for an agreed compensation. The legal relationship in lease agreements—particularly those involving the lease of tanah bengkok—is established between the lessor and the lessee, in accordance with the provisions of the Civil Code. Specifically, Articles 1320 and 1338 paragraph (1) of the Indonesian Civil Code stipulate that a legally valid agreement holds the same binding force as law for the parties involved. As part of this legal guarantee, the object of the lease may be land along with any buildings erected on it, based on mutual agreement. Leasable objects may include both movable and immovable goods, as well as tangible or intangible items, provided they meet appropriate specifications for lease.²¹ In accordance with these provisions, leasing tanah bengkok to third parties is permissible, especially when aimed at optimizing the use of village assets to generate additional income for the village. However, any village head decree issued as the legal basis for a lease agreement must clearly stipulate that the lease shall terminate at the end of the official's term of office (i.e.,

²¹ Herdt and Jonkman, "The Acceptance of Density: Conflicts of Public and Private Interests in Public Debate on Urban Densification."

limited to the duration of service of the village official concerned), or alternatively, the lease must be executed in the name of the village government.

The utilization of tanah bengkok (village official land) through leasing must follow several procedural and evaluative steps, including obtaining a Land Use Designation Permit (Izin Peruntukan Penggunaan Tanah, IPPT), which requires an assessment based on five key aspects: spatial planning, land ownership status, economic considerations, social implications, and environmental impact. The utilization mechanism involves the following steps:

1. Submission of Application: The prospective lessee submits a formal application to the village head, accompanied by the necessary administrative documents.
2. Deliberation: The village head and the Village Consultative Body (BPD) review and deliberate on the submitted application.
3. Submission to the Regent: If the application is approved, the village head forwards the request to the regent through the subdistrict head (camat), accompanied by the village head's decree, the BPD's decision, and the subdistrict head's recommendation.

Therefore, without an IPPT (Land Use Designation Permit) issued by the regent, the utilization of tanah bengkok—including leasing or altering its form—is not permitted, whether for physical construction or for changing the land's designated location or function. The village head's decree (surat keputusan kepala desa) is categorized as a state administrative decision, or what is referred to in administrative law as a *beschikking*. This term was introduced by W.F. Prins and translated into Indonesian as *ketetapan* by E. Utrecht and Brigadier General Manan, and as *decision* (*putusan*) by Prajudi Atmosudirjo.

A state administrative decision constitutes a legal act conducted by a state official acting in their capacity as a representative of the state. According to Law No. 51 of 2009, which amends Law No. 5 of 1986 concerning the State Administrative Court (Peradilan Tata Usaha Negara), a state administrative decision is defined as a written determination issued by an administrative official, containing an administrative legal act based on prevailing laws and regulations, which is concrete, individual, and final in nature, and which gives rise to legal consequences. The issuance of a state administrative decision must comply with applicable procedures. If a decision issued by a competent official results in harm to an individual or legal entity under private law, it may give rise to a state administrative dispute. The requirements for such disputes are stipulated in

Article 53 of Law No. 9 of 2004, which amended Law No. 5 of 1986 on the State Administrative Court:

- (1) *The State Administrative Decision being contested is in conflict with the prevailing laws and regulations;*
- (2) *The Administrative Body or Official, at the time of issuing the decision as referred to in paragraph (1), exercised their authority for a purpose other than that for which the authority was granted;*
- (3) *The Administrative Body or Official, at the time of issuing or failing to issue the decision as referred to in paragraph (1), after considering all interests affected by the decision, should not have come to such a decision or omission.*

Based on the State Administrative Court Law, the Village Head's Decree fulfills the first element, in which the decree may be annulled due to causing losses to a legal entity or individual, meeting two legal provisions: Article 12 of the Ministry of Home Affairs Regulation Number 1 of 2016 on the Management of Village Assets, which stipulates that the rental period must not exceed the maximum limit of three years; and Article 10, which states that the use of village assets must be in accordance with their designated function. Therefore, if tanah bengkok (village land) was originally handed over to village officials as agricultural land, it must be returned in the same form after the end of the official's term of office—unless there is a Village Head's Decree that legally authorizes a change in land use. Consequently, the Village Head's Decree in this case may serve as the object of a state administrative dispute, as it meets the criteria under Article 53 for legal action, and may be challenged before the State Administrative Court following the completion of administrative remedies. Essentially, tanah bengkok is granted for the use of village officials during their term of office, and thus, upon the conclusion of the term, the land must be returned to the village government.

1. Mechanism for Legal Dispute Resolution Concerning Administrative Violations in the Management of Tanah Bengkok by Village Governments

The resolution of the tanah bengkok case in question was not pursued through legal channels, as the acting village secretary accepted the area of tanah bengkok being cultivated, despite a reduction of 1 hectare. However, this issue should serve as a concern for the village government to improve its administrative record-keeping system in order to prevent similar cases from recurring and to preserve the total area of tanah bengkok. Reflecting on various solutions implemented by governments in other villages, technological innovation has

simplified administrative processes. One such tool is the SIPADES application. SIPADES is a digital system designed to assist in the recording and inventory of village assets, facilitating the village apparatus in asset documentation from the beginning to the end of the fiscal year. As a result, it supports the efficient preparation of annual reports and minimizes the risk of asset loss or shrinkage, particularly of land assets,²²

The mechanism for resolving legal disputes related to administrative violations in the management of tanah bengkok by village governments must fundamentally be understood within the framework of agrarian law and village governance applicable in Indonesia. In this context, if an administrative violation occurs—such as abuse of authority by the village head or village officials in the utilization of tanah bengkok, leasing the land without a Village Regulation (Perdes), or even transferring the land without proper authorization—the resolution mechanism may be pursued through administrative, civil, or criminal channels, depending on the nature and severity of the violation.

First, from an administrative perspective, dispute resolution begins with internal oversight mechanisms through supervision by the sub-district head (camat), who acts as the direct supervisor of the village head. The camat is authorized to issue written warnings, recommend temporary suspension, or even propose dismissal to the regent/mayor if the village head's actions are proven to have caused tangible harm to the village. In this context, Article 26 paragraph (4)(d) of the Village Law stipulates that village heads are obligated to manage village finances and assets in a transparent, accountable, participatory manner and in accordance with budgetary discipline. If this provision is violated, the district/city government, through the Regional Inspectorate, may conduct a special audit of the tanah bengkok management. This inspection may result in recommendations for administrative sanctions, such as written warnings, restitution of village financial losses, or removal from office.

It is important to note that before entering civil or criminal legal proceedings, administrative conflict resolution regarding violations in the management of tanah bengkok must first be addressed through internal village mechanisms, village deliberations (musyawarah desa), and mediation involving the Village Consultative Body (Badan Permasyarakatan Desa or BPD) as the institution supervising the village head's performance. The BPD can demand accountability for decisions related to the management of tanah bengkok that do not involve

²² Dela Prayitno, "Analisis Penerapan Sistem Pengelolaan Aset Desa (SIPADES) Terhadap Inventaris Desa," *Jurnal Ilmiah Akuntansi Manajemen* 4, no. 2 (2021): 78–82, <https://doi.org/10.35326/jiam.v4i2.1300>.

them as representatives of the community. If no solution is found through this internal mediation process, the report can be escalated to the sub-district head (camat) or directly to the Regency Inspectorate. Furthermore, resolution through village deliberation is still highly recommended in many cases of village asset management conflicts. The principle of amicable settlement remains a priority, considering the social culture of village communities that tend to be collective and uphold the value of consensus-based deliberation (musyawarah mufakat). If village deliberations involving village officials, community leaders, and the BPD fail to resolve the issue, the community has the right to report the violation to the regional government's administrative channels or relevant legal institutions. The Ombudsman of the Republic of Indonesia can also serve as an alternative dispute resolution mechanism if the community perceives maladministration by village officials in the management of tanah bengkok, especially if such actions cause public loss or hinder public access to village services and assets. It is also important to note that in many cases, administrative violations in managing tanah bengkok occur due to the village officials' limited understanding of regulations or the absence of a Village Regulation (Perdes) as the legal basis for tanah bengkok utilization. Therefore, one recommended preventive measure is strengthening village institutional capacity through legal training, legal assistance from the district government, and the drafting of clear and firm Perdes regarding the governance of tanah bengkok. This Perdes should include clauses concerning the transfer process, leasing mechanisms, transparency of management results, and supervision by the BPD.

Administrative resolution in this case, if deemed unfair regarding the received amount of tanah bengkok, may be pursued through administrative efforts such as the annulment of the village head's decree²³ The village head's decree becomes the object of dispute based on Article 87 of Law Number 30 of 2014 concerning Administration, which states: "With the enactment of this Law, State Administrative Acts as referred to in Law Number 5 of 1986 concerning State Administrative Courts, as amended by Law Number 9 of 2004 and Law Number 51 of 2009, must be interpreted as:

- a. A written determination that also includes factual actions;
- b. Decisions of State Administrative Bodies and/or Officials within the executive, legislative, judicial, and other state institutions;
- c. Based on statutory provisions and the Principles of Good Governance (AUPB);
- d. Final in a broad sense;

²³ Kartika Widya Utama, "Surat Keputusan Tata Usaha Negara Yang Bersifat Fiktif Positif," *Notarius* 8, no. 2 (2015): 141–251.

- e. Decisions that have the potential to cause legal consequences; and/or
- f. Decisions that apply to members of the public.

If the losses experienced meet the elements of a State Administrative Court lawsuit, the lawsuit must be filed against the authorized official.

- (1) Decisions made by village officials concerning village assets, in this case tanah bengkok, which are considered harmful or violate administrative law, may be challenged in the State Administrative Court (PTUN) in accordance with Law Number 5 of 1986 concerning State Administrative Court as amended by Law Number 9 of 2004 and Law Number 51 of 2009.
- (2) The aggrieved party (individuals, groups, or legal entities) may file a written lawsuit to the PTUN in the jurisdiction where the decision was issued. The lawsuit must include the identity of the plaintiff, the identity of the defendant (the official who issued the decision), a description of the decision being challenged, the grounds for the lawsuit, and the relief sought from the court. The lawsuit must be accompanied by supporting evidence, such as copies of the village official's decision, related documents, and evidence of losses or legal violations that occurred. The lawsuit to the PTUN must be submitted within 90 working days from the date the aggrieved party became aware of the decision. The PTUN will examine the case, summon the parties, review evidence and witnesses, and then decide whether the village official's decision is lawful or not. If proven unlawful, the decision may be annulled or declared invalid.

Based on Law Number 30 of 2014, administrative remedies are efforts to resolve disputes outside the court system. Judicial resolution can only be pursued after the exhaustion of legal remedies, namely by first submitting an administrative appeal or objection. Administrative remedies refer to dispute resolution within the internal scope of the state administrative body by the aggrieved party. These remedies are expected to settle administrative disputes without going through court proceedings, as judicial resolution is considered a last resort. Administrative remedies are divided into two types that is An objection is submitted to the superior of the official who issued the disputed decision. The objection must contain the reasons for the objection and be copied to the official who made the decision.²⁴ If the objection is rejected, the next step is to submit an administrative

²⁴ Erna Dwi Safitri and Nabitatus Sa'adah, "Penerapan Upaya Administratif Dalam Sengketa Tata Usaha Negara," *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): 34-45, <https://doi.org/10.14710/jphi.v3i1.34-45>.

appeal. This appeal is addressed to a higher-level official within the internal hierarchy of the state administrative body. The timeframe for filing an objection is 14 (fourteen) days from the date the decision is known or received. Likewise, the timeframe for submitting an administrative appeal is also 14 (fourteen) days, counted from the date the objection is rejected. If these administrative remedies have been exhausted and no satisfactory resolution is reached, then a lawsuit may be filed in the Administrative Court (Peradilan Tata Usaha Negara), within a maximum period of 14 (fourteen) days. Only after such a lawsuit is submitted does the judicial process within the State Administrative Court system commence.²⁵

Secondly, within the civil law mechanism, individuals or parties who suffer losses as a result of the misuse of tanah bengkok (village treasury land) may file a lawsuit in the district court. For instance, if the management of tanah bengkok is carried out without approval through a village regulation (perdes) or without a valid agreement, and such action causes harm to a third party (e.g., a lessee who is denied usage rights despite having made payment), the aggrieved party has the right to file a claim for breach of contract (wanprestatie) or an unlawful act (onrechtmatige daad)²⁶ pursuant to Article 1365 of the Indonesian Civil Code (KUH Perdata). In this context, the village, as a public legal entity that holds the authority to manage village assets including tanah bengkok, may be held legally accountable if proven negligent in regulating or implementing such management in accordance with the applicable legal procedures.

Thirdly, in cases involving criminal violations, such as corruption, abuse of authority, or embezzlement of village assets, the legal resolution mechanism shifts to criminal proceedings. For example, if a village head leases tanah bengkok (village treasury land) to a private party and personally profits from it without depositing the income into the village treasury, such an act may be classified as a criminal offense of corruption under Article 3 or Article 2 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption. The enforcement of the law is carried out by the Prosecutor's Office (Kejaksaan) or the Police based on audit findings from the Inspectorate or reports from the public. In several cases in Indonesia, the Prosecutor's Office has named village heads as criminal suspects for the misuse of tanah bengkok for personal gain without the approval of the village deliberation forum (musyawarah desa) or any valid legal basis.

²⁵ Safitri and Sa'adah.

²⁶ La Sensus, Sahrina Safiuddin, and Asri Sarif, "Prinsip Keabsahan (Rechmatigheid) Tindakan Pemerintah Desa Atas Pengelolaan Aset Desa (Studi Kasus Di Desa Laworo)," *Halu Oleo Law Review* 8, no. 2 (2024): 199–208, <https://doi.org/https://doi.org/10.33561/holrev.v8i2.121>.

Conclusion

The management of tanah bengkok (village treasury land), as part of village assets, is regulated within the framework of national law, particularly through Minister of Home Affairs Regulation (Permendagri) Number 1 of 2016 and respective Village Regulations (Peraturan Desa). A case study in Paremono Village reveals that, despite the existence of village-level regulations, the practice of leasing tanah bengkok often violates established rules—for example, by allowing lease periods that exceed the term of office of the authorized village officials. Such practices result in losses to village assets, including the reduction in land area that should rightfully be allocated to newly appointed village officials, and may potentially give rise to legal disputes.

Administrative violations in the management of tanah bengkok may be categorized as acts contrary to the principles of state administrative law, particularly when the decisions of the village head cause harm to other village officials or the community. Such decisions may qualify as objects of claim in the Administrative Court (Pengadilan Tata Usaha Negara, or PTUN) if they are proven to be procedurally flawed, legally detrimental, or beyond the authority of the official's term of office. Therefore, resolution mechanisms should first be pursued through administrative remedies before proceeding to litigation.

Efforts at resolution through village deliberation forums (musyawarah desa), oversight by the Village Consultative Body (Badan Permusyawaratan Desa, or BPD), as well as guidance from subdistrict heads (camat) and inspectorates, should be prioritized as initial steps. Additionally, the digitalization of asset management through systems such as SIPADES (Village Asset Management Information System) can serve as a preventive solution to minimize record-keeping errors and asset loss. This research emphasizes the importance of law enforcement and transparency in the governance of village assets to safeguard the sustainability and integrity of public assets that are collectively owned by the village community.

Recommendation

Future researchers are encouraged to compare other village governments facing similar cases and examine the policies adopted to address such issues. Subsequent studies should analyze the relationship between the implementation of innovation-based village asset management systems in villages that utilize SIPADES (Village Asset Management Information System). This system is employed by village governments in Indonesia to manage village assets—including land, buildings, and facilities—by facilitating recording, administrative procedures, and asset management from planning, procurement, and structuring to reporting. SIPADES also includes functions for codification and labeling of assets in accordance with applicable regulations. The primary objectives of the system are to ensure legal ownership of village assets, minimize the risk of asset loss, and assist village heads in presenting accurate and accountable asset reports. Future researchers are expected to provide practical solutions and evaluations that are linked to real-world cases concerning the misuse of village asset management.

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