

Likelihood of Addressing People's Tenurial Problems at State Own Enterprise Assets

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Abstract

This qualitative study aimed to describe potential settlements of community's land problems on state-owned enterprises' assets. To this end, a qualitative approach was applied. Data were garnered by reviewing literature from journal articles, online media, regulations, and reports relevant to the research topic. Data were analyzed using an interactive model comprising data collection, data reduction, data display, and drawing of conclusion. The finding revealed a number of land-related problems in SOEs' assets. The first problem is related to people's one-sided occupation of SOEs' assets, people's one-sided occupation of the

past land, dual certificate issues between the government and the community, dual recordings between SOEs and Regional government, and customary land claim upon the state's land. Efforts in resolving these issues also face high barriers, including hindrances in object write-off and subject nomination, inefficient court-based conflict settlement, the bad precedent of SOEs' asset release, and an indication of post-certification trades. In this regard, some potential settlement mechanisms were proposed, including the release of fixed assets by reducing the state's equity capital, asset utilization cooperation, the granting of land rights upon the Right of Management, and other agreement-based options. This study's findings gave implications for future policies related to the settlement of SOEs' land problems.

Keywords

land asset, SOE's asset, SOE reformation, land problems, land-related hindrances.

I. Introduction

Indonesian State-owned enterprises continue to show self-improvement after successfully performing bureaucratic reform through SOEs clustering and restructuring giant SOEs like Garuda Indonesia and saving Jiwasraya from the corruption trap. The minister of state-owned enterprises sets three long-term initiatives to strengthen SOEs further. The first initiative is to prepare the 2nd Phase of SOEs Roadmap 2024-2034. The second initiative is to deregulate and design a Minister of SOEs omnibus regulation. Meanwhile, the third initiative was to make a track

record and blacklist of SOE's directors.¹ Programs with direct impacts on the community are also escalated. As a means to educate and provide access to funding for micro, small, and medium-scale enterprises (MSMEs), Rumah BUMN has operated in 250 locations in the country. Program Makmur aiming at supporting farmers and optimizing cultivation, has reached 18,712 farmers with 50,012 ha of land, among other programs targeting communities in the country.² These positive achievements not only restore the farmers' livelihood but also transform the citizen in a community.³ Currently, agrarian reforms seem to be enjoyed only by large-scale farmer.⁴ These positive achievements deserve appreciation and should be sustained and promoted to make it more massive.

One of the issues in SOEs that directly affects the community is the land-related problem, which is currently addressed through various mechanisms, such as certification, asset legalization, and settlements with the third party's illegal occupation. The latter is reported to often lead to social conflicts. One of the latest cases is the Pertamina Depot fire in Jakarta on 3

¹ Patricia Yashinta Desy Abigail, "Omnibus Law BUMN Terbit, Direksi Bermasalah Bisa Kena Blacklist", *KATADATA Online*, March 28, 2023. <https://katadata.co.id/syahrizalsidik/finansial/6422872696582/omnibus-law-bumn-terbit-direksi-bermasalah-bisa-kena-blacklist>

² Pusri. "Pencapaian Program Makmur". *Online*, retrieved from <<https://www.pusri.co.id/id/prosperous>>

³ Minsi Liu, and Kevin Lo. "The territorial politics of urban expansion: Administrative annexation and land acquisition". *Cities* 126 (2022): 103704. <https://doi.org/10.1016/j.cities.2022.103704>

⁴ Tim Forsyth, and Oliver Springate-Baginski. "Who benefits from the agrarian transition under violent conflict? Evidence from Myanmar". *Journal of Rural Studies* 95 (2022): 160–172. <https://doi.org/10.1016/j.jrurstud.2022.09.003>

March 2023, causing tens of people to die. The oil depot was built in 1971 and began to operate in 1974. It was surrounded by people's housing, built on a buffer zone that was supposed to be free from housing.

Debate on legality and the resolution of the Pertamina depot fire tragedy appears to meet a dead end. This case is one of the issues Indonesian SOEs face in their efforts to achieve holistic improvement. Indication of SOE's HGU overlap emerges in several regions. In addition to the Plumpang case, President Joko Widodo also met a person from Meincirim Village, North Sumatera, who walked from Medan to the Presidential Palace to express his aspiration related to land problems with PTPN 2, in which the residential area he resides is indicated to be overlapped with the land owned by PTPN 2 and has not been resolved for decades. These two cases are only a small part of land issues related to SOEs. The Executive Office of the President of the Republic of Indonesia (KSP) reported that until December 2022, there were 271 SOEs' land-related public complaints filed to the office.⁵ The Ombudsman of the Republic of Indonesia also recorded 476 agrarian complaints in 2022, among which are the issues on SOE's Right to Cultivate (*Hak Guna Usaha* -HGU) that overlap with the

⁵ KSP, "KSP dan Pakar Cari Solusi Penyelesaian Konflik Agraria Aset PTPN", *Online News*, June 8, 2022. Retrieved from <https://www.ksp.go.id/ksp-dan-pakar-cari-solusi-penyelesaian-konflik-agraria-aset-ptpn.html>. See also I. Gusti Ayu Ketut Rachmi Handayani, et al. "Politics Settlement of Land Tenure Conflicts in Forest Areas Indonesia in the era of President Joko Widodo." *Journal of Indonesian Legal Studies* 7, no. 2 (2022): 487-524; Muhammad Roykhan Rashif Aulia, and Amarru Mufftie Holish. "Legal Aspect of Land Tenure Strategies by Foreign Nationals (Case of District of Jepara, Indonesia)." *Journal of Law and Legal Reform* 4, no. 1 (2023): 33-44.

people's residential area.⁶ In this regard, President Joko Widodo has ordered SOEs to resolve their land-related issues, especially those affecting society. Agrarian reforms should be exercised in peace and through a fair land division.⁷

The community demands land-related laws and policies to fulfill the public needs and the latest social conditions by accommodating the development of public needs, interests, and aspirations, considering that laws function as social engineering.⁸ However, regulatory complexity is inevitable. State-owned enterprises' standings are viewed to be in a legally grey area, whether they are entirely a private legal entity or public entity, or private-public actors. Therefore, the spectrum of problems and legal consequences related to SOEs potentially arise from a range of legal branches and are counterproductive.⁹ There are some possible solutions to the problems, including dialog with the community to accommodate the asset owner's good faith in resolving conflict with the community, either by partially releasing the land occupied by the community, giving compensation

⁶ Ombudsman. *Laporan Tahunan Ombudsman Tahun 2022*. (Jakarta: Ombudsman Republik Indonesia, 2022). Available online at <https://ombudsman.go.id/produk/lihat/754/SUB_LT_5a1ea951d55c4_file_20230331_151307.pdf>

⁷ Jose Michael Villarreal Escallón. "The historical relationship between agrarian reforms and internal armed conflicts: Relevant factors for the Colombian post-conflict scenario." *Land Use Policy* 101 (2021): 105138. <https://doi.org/10.1016/j.landusepol.2020.105138>

⁸ Mudjiono Mudjiono. "Alternatif penyelesaian sengketa pertanahan di Indonesia melalui revitalisasi fungsi badan peradilan." *Jurnal Hukum Ius Quia Iustum* 14, no. 3 (2007).

⁹ Enrico Simanjuntak, "Esensi sengketa administrasi pertanahan di peradilan tata usaha negara." *BHUMI: Jurnal Agraria dan Pertanahan* 3, no. 2 (2017): 171-188.

according to the prevailing regulation, or settling the dispute on overlapping certificate through litigation, provided that there is no defective administration.¹⁰ It is in line with the President's instruction during a closed-door meeting in December 2020, he stated: “*Permasalahan tanah banyak terdapat di Perusahaan Umum (Perum) Perhutani dan PT Perkebunan Nusantara (Persero) (PTPN). Oleh karena itu, Menteri Badan Usaha Milik Negara (BUMN) agar membuat kebijakan mengenai hal tersebut mengingat lahan yang dimiliki Perum Perhutani dan PTPN jumlahnya mencapai 3,5 juta hektar. Upayakan agar lahan tersebut dapat diambil sedikit untuk rakyat karena pada kenyataannya di lapangan, rakyat telah menempati kawasan di dalam hutan maupun di pinggir hutan selama puluhan tahun. Fakta lapangan telah terlihat nyata. Oleh karena itu, lahan tersebut agar dilepas untuk rakyat*” (Many land problems are found in Perum Perhutani and PT Perkebunan Nusantara (Persero). Therefore, Minister of State-owned enterprise should issue a policy related to this issue, given that these two companies hold a total of 3.5 million hectare of land. Give a small portion of the land area to the people because the fact shows that they have occupied the land in forest area or around the forest area for decades, and this fact is crystal-clear. So, I hope that those land could be released and given to the people).

Despite various attempts to implement this instruction, some regulatory hindrances arise. One of the barriers to realizing this instruction is the Regulation of Minister of State-owned Enterprises no. 2/2010, which stipulates that SOEs are not

¹⁰ Sekretariat Kabinet. “Upaya Mencari Pola Penanganan Masalah Tanah Aset Negara”, *Online News*, December 10, 2022. Retrieved from <<https://setkab.go.id/upaya-mencari-pola-penanganan-masalah-tanah-aset-negara/>>

allowed to give their land freely to the community, as they are responsible to maintain and manage their assets. Alternative solutions and settlements are currently sought for to obtain the best possible option and solve the problems in a fair manner.

This work attempts to identify and review potential resolution opportunities to unravel the prolonged deadlocks and to support holistic SOEs reforms. The result of this study is expected to be a part of the road map of SOEs reforms, as launched by Minister Erick Tohir in 2023.

II. Method

This study applied a qualitative approach.¹¹ Data and theory were garnered by reviewing literature from journal articles, online media, regulations, and reports relevant to the research topic. Creswell (2014) defines a literature study as a written summary of journal articles, books, and other documents.¹² Data in this study were obtained from information and data published in scholarly articles, books, reports, and other documents relevant to SOEs' land problems. Data were analyzed through two main activities proposed by Miles et al. (2018): data reduction and drawing of conclusion.¹³

¹¹ Lexy J. Moleong. *Metode Penelitian Kualitatif*. (Bandung: Remaja Rosdakarya, 2017).

¹² John W. Creswell, and J. David Creswell. *Research design: Qualitative, quantitative, and mixed methods approaches*. (London: Sage Publications, 2017).

¹³ M. B. Miles, A. M. Huberman, & J. Saldaña. *Qualitative data analysis: A methods sourcebook*. (London: Sage Publications, 2018).

III. Land Problems in State-Owned Enterprises' Assets

During the discussion forum “*Penyamaan Persepsi Penyelesaian Masalah Tanah Aset Negara Ditinjau dari Aspek Administrasi dan Hukum*” on Monday, 21 November 2022, the Coordinating Minister for Political, Legal, and Security Affairs stated that he had received many public complaints related to land problems, especially the state’s land managed by the ministry, institution, the regional government, and SOEs. In general, the problems are related to, first, the government's land illegally being occupied by the local community. Second, the government’s land obtained from the past (Minutes of Transfer, Land tenure by the colonizer, etc.) that is illegally occupied by the community. The third problem deals with the government’s certified land that is physically held by the community, which also holds a land ownership certificate upon the land. The fourth problem is related to the government’s land obtained from the past, or that has been certified used by regional governments and causes dual records regarding the state/ regional government property or the SOEs’ land used by the government, social organization, or the community. The fifth problem is related to the government’s certified land being held by the government yet claimed to be the customary land by the community. It is difficult to release customary land as it is cost-prohibitive to develop rights to land held under communal ownership, considering that such

ownership sets aside a pay-to-use-property system.^{14,15} Until 2022, KSP received 1504 land-related complaints, 223 of which were related to SOEs. An interview with Deputy II of KSP revealed that SOEs and relevant ministries are currently seeking a holistic solution to SOEs' problems. The problem inventory in four SOEs exhibited a general picture of problematic assets as follows:

- 1) PTPN: a total occupation of 153 locations with a land area of about 50,274.74 Ha.
- 2) Perum Perhutani: a total occupation of 51 locations with a land area of about 15,667 Ha.
- 3) PT KAI: a total occupation of 184 locations with a land area of about 2,860.16 Ha.
- 4) PT Pelindo: a total occupation of 54 locations with a land area of about 1965.05 Ha.

A land expert from Gajahmada University, Prof. Dr. Maria S.W. Sumardjono, states that, in general, the phenomenon of people occupying the state-owned lands reflects inequality in land ownership and tenure, a problem the government should seek a solution in order to fulfill the constitutional mandate in article 33 paragraph (3) of the 1945 Constitution. With this regard, during a series of internal meetings on Reforma Agraria and Land Problem Resolution on 21 December 2020, President Joko Widodo stated that many land problems were reported in Perum Perhutani and PTPN and urged the Ministry of SOEs to make

¹⁴ Satish Chand. "Registration and release of customary-land for private enterprise: Lessons from Papua New Guinea". *Land Use Policy* 61 (2017): 413–419. <https://doi.org/10.1016/j.landusepol.2016.11.039>

¹⁵ Karen Bell, et al. "The fences of Chuschi: The impacts of land enclosure on an Andean indigenous community." *Journal of Rural Studies* 97 (2023): 224-234.

policies to solve these problems, instructing the minister to solve problems and give the land to people who have resided in those lands for decades. However, the follow-up attempts to realize this instruction encounter regulatory complexities, among other obstacles, implying the needs for adjusting the land use planning for the community, as instructed by the President.¹⁶

IV. Commitment, Efforts, and Barriers to Settlement

The theory of dispute settlement defines the phrase 'dispute settlement' constitutes efforts to reconcile disputing parties' relationship. Through reconciliation, the disputing parties could develop social and legal relationships.¹⁷ Various efforts are made to settle disputes. In the context of conflict between PT. Perkebunan Nusantara-III and the local community, the consensus could be reached by compensating the local community who have worked on the land, which is done by a dedicated team appointed based on the Director's decision. This mechanism is considered a better option when compared to the litigation process, as it can maintain a good social relationship with the local community working on the plantation. However, some cases are also resolved through litigation, like the one between PTPN II in

¹⁶ KSP. "KSP Pastikan Konflik Agraria di Simalingkar dan Sei Mencirim Segera terselesaikan". *Online News*, 2021. Retrieved from <<https://www.ksp.go.id/ksp-pastikan-konflik-agraria-di-simalingkar-dan-sei-mencirim-segera-terselesaikan.html>>

¹⁷ Kusbianto, Kusbianto. "Penyelesaian Sengketa Tanah Perusahaan Badan Usaha Milik Negara (BUMN) Perkebunan di Sumatera Utara." *Jurnal Ilmiah Advokasi* 6, no. 1 (2018): 109-125.

Tanjung Merawa Regency, North Sumatera, and 234 farmers/inheritors.

Settlement and resolution efforts are also made by PT.KAI for its assets in Java and Sumatra. This SOE's land problems spread across Java, from operating regions 1 to 9, and from Regional Divisions 1 to 4 in Sumatra. Currently, many KAI assets are occupied by third parties, either individuals or a group. Various efforts have been made to secure assets following the prevailing regulation, such as certification, enforcement, and even litigation. Still, there are 184 problematic locations this SOE should address.

A similar issue is also faced by PT. Pelabuhan Indonesia (Persero) is currently putting mitigative efforts to secure land assets in all of its operating regions to prevent them from being occupied by a third party without authorized land-use cooperation. Their efforts include inventorying lands, registering rights (management rights or rights to use building), installing the land boundary marker, fencing, installing a sign stating “state-owned land”, returning land boundaries together with the National Land Agency (Badan Pertanahan Nasional - BPN) to regularly monitor the assets.

With regard to the conflicts resolution made by Perum Perhutani for area indicated to be turned into residential area, they are resolved based on the Government Regulation no. 23 of 2021 on Forest Administration, especially the policy of Resolution of Land Tenure in the under the Forest Area management framework (PPTPKH) and Forest Area with Special Management (KHDPK).

The interview with Deputy II of KSP revealed that the president gives considerable attention to the resolution of SOEs' land problems, especially those related to the people. As per KSP's

record, at least five closed-door meetings with ministers are directly led by the president to instruct related ministries to be committed to solving problems and strengthening necessary policies. The president held four closed-door meetings between November 2020 and December 2021. On 21 December 2020, President Joko Widodo instructed to release land to people who have occupied the land for decades. During the latest closed-door meeting on 3 January 2023, the president instructed monitoring of agrarian conflict resolution related to SOEs' assets.

As per the president's instruction, the executive office of the president also monitors the settlement progress since 2020. As mentioned earlier in this paper, regulatory complexity and constraint emerges as the main barrier to exercising the president's instruction. The existing regulatory framework in the Regulation of Minister of State-owned Enterprise 02/2010 provides only four schemes (i.e., sale, exchange, compensation, and equity capital). The circular letter S-155/MBU/2012 also prohibits the granting of a SOE's assets. The following sections describe in detail the hindrance, challenges, and problems.

A. Hindrances in Object Write-Off and Subject Nomination

The resolution of Sei Mencirim and Simalingkar problems, which was received directly by the president in August 2020, still encounters issues on write off for residential land, the issuance of the Right of Management for PTPN, and the issuance of the Right to use for the community regarding the land they work on. This issue is related to the existing regulatory framework in the

Regulation of Minister of State-owned Enterprise 02/2010, which only provides only four schemes: sale, exchange, compensation, and equity capital, and the circular letter S-155/MBU/2012 prohibiting the granting of an SOE's assets, thus preventing the community from obtaining 150m²/ household for residential purpose and 2500 m²/household for working purpose in Simalingkar and Sei Mencirim Villages. Furthermore, the regional government seems to be reticent to list a nominative subject because it is considered beyond the regional government's authority, making it difficult to determine the subject and individuals entitled to receive the land.

B. Inefficiency of Court-based Conflict Resolution

The barrier to resolving conflict between PTPN II and the community in Tanjung Merawa lies in different views between BPN regional office and Lubuk Pakam District Court regarding the object measurement authority in executing the cassation rulings. The dispute has been given two final rulings (Cassation rulings no. 39/K/Pdt/2013 and no. 1701K/Pdt/2021) in which the 234 farmers or inheritors win the dispute. This condition demonstrates people's weak legal status in proving land ownership or tenure, prolonged case settlement from the first-level court to receive final verdicts, and difficulty in executing the court rulings.

C. Bad Precedents of SOEs' asset release and indication of Post-certification trades

The settlement of a 20-year-long dispute between the Senamanenek Community in Kampar Regency, Riau, and PTPN V becomes a bad precedent of a SOE's asset release through land redistribution. It is important considering the increasingly higher land price and that it is impossible to pay land to the people.¹⁸ The granting of 1.385 certificates for 2.571 Ha of land was done by the Minister of Agrarian Affairs and spatial planning/ national land agency (12/2019) after the write-off agreement through the SOE's general meeting of shareholders. A problem also occurs in the cooperative with regard to joint management and cultivation. Some people appear to misuse the redistribution program by reselling the land granted to them. It becomes the bad precedent of land redistribution, potentially preserving bad practices of one-sided land occupation by the community.

Another issue lies in the execution of the state administrative court related to the revocation of rights to land registered as a SOE's asset. Such revocation of land rights potentially causes problems because it could be followed by the order to issue new rulings (Law on State Administrative Court and Law on Government Administration). The law on Government Administration states that the revocation of a decision should be done at a maximum of 21 working days from the issuance of a court order. Suppose the revocation is related to the deletion of the state's property held by SOEs. In that case, no maximum time

¹⁸ Nannan Xu, "What gave rise to China's land finance?." *Land Use Policy* 87 (2019): 104015. <https://doi.org/10.1016/j.landusepol.2019.05.034>

limit has been set with respect to the revocation decision issuance by the Ministry of Finance. The maximum time limit of two months regulates only the process of reviewing deletion applications by the state property manager. The problem potentially arises when deleting SOE's assets takes a long time, as the land affairs office will find it difficult to make a new decision. Meanwhile, according to the Law on State Administrative Court, when the revocation is followed by an obligation to issue a new decision, and no decision is made after 90 working days, the applicant should file an application to the chief justice to order the defendant to execute the court ruling. Failure to execute the court's ruling within the determined period may result in new problems, such as 'justice delayed justice denied' or *litis finiri oportet*- a lawsuit must be concluded. Failure to exercise the court's ruling within the determined period may also lead to sanctions or a new lawsuit from the damaged party. Therefore, in order to ensure the execution of the court's rulings, it is suggested to set a new regulation related to the time limit for deletion of government's/ SOE's assets, thus creating a more expedited and simple process.¹⁹

According to Mulki Shader, a Junior expert in KSP, stated that the resolution of land problems in SOEs' assets lies in both public and private legal dimensions, as it is oriented not only to clarifying the ownership status and land redistribution to the community but also to managing SOEs' assets and finance. It is different from the regular agrarian conflict that could be handled by the Ministry of Agrarian Affairs and Spatial Planning/ National

¹⁹ Simanjuntak, Esensi sengketa administrasi pertanahan di peradilan tata usaha negara."

Land Agency, agrarian conflict on SOEs' assets requires the Ministry of SOEs, the Ministry of Finance, monetary supervisory institution, and law enforcement institutions to ensure that the settlement complies with the prevailing law and does not cause new problems in the future. As the president asserts during the closed-door meeting, it is important to eradicate potential free riders in SOEs' land problem resolution. This could be done by setting a cut-off date for the conflict to be settled. The settlement would focus on the existing complaint filed before the draft presidential regulation on *reforma agraria* is enacted. In the future, SOEs will be encouraged to monitor their asset more optimally to prevent agrarian conflict.

V. Analysis and Potential Resolution

A. *Opportunities in phrase “Cara Lain” in The Regulation of Minister of SOEs no. 2/2010 on Asset Transfer*

Article 4 letter (e) and Article 13 of the Regulation of Minister of SOEs no. PER -02/MBU/2010 regulates five options for the transfer of a SOE's asset: Trade, exchange, compensation, equity capital, and *cara lain* (other ways). The fifth option, i.e., other ways, could only be taken under several conditions: first, the four options, i.e., trade, exchange, compensation, and equity capital, are inapplicable. Second, the asset value is insignificant to the SOE's total assets. Third, the transfer does not disturb the SOE's operation/ not a productive asset. Fourth, the 'other way' should be exercised after receiving approval from the general meeting of

shareholders/ the minister and by paying attention to the SOE's interest.

The fifth option appears to be relevant for implementing the president's instruction. As mentioned earlier, the Circular Letter of Minister of SOEs no. S-155/MBU/2012 on Prohibition of Granting of a SOE's fixed asset does not allow the Director and the Boards of Commissioners/ Supervisory Board to transfer an SOE's fixed asset through a grant or other non-compensating mechanisms. However, considering the need for solving land problems and agrarian conflict amid society and translating the president's instruction, in addition to the fact that agrarian reform is the ongoing national strategic program while the legal standing of the circular letter, the possible bottlenecking effort is by revising the circular letter S-155/MBU/2012 by including exception of prohibition to the reforma agraria program.

In order to prevent bad precedents as the one occurs in Sinamanenek from happening again in the future, it is necessary to create a safeguard through:

- a. Innovative approach of subject-object resolution instead of object-subject one to prevent potential one-sided occupation after determining the object;
- b. Regarding concerns about private land trade, Presidential Regulation No. 86 of 2018 on Reforma Agraria states that such land transactions could only be done under the minister's approval. Failure to comply with the procedure is categorized as a law violation and could be legally processed

B. Release of Fixed Assets by Reducing the State's Equity Capital (Government Regulation 44/2005)

The existing regulation related to the Right to Cultivate i.e., Governmental Regulation 18/2021 and Regulation of Minister of ATR no. 7/2017, regulates that one of the conditions to annul HGU is the expiration of the rights, as stipulated in the granting extension, and the renewal of the rights. When a right to cultivate the state's land is annulled, the land returns to the state, and its use, management, and ownership belong to the authority of the Minister of ATR/BPN. However, article 29 (3), (4), and (5) of the Regulation of Minister of Agrarian Affairs and Spatial Planning no. 9/1999 on the Procedure of Granting and Annulment of Rights to State Land and Right of Management regulates that the former right holder is entitled to monetary compensation if the extension of HGU is not based upon the land abandonment. Following the periodic interpretation (*lex posterior derogat legi priori*), the stipulation in this Minister Regulation Is not in line with the prevailing law, especially Government Regulation No. 40 of 1996, which has been annulled and amended by Government Regulation No. 18/2021. Therefore, the conflict settlement in three locations related to the expired PTPN's HGU could be done by the write-off of the fixed asset without asking/waiting for compensation. According to the prevailing law, the rights to this land return to the state, and its use, management, and ownership belong to the authority of Minister of Agrarian and Spatial Planning/ National Land Agency.

C. Asset Utilization Cooperation

Asset utilization cooperation could be exercised following an agreement on the land use between the holder of land subjected to the reforma agraria program, as regulated in Presidential Regulation 86/2018 on Reforma Agraria. Asset utilization cooperation is one of the joint efforts related to asset management.²⁰ Therefore, such cooperation can be an alternative to land management.²¹ Based on such an agreement, the land could be cultivated under profit-sharing principles. Lands owned by SOEs or Regional government-owned enterprises, ministries, governmental institutions, or regional governments should first be given a right of management, upon which temporary rights, i.e., Right to Cultivate, Right to Use Building, and Right to Use, could be added. Applying this mechanism, the asset is still registered under the owner's name but is utilized by other parties as a source of people's welfare.

D. Granting land rights upon the Right of Management

Another possible option is the granting of temporary land rights on the SOE's right of management. This mechanism could be

²⁰ Agung Prasetya, Siti Musyarofah, and Bambang Haryadi. "Analisis Kerjasama Pemanfaatan Aset Daerah." *InFestasi* 16, no. 1 (2020): 58-68. <https://doi.org/10.21107/infestasi.v16i1.6897>

²¹ Evi Noviawati, and Yuliana Suryagalih. "Pengembangan Konsep Kerjasama Pemanfaatan Aset Desa Berbasis Kearifan Lokal di Kabupaten Ciamis." *Jurnal Ilmiah Galuh Justisi* 8, no. 2 (2020): 287-299. <https://doi.org/10.25157/justisi.v8i2.4095>

found in management of free-trade zone and free port in Batam City.²² Similar mechanism has also been applied by PT. Kawasan Berkat Nusantara in Cakung, East Jakarta.²³ This resolution mechanism may serve as the middle way to protect the SOE's asset while protecting people's needs for space to life. Agrarian reform is also associated with political interest.²⁴ From legal perspectives, this option is highly possible since the issuance of article 8 of Government Regulation no. 18 of 2021, which allows the granting of land rights in the form of Right to Cultivate, Right to Use Building, and/or Right to Use with respect to the land utilization by other parties, provided that it is done under land utilization agreement. This option allows SOEs to legally hold the land (i.e., Right of Management), while giving the community a legal certainty on the land tenure through Right to Cultivate, Right to Use Building, and Right to Use.

However, it should be noted that the granting of land rights is temporary in nature. In other words, individuals granted with these rights are expected to increase their income and could eventually buy their own land in the future. Therefore, this option should be supported by other policies regarding people's economic empowerment. These policies are important, particularly in the

²² Pratama Ari. "Pemberian Hak Atas Tanah di Atas Pengelolaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas di Kota Batam". *Thesis* (Padang: Universitas Andalas, 2016).

²³ Fathin Afif Hazza. "Pemberian Hak Atas Tanah di Atas Pengelolaan PT. Kawasan Berikat Nusantara di Cakung Jakarta Timur Paca Peraturan Pemerintah Nomor 18 Tahun 2021 Tentang Pengelolaan Hak Atas Tanah, Satuan Rumah Susun dan Pendaftaran Tanah". *Thesis* (Padang: Universitas Andalas, 2023).

²⁴ Barid Hardiyanto, "Politics of land policies in Indonesia in the era of President Susilo Bambang Yudhoyono." *Land Use Policy* 101 (2021): 105134. <https://doi.org/10.1016/j.landusepol.2020.105134>

rural area where lands are used as the main source of livelihood and place to reside.²⁵

E. Other agreement-based options

Considering that SOE's land-related conflicts vary, it is important to be open to resolution options oriented to agreement between the conflicting parties. Conflicts could be resolved through mediation to ensure efficient resolution with legal certainty.²⁶ Land conflict settlement, power mechanisms, and legal action could also be effective solutions²⁷. This option also allows the related parties to combine four possible options described earlier

²⁵ Helen Akolgo-Azupogo, Roland Bardy, and Arthur Rubens. "Land governance in Northern Ghana: Creating communities of practice between tribal leaders and the government." *Land Use Policy* 107 (2021): 105493. <https://doi.org/10.1016/j.landusepol.2021.105493>

²⁶ Sri Hajati, Agus Sekarmadji, and Sri Winarsih. "Model Penyelesaian Sengketa Pertanahan Melalui Mediasi Dalam Mewujudkan Penyelesaian Yang Efisiensi Dan Berkepastian Hukum." *Jurnal Dinamika Hukum* 14, no. 1 (2014): 36-48; N. Wahyuni, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Batas Tanah (Studi Kasus di Badan Pertanahan Nasional Kabupaten Gowa)". *Thesis*. (Makassar: Universitas Islam Negeri Alauddin Makassar, 2017); Yudha Chandra Arwana, and Ridwan Arifin. "Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia." *Jambura Law Review* 1, no. 2 (2019): 212-236; Juwita Tarochi Boboy, Budi Santoso, and Irawati Irawati. "Penyelesaian Sengketa Pertanahan Melalui Mediasi Berdasarkan Teori Dean G. Pruitt Dan Jeffrey Z. Rubin." *Notarius* 13, no. 2 (2020). 803-818; Suwardhie Sasro Prawira, and Muhammad Ilyas. "Penyelesaian Sengketa Tanah Melalui Mediasi: Studi Kantor Pertanahan Kabupaten Bantaeng." *Journal of Lex Philosophy (JLP)* 1, no. 1 (2020): 20-41.

²⁷ Hossein Shirzad, et al. "Agricultural land tenure system in Iran: An overview." *Land Use Policy* 123 (2022): 106375. <https://doi.org/10.1016/j.landusepol.2022.106375>

by adhering to the prevailing regulation. For instance, an agrarian conflict between communities in Sei Mencirim and Simalingkar and PTPN II could be resolved by building a 150m² house and granting a 2500m² production land under temporary use agreement for each household for 35 year period

VI. Conclusion

The settlement of SOEs' land problems with the community should be carried out through rule-based mechanisms to reach the most optimal solution for the community and SOEs. The settlement schemes, according to the case typology, include Asset Utilization Cooperation, Granting land rights upon the Right of Management, Land Redistribution, and other agreement-based options following the prevailing regulation. Any scheme should be selected by considering the people's socio-economic condition, strategic utilization potentials, and potential growth of SOEs. Furthermore, it is also necessary to inventory and verify the subject (eligible individuals to be the beneficiary) when implementing these options under the agrarian reform frameworks in order to prevent free riders and avoid a new pandora box of conflict. This could be done through collaboration with law enforcement and monetary supervisory institutions.

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