

Transfer of Land Rights through Exchange Originating from Village Treasury Land

Peralihan Hak Atas Tanah Melalui Pertukaran Yang Berasal Dari Tanah Kas Desa

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Abstract

The transfer of land rights is carried out by switching or transferring so that land rights are transferred from the old right holder to the new right holder in accordance with the provisions of the applicable laws and regulations. Based on Minister of Home Affairs Regulation Number 1 of 2016, it is possible to transfer rights to village treasury land through the transfer of assets by means of exchange. This research aims to find out how the procedure for transferring land rights by means of the transfer of assets through exchange is reviewed based on Permendagri Number 1 of 2016 concerning Village Asset Management, as well as what the legal consequences are on the status of land resulting from the transfer of land rights through the transfer of assets by means of exchange. This research uses Normative Juridical research, using qualitative data analysis methods presented descriptively. The research results show that Based on Minister of Home Affairs Regulation Number 1 of 2016, the transfer of village assets in the form of land through exchange consists of those for the public interest, not for the public interest and village treasury land other than for the public interest and not for the public interest, where the exchange is for the public interest and not for the public interest. generally



have general similarities in procedures. The transition requires permission from the Village Government, Regent and Governor with a stipulation through a decree. Meanwhile, the legal consequences for the status of land resulting from the transfer of land rights through the transfer of assets by means of exchange are that the village treasury land that is released will be removed from the village asset inventory list and the applicant can register the land as their ownership with freehold status. Meanwhile, the replacement land will be recorded in the village asset inventory list and will become village treasury land with right-to-use status owned by the village government.

Keywords *Transfer of Rights, Exchange, Village Treasury Land*

Pengalihan hak atas tanah dilakukan dengan cara tukar menukar atau pemindahan sehingga hak atas tanah beralih dari pemegang hak lama ke pemegang hak baru sesuai dengan ketentuan peraturan perundang-undangan yang berlaku. Berdasarkan Peraturan Menteri Dalam Negeri Nomor 1 Tahun 2016, dimungkinkan untuk mengalihkan hak atas tanah kas desa melalui pengalihan aset dengan cara tukar menukar. Penelitian ini bertujuan untuk mengetahui bagaimana prosedur pengalihan hak atas tanah melalui pengalihan aset dengan cara tukar menukar ditinjau berdasarkan Permendagri Nomor 1 Tahun 2016 tentang Pengelolaan Aset Desa, serta apa konsekuensi hukum terhadap status tanah yang dihasilkan dari pengalihan hak atas tanah melalui pengalihan aset dengan cara tukar menukar. Penelitian ini menggunakan penelitian Normatif Yuridis, dengan metode analisis data kualitatif yang disajikan secara deskriptif. Hasil penelitian menunjukkan bahwa Berdasarkan Peraturan Menteri Dalam Negeri Nomor 1 Tahun 2016, pengalihan aset desa berupa tanah melalui tukar menukar terdiri dari yang untuk kepentingan umum, tidak untuk kepentingan umum dan tanah kas desa selain untuk kepentingan umum dan tidak untuk kepentingan umum, di mana tukar menukar tersebut untuk kepentingan umum dan tidak untuk kepentingan umum. secara umum memiliki kesamaan prosedur yang umum. Transisi tersebut memerlukan izin dari Pemerintah Desa, Bupati, dan Gubernur dengan ketentuan melalui sebuah keputusan. Sementara itu, konsekuensi hukum untuk status tanah yang dihasilkan dari pengalihan hak atas tanah melalui pengalihan aset dengan cara tukar menukar adalah bahwa tanah kas desa yang dilepaskan akan dihapus dari daftar inventaris aset desa dan pemohon dapat mendaftarkan tanah tersebut sebagai kepemilikan mereka dengan status hak milik penuh. Sementara itu, tanah pengganti akan dicatat dalam daftar inventaris aset desa dan akan menjadi tanah kas desa dengan status hak pakai yang dimiliki oleh pemerintah desa.

Kata Kunci *Transfer Hak, Pertukaran, Tanah Kas Desa*

Introduction

The transfer of land rights is not an unfamiliar legal act carried out by the community considering the importance of land for human life. Apart from being the main basis for humans as a place to live or in carrying out daily life, currently land has other important functions such as investment, a place to build a business or construction of public facilities (Rosmidah, M. Hosen, & Sasmiar, 2023). The transfer of land rights is carried out by switching or transferring so that land rights are transferred from the old right holder to the new right holder in accordance with the provisions of the applicable laws and regulations. The transfer of land rights is often encountered, such as through buying and selling, exchange and inheritance which is carried out by legal acts or legal events where usually the status of the land comes from Ownership Rights (Taolin, Mujiburohman, & Widarbo, 2024). However, it is rare to transfer land rights originating from village treasury land, which is state land given by the regional government.

In general, local people, especially people who live in village areas, often refer to village treasury land as bent land. Tanah bent is often used by Javanese people to define land that is managed as a form of wages or salaries by village officials such as village heads, secretaries, treasurers, bayan and others during their tenure (Sya'ban & Tanawijaya, 2019). Bending land has several main characteristics, including that it is part of the land owned by the village, it is given to village residents who serve as village officials, the grant is temporary as long as someone serves as a village official and the grant functions as compensation costs to live their life (Wahanisa, Niravita, & Riyanto, 2018). However, based on the Instruction of the Minister of Home Affairs Number 26 of 1992 concerning Changes in the Status of Crooked Land and Similar Land to Village Treasury Land, the term or nomenclature of crooked land has been changed to village treasury land. Therefore, even though Law Number 6 of 2014 concerning Villages or other statutory regulations do not explain it clearly, village treasury land can be interpreted the same as benthic land (Abrianto & Fikri, 2021).

Village treasury land is one of the village assets or original village assets, part of which is owned by the village. Article 1 point 5 of Minister of Home Affairs Regulation Number 1 of 2016 concerning Management of Village Assets (hereinafter referred to as Minister of Home Affairs Regulation Number 1 of 2016) states that "Village Assets are items belonging to the Village originating from the Village's original assets, purchased or obtained at the expense of the Revenue Budget and Village Expenditures (Village APB) or

the acquisition of other legitimate rights." Furthermore, Article 1 point 26 states that "Village Land is land controlled and/or owned by the Village Government as a source of original village income and/or for social purposes". From the perspective of Indonesian society, village treasury land is only considered as one of the lands used by the village government as a source of income (Musthofa & Aminah, 2021). Apart from that, village treasury land in village governance in Java is also used for public purposes, original village income and carrying out social functions (Diniyanto, 2019). However, it turns out that based on statutory regulations, one of which is Permendagri Number 1 of 2016, it is possible to transfer rights to village treasury land through the transfer of assets by means of exchange.

Exchange includes the transfer of land rights transferred from one party to another party (Ginting, Suryandono, & Putra, 2019), where between the two parties a contract will be created that provides rights and obligations which are regulated in Articles 1541 to Article 1546 of the Civil Code (Civil Code). The Civil Code explains that exchange is an agreement to give goods to each other in exchange for another item. Meanwhile, Article 1 Number 20 of Minister of Home Affairs Regulation Number 1 of 2016 states that "Exchange is the transfer of ownership of Village assets carried out between the village government and another party with replacement in the form of goods". The legal act of exchanging village treasury land or exchanging land when viewed refers to Article 25 of the Minister of Home Affairs Regulation Number 1 of 2016 concerning Village Asset Management, which states that bFor the transfer of village assets as intended in Article 7 letter h, one of them is through exchange. Then Article 25 paragraph (2) also explains that the transfer of village assets as referred to in paragraph (1), namely in the form of village-owned land and/or buildings, is only carried out by exchange and capital investment. For capital participation in the form of village treasury land, it becomes an asset belonging to BUMDes, meaning that village treasury land can be used as investment capital to further optimize village assets (Sekarningrum, 2019). Furthermore, Article 33 paragraph (2) letter b, if replacement land is not yet available, the replacement land can first be given in the form of money, so that this regulation also provides an alternative when there is a situation where there is no replacement land.

The focus of this research is to analyze the procedure for transferring land rights by transferring assets through exchange which is reviewed based on Minister of Home Affairs Regulation Number 1 of 2016 concerning Village Asset Management, and secondly what the legal consequences are for the

status of land resulting from the transfer of land rights through transferring assets using how to exchange.

Methods

This research is a normative juridical research on issues relating to the transfer of land rights through exchange of land from the village treasury. Normative Juridical Research is a legal research method carried out by examining library materials or secondary materials (Muchtar, 2018). The data analysis method is carried out by collecting data through reviewing library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials (Tan, 2021). This data includes documents or applicable laws and regulations related to normative juridical analysis of the transfer of land rights through exchange originating from village treasury land.

To analyze the legal materials that have been collected, this research uses qualitative data analysis methods which are presented descriptively. This is done by describing a policy related to the procedure for transferring land rights by means of the transfer of assets through exchange which is reviewed based on Minister of Home Affairs Regulation Number 1 of 2016 concerning Village Asset Management and describing the legal consequences on the status of land resulting from the transfer of land rights through the transfer of assets by how to exchange.

Result & Discussion

A. Procedure For Transferring Land Rights By Transfer Of Assets Through Exchange

Previously, it was known that village land, which is one of the village assets, could be transferred by transferring assets through exchange. In general Indonesian people during the Dutch colonial era were more familiar with the term Ruislag or Tukar Guling in interpreting Tukar Swap. Ruislag is one method that can be used to obtain land rights owned by another party, by exchanging land rights to carry out a legal act, namely the transfer of land rights. Ruislag is also often referred to as a take over or exchange between goods belonging to the department and the private sector (Sayita, Dewi, & Prasetyo, 2022). Based on Minister of Home Affairs Regulation Number 1 of 2016 concerning Village Asset Management, you need to know that the exchange of village assets is regulated in CHAPTER III. Article 32 of the regulation stipulates that the transfer of village assets in the form of land

through exchange consists of those for the public interest, not for the public interest and village treasury land other than for the public interest and not for the public interest.

a. Transfer of village assets in the form of land through exchange for public purposes

There are provisions for exchanging village assets in the form of land for development for the public interest based on Article 33 of Permendagri Number 1 of 2016, namely The exchange can be carried out after an agreement has been made on the amount of compensation according to a price that is favorable to the village using the fair value calculated by the appraiser. If replacement land is not yet available, money can be given in advance for the replacement land. The compensation in the form of money must be used to purchase replacement land of equal value, preferably where the land is located in the local village. However, if a replacement land location is not available in the local village, it can be located in one sub-district and/or a village in another sub-district that is directly adjacent.

The stages in exchanging village assets in the form of land for development for the public interest are contained in Article 34 of Permendagri Number 1 of 2016. First, The Village Head submits a letter to the Regent or Mayor regarding the results of the Village Conference regarding the exchange of Village-owned land with the prospective replacement land location in the local village. Furthermore The Village Head submits the permit request to the Regent or Mayor and then forwards the permit request to the Governor. However, when there are conditions where replacement land is not available in the local village, it is carried out in different stages. First, the Regent or Mayor will conduct a field survey and verify the data to obtain the material and formal truth as stated in the minutes. The results of the field review and data verification are then submitted to the Governor as consideration for granting approval. However, before approval is given, the Governor can conduct a field visit and verify the data. Finally, after the Governor gives approval, the Village Head then stipulates Village Regulations regarding the exchange of village-owned land and the Governor reports the results of the exchange to the Minister.

In Article 35 of Minister of Home Affairs Regulation Number 1 of 2016, it is also explained that the field survey has the aim of seeing and knowing materially the physical condition of the location of village-owned land and the location of potential replacements for village-owned land. Meanwhile, data verification aims to obtain formal evidence through meetings in the village attended by elements from the Village Government, BPD, parties carrying out the exchange, owners of land used for replacement land, District officials, Regency and Provincial Governments, as well as parties and /or other related agencies. The results of the field

review and data verification will be published in an official report signed by the parties and/or other relevant agencies. The minutes contain the results of the village deliberation, then there is the location, area, fair price, type of village land based on its use and proof of ownership of the exchanged village land and its replacement.

In relation to compensation, Article 36 explains that compensation is in the form of money if replacement land is purchased and there is a relatively small difference in money or the relatively small compensation money can be used for other than land. The amount and use of the remaining difference is regulated by the Regent or Mayor and will be included in the Village Treasury and its use determined in the Village APBDes.

b. The transfer of village assets in the form of land through exchange is not for the public interest

Based on Article 38 of Minister of Home Affairs Regulation Number 1 of 2016, exchange of village-owned land not for development in the public interest can only be carried out when there is a more important and strategic national interest while still paying attention to and adjusting spatial planning (RTRW), for example the development of industrial and residential areas. In carrying out this exchange, there are several provisions, namely that the exchange can be carried out after an agreement has been made on the amount of compensation according to a price that benefits the village using the fair value calculated by the appraiser. The land used as replacement land is preferably located in the local village, but if it is not available it can be located in one sub-district and/or a village in another sub-district which is directly adjacent.

The procedure for carrying out this exchange is regulated in Article 39 with several provisions. The first is determined through Village Regulations regarding the exchange of village-owned land after obtaining permission from the Regent or Mayor, Governor and Ministerial Approval. However, before the Regent issues a permit, he must first form a Regency/City Study Team whose membership consists of the relevant Regional Work Units (SKPD) which are adjusted to the needs and determined by the Regent's or Mayor's Decree and include assessors. The Study Team has the task of carrying out studies in the form of improving the village economy, benefiting the village, and not harming village assets. The results of the study will be used as material for consideration which will then be submitted to the Governor for the permit application. The governor is also required to carry out studies through field inspections and data verification before issuing a permit for the exchange of village-owned land.

As with exchanges for the public interest, exchanges that are not for the public interest also have the aim of conducting a field survey as mentioned above, namely to see and know materially the physical condition of the location of village-owned land and the location of potential replacements for village-owned land. Meanwhile, data verification is carried out to obtain formal evidence through meetings in the village which are attended by elements from the Village government, BPD, the party carrying out the exchange, the owner of the land used for replacement land, sub-district officials, Regency and Provincial Government, as well as other parties. and/or other related agencies. The results of the field review visit and data verification will later be published in an official report signed by the parties and/or other relevant agencies. The minutes will later contain the results of the village deliberation and then include the location, area, fair price, type of village land based on its use and proof of ownership of the exchanged village land and its replacement. The minutes have an important role because they will be used as a basis and consideration for the Governor to issue a permit and then submitted to the Minister for approval. The Minister, through the Director General of Village Government Development, carries out a field review and data verification in order to obtain material and formal truth as outlined in the Minutes before giving approval with the results of the field review and data verification used as material for consideration in issuing the Minister's Letter.

c. Transfer of village assets in the form of land through exchange other than for public purposes and not for public purposes

Village treasury land can also be exchanged other than for public purposes and not for public purposes where the condition is that the village-owned land is outside the village or the village-owned land is not one stretch of land that is squeezed by another party's stretch of land and/or village-owned land that contains land. other parties can exchange at local village locations. This is done in order to increase the effectiveness of management so that it is more efficient and effective. Another provision that must be fulfilled in this exchange is that the replacement land must be of equal value and pay attention to fair value as well as provisions in Village Regulations regarding exchange of village-owned land after obtaining permission from the Regent/Mayor. For the process or procedure for transferring village assets in the form of land through exchange other than for the public interest and not for the public interest, Minister of Home Affairs Regulation Number 1 of 2016 concerning Village Asset Management does not regulate the process or procedure in detail.

B. Legal Effects On The Status Of Land Resulting From The Transfer Of Land Rights Through The Transfer Of Assets By Exchange

As is the definition of exchange in Article 1 number 20 of Minister of Home Affairs Regulation Number 1 of 2016 concerning Village Asset Management, exchange is carried out by transferring ownership of village assets between the village government and another party with replacement in the form of goods. This means that the other party who requests the exchange or is called the applicant for village treasury land will provide compensation in the form of goods, namely in the form of replacement land. The main condition that must be fulfilled by the applicant in exchanging village treasury land for freehold land is that the applicant must replace the land with replacement land which must not be detrimental to the village and must instead be more profitable for the village.

In the process of transferring village treasury land into ownership through exchange, several permits are required. One of the permits that underlies the transfer of village treasury land into ownership through exchange is permission from the village government. This permission is carried out through village meetings or in Javanese society it is often called 'village meeting' with the aim of getting approval from the village community so that the village treasury land can be released and transferred to individuals (Sucipto & Winarsih, 2022). Next, the village government will issue a decision through a decree after obtaining permission through the village deliberation. However, apart from requiring a village decree, a regent's decree and a governor's decree are also needed in the implementation of the transfer of village treasury land into ownership through exchange. Some of these permits are very important in the transition of exchange of village treasury land with freehold land because they are administrative requirements so that the land office cannot process the land if it is not completed. However, because people often have misunderstandings after the completion of the process of transferring village treasury land to freehold land regarding the legal consequences for the status of the village treasury land that has been transferred and the replacement land, we will discuss the legal consequences of the land status in more detail.

a. Legal consequences for village treasury land that has been transferred through exchange

Transferred means the transfer of ownership rights over land from its owner to another party due to legal actions, namely actions that give rise to

legal consequences, one of which is through exchange (Irvan, Warman, & Arnetti, 2019). As the definition of exchange for village assets is that there is a transfer of ownership of village assets carried out between the village government and another party by replacing it in the form of goods in the form of land, so that changes occur after the transfer through exchange. Village treasury land which was originally owned by the village government becomes the ownership of another party or applicant and replacement land which initially had ownership status by the applicant becomes the ownership of the village government. Legislation has clearly regulated in Article 43 of Minister of Home Affairs Regulation Number 1 of 2016 concerning Management of Village Assets that village assets that are exchanged include village treasury land for public purposes, not public interests, and village treasury land other than for public interests and not for public purposes, is removed from the village asset inventory list and its replacement is recorded in the village asset inventory list. So that after the exchange process is completed between the applicant and the village government, it is no longer a village asset because it has been removed from the village inventory list.

In order for the village treasury land to be legally recognized by the applicant in the eyes of the law after the exchange process, the applicant must carry out certification of the land that has been released by the village government. Indeed, applicants usually experience obstacles, namely the costs of certification which are not small. Because in reality, there are still many land owners who do not register land ownership rights or certify them in accordance with applicable regulations for various reasons, such as large costs, very long and lengthy processes (Prakoso, 2021). Apart from that, there were several applicants who initially had to buy replacement land first and then exchange it for village treasury land. This makes the applicant feel like they have to pay more money to carry out the certification.

In the end, the solution to this problem is through the PTSL or Complete Systematic Registration program. PTSL is often assumed by the public to be a government program that carries out mass certification for free. Although there are still self-help costs, these costs are very affordable. Apart from that, for people who live far from the Land Office, it will be more profitable in terms of time, energy and cost efficiency (Widodo & Wardani, 2022). Therefore, in carrying out certification, the community will wait for the PTSL program which is relatively cheaper but still guarantees legal certainty by obtaining a certificate of ownership in the form of property rights. This is in

line with the aim of the PTSL program as stated in Article 2 of Ministerial Regulation Number 6 of 2018 concerning PTSL that "the aim of implementing complete systematic land registration is to realize the provision of legal certainty and legal protection of community land rights based on the principles of simple, fast, smooth, safe, fair, equitable and open and accountable, so that it can improve the welfare and prosperity of society and the country's economy, as well as reduce and prevent land disputes and conflicts"

Thus, the legal consequence of the transfer of village treasury land through exchange is that first the village treasury land will be removed from the village asset inventory list. Then secondly, the village treasury land which originally had the status of a use right, after the exchange process the applicant can carry out certification which can be registered as land with the applicant owning it as freehold land. Land registration can be adjusted to land administration which is guided by Government Regulation Number 24 of 1997 concerning Land Registration and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management and Land Rights.

b. Legal Consequences of Replacement Land Resulting from the Exchange by the Applicant

The transfer of land rights through the transfer of assets by means of exchange also has legal consequences for the replacement land, as well as for the transferred village treasury land. Article 43 of Minister of Home Affairs Regulation Number 1 of 2016 concerning Management of Village Assets also underlies the legal consequences for the replacement land. This provision states that village assets that are exchanged, including village treasury land for public purposes, not public interests, and village treasury land other than for public purposes and not for public purposes, are deleted from the village asset inventory list and the replacement is recorded in the village asset inventory list. This means that the replacement land will be recorded in the village asset inventory as village treasury land where Article 6 paragraph (1) of Minister of Home Affairs Regulation Number 1 of 2016 orders that all village assets in the form of land be certified in the name of the village government.

When reviewed, village treasury land is generally used for public purposes, to carry out social functions and to increase the village's original income. The land, which is usually in the form of rice fields, is given to the

village head or village officials based on their position and can later be managed as wages for running the village government. However, quite a few village treasury lands are also used for village development and rented out to village residents to help the residents' economy while increasing the village's original income (Hafno, Affan, & Hakiki, 2021). Thus, looking at the purpose and concept of village treasury land, it fulfills the elements of "using" and "retrieving proceeds" as defined by the right to use. Article 10 and Article 11 of Minister of Home Affairs Regulation Number 1 of 2016 also reiterate that the function of village treasury land can only be used and utilized without eliminating the ownership status of village treasury land. Apart from that, Articles 25 and 32 of the Minister of Home Affairs Regulation also prohibit the transfer of village treasury land assets other than through capital participation in BUMDes (Village-Owned Enterprises) and for exchange. Therefore, village treasury land has the status of a right to use. So that the replacement land resulting from the exchange will be recorded in the village asset inventory as village treasury land with use rights ownership status by the village government.

Conclusion

Based on the description above, it can be concluded that the transfer of land rights through the transfer of assets by means of exchange is based on the applicable provisions, one of which is Minister of Home Affairs Regulation Number 1 of 2016 concerning Management of Village Assets consisting of those for the public interest, not for the public interest and land. village cash other than for public purposes and not for public purposes, all three of which have similarities in procedures. The transition requires permission from the Village Government, Regent and Governor with a stipulation through a decree. Furthermore, the legal consequences for the land status resulting from the transfer of land rights through the transfer of assets by means of exchange are that the village treasury land that is released will be removed from the village asset inventory list and the applicant can register the land as their ownership with freehold status. Meanwhile, the replacement land will be recorded in the village asset inventory list and will become village treasury land with right-to-use status owned by the village government.

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