REFORMULATION OF CONTROL AND LEGAL SECURITY OF LAND OWNED BY LOCAL GOVERNMENTS

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ABSTRACT
This research is motivated by a systemic norm conflict between the agrarian law regime, derived from Article 33 paragraph (3) of the 1945 Constitution, and the state finance law regime, derived from Articles 23 and 23C of the 1945 Constitution, concerning the regulation of the control and safeguarding of local government land assets. Consequently, local government lands are administratively recognized as assets yet remain legally vulnerable due to the absence of land certificates, thereby increasing their susceptibility to disputes and third-party claims. This study employs normative legal research, utilizing statutory, case, and conceptual approaches. The findings indicate a paradigm shift in the concept of the State's Right of Control from public authority to administrative ownership. Furthermore, the legal standing of local governments exhibits ambivalence between public authority and administrative ownership, while land control practices are predominantly governed by de facto rather than de jure aspects. The study also identifies four distinct forms of norm conflicts: conflicts regarding legality principles, terminological conflicts, conflicts of legal consequences, and institutional conflicts. Additionally, the research reveals that regulatory disharmony between Government Regulation (PP) No. 28 of 2020 and PP No. 24 of 1997, coupled with weak institutional coordination between the Regional Financial and Asset Management Agency (BPKAD) and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), constitute the primary structural impediments to the certification of regional land assets. The study concludes that a legal reformulation is imperative, anchored in three foundational pillars: the fortification of agrarian legality utilizing land certificates as a fundamental prerequisite, the harmonization of cross-regime regulations, and the enhancement of institutional coordination.

Keywords: Land Ownership Reformulation, Legal Security, Agrarian Norm Conflict, Regional Asset Certification, Legal Certainty

INTRODUCTION

Land constitutes a strategic agrarian resource within regional governance, functioning both as a primary medium for administrative operations and as a highly valuable economic asset. Nevertheless, the control and safeguarding of regional government-owned land in Indonesia encounter profound systemic challenges. From a normative perspective, the regulation of regional government land falls under two distinct legal regimes: the Agrarian Law, derived from Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), and the State Finance Law, rooted in Law Number 17 of 2003 on State Finance alongside Law Number 1 of 2004 on the State Treasury. This regulatory dualism engenders normative conflicts that directly precipitate legal uncertainty regarding the status of lands under regional government jurisdiction. In empirical practice, numerous parcels of regional government land are administratively registered as Regional-Owned Property (BMD) and utilized for public interests, yet they remain juridically devoid of legitimate land title certificates. Consequently, these assets are highly susceptible to disputes and third-party claims (Anggraini, Harsono, & Saptono, 2022).

The issue of securing regional government land assets extends beyond mere normative dimensions, being fundamentally intertwined with public governance and accountability. The principles of good governance, which necessitate transparency, accountability, and legal certainty in the management of regional assets, are frequently undermined by inadequacies within land administration and regional financial management systems. According to recent audit findings by the Supreme Audit Agency (BPK), numerous regional governments are unable to provide accurate representations of fixed land assets due to the absence of legitimate ownership documentation. This indicates that administrative safeguarding via registration in the Goods Inventory Card (KIB) is insufficient unless corroborated by juridical protection through formal land rights certification. The prevailing weakness in juridical security creates vulnerabilities that facilitate the misappropriation of regional assets, including unauthorized occupation by third parties who exploit the equivocal legal status of the land (Kurniawan, Rahayu, & Mulyani, 2021).

Furthermore, the complexities associated with the control of regional government land are intrinsically linked to deficient institutional coordination between regional governments, serving as asset managers, and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), the authoritative body responsible for granting land rights. The absence of an integrated coordination mechanism renders the certification process for regional land assets both protracted and deprioritized. This occurs despite the explicit statutory mandate set forth in Article 49, paragraph (1) of Law Number 1 of 2004, which stipulates that lands controlled by central or regional governments must be formally certified in the name of the respective government entity. However, procedural and administrative impediments have persistently obstructed the comprehensive execution of this mandate. This predicament is further exacerbated by the lack of explicit legal norms that correlate the obligation to inventory regional assets with the requisite certification of land rights, consequently allowing the respective legal regimes to operate sectorally without a binding intersection (Prasetyo, Widodo, & Nugroho, 2023).

From the perspectives of sustainable development and the welfare state, state control over land ought to be directed toward maximizing public prosperity. However, contemporary regional asset management practices reveal a paradigm shift from the inherently public concept of the State's Right of Control to an administrative framework that closely resembles private ownership. This transition is evidenced by the prevalence of an asset management approach within the state financial system, which commodifies land economically, rather than adhering to an agrarian legality approach that underscores the social function of land. Consequently, local government land is frequently treated as an asset to be exploited exclusively for economic gain, neglecting fundamental principles of equity and sustainability. Such practices directly contravene the constitutional mandate stipulated in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which dictates that the earth, water, and the natural resources contained therein are controlled by the state and must be utilized for the greatest benefit of the people (Wulandari, Setiawan, Firmansyah, & Lestari, 2024).

On a national scale, the challenge of securing local government land is intricately linked to the pervasive inadequacy of regional asset certification. Data provided by the Corruption Eradication Commission (KPK) demonstrates that in Aceh Province, merely 9,302 out of 28,152 asset parcels owned by regencies and municipalities are certified, representing approximately 33 percent. Furthermore, at the provincial level, only 843 (46 percent) of the 1,826 land parcels owned by the Aceh Provincial Government possess official certification, leaving 983 parcels uncertified. Comparable circumstances are evident in Pidie Regency, where 497 out of 1,150 regional land asset parcels lack certification. This low rate of land certification is driven not only by financial constraints but also by substantial impediments in retrieving supporting ownership documentation—such as Handover Certificates (BAST) and acquisition receipts—which are frequently incomplete or entirely misplaced (Hartono, Suryani, & Wijaya, 2025).

Conceptually, the fundamental issue concerning the control and safeguarding of local government land stems from a paradigmatic divergence between agrarian law and state finance law regarding how the legal relationship between the state or local government and the land is interpreted. Agrarian law, rooted in Article 33, paragraph (3) of the 1945 Constitution, designates the state as the entity exercising the right of control rather than absolute ownership. Under this framework, the state's authority is strictly limited to regulating and managing land utilization for the public good. In contrast, state finance law, derived from Articles 23 and 23C of the 1945 Constitution, conceptualizes land as a state or regional asset that possesses quantifiable monetary value and is subject to state ownership. This profound normative dichotomy engenders legal uncertainty regarding the status of land under local government jurisdiction (Nugroho, Rahmawati, & Saputra, 2023).

The practical ramifications of this normative conflict severely undermine the legal protection of local government land assets. During numerous agrarian disputes, local authorities frequently fail to defend their land tenure before the courts due to the absence of formal land certificates, which serve as definitive legal evidence. The mere registration of land within the Goods Inventory Card (KIB) and regional financial balance sheets is inadmissible as valid proof within the civil evidentiary framework. Consequently, land that has been physically occupied and utilized for public utility over extended periods remains vulnerable to claims by third parties possessing antiquated colonial-era documentation, such as girik, letter C, petok D, or eigendom verponding. This vulnerability underscores the premise that administrative recording, devoid of formal juridical safeguarding, fails to afford sufficient legal protection for local government land assets (Rahman, Hakim, & Permana, 2022).

Furthermore, legal uncertainty surrounding the tenure of local government land significantly impedes the optimal utilization of assets for public interest and regional development. Land with an ambiguous legal status presents substantial challenges for establishing partnerships with third parties through Utilization Cooperation (Kerja Sama Pemanfaatan or KSP), Build-Operate-Transfer (BOT), or alternative schemes that fundamentally stipulate legal certainty as a primary prerequisite. Consequently, this ambiguity obstructs local governments' initiatives to enhance Locally-Generated Revenue (PAD) and to optimize idle assets. Additionally, such legal uncertainty diminishes investor confidence in regional investments due to the elevated risk of land disputes. Therefore, the challenges associated with safeguarding local government land extend beyond legal dimensions, profoundly affecting both economic development and public welfare (Susanto, Wijayanti, & Hidayat, 2024).

The central problematization of this study is the systemic normative conflict between the agrarian legal regime and the state financial legal regime, which engenders legal uncertainty in the tenure and safeguarding of local government land. The analytical gap lies in the absence of a comprehensive reformulation model capable of simultaneously integrating the dimensions of agrarian legality (land rights certification), accountability in regional asset management, and the fortification of institutional coordination. Previous studies have predominantly adopted a partial approach, failing to formulate a concrete mechanism for resolving cross-regime normative conflicts. The urgency of this research is underscored by the high risk of state and regional land asset misappropriation due to inadequate legal protection, coupled with the imperatives of bureaucratic reform to establish a transparent, accountable, and legally definitive regional asset governance system. Ultimately, this research aims to formulate a harmonious and applicable reformulation model for the tenure and safeguarding of local government land, ensuring legal certainty in accordance with the principles of a welfare state based on the rule of law.

METHOD

This study employs a normative or doctrinal legal research methodology, which conceptualizes the law as a structured system of norms (Soekanto & Mamudji, 2015). The objective of normative research is to construct legal arguments that serve as a foundation for evaluating the legality of specific events and determining their appropriate legal resolution (Marzuki, 2011). Its primary function is to provide juridical argumentation in instances of normative vacuums, ambiguities, or conflicts within the positive legal system (Diantha, 2019). Consequently, this research encompasses legal principles, legal systematics, the degree of vertical and horizontal legal synchronization, comparative law, and the legal history pertaining to the control and safeguarding of regional government-owned land (Soekanto & Mamudji, 2015).

Building upon this normative framework, the study utilizes three primary approaches. First, the statute approach serves as the fundamental step in legal reasoning, functioning as reasoning based on rules through the comprehensive examination of statutory regulations (Hadjon & Djatmiati, 2009). This approach is applied to elucidate issues concerning the consistency of the philosophical and ontological foundations, as well as the ratio legis, among various regulations and legal principles (Muhjad & Nuswardani, 2012). The legislation analyzed includes the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA), Law Number 17 of 2003 on State Finance, Law Number 1 of 2004 on the State Treasury, Law Number 23 of 2014 on Regional Government, and relevant implementing regulations, such as Government Regulation Number 28 of 2020 and Minister of Home Affairs Regulation Number 7 of 2024.Second, the case approach is employed to examine the practical application of legal norms and principles within legal practice (Efendi & Ibrahim, 2018).

The investigated cases encompass various dispute practices and the unauthorized occupation of local government-owned land, including overlapping rights, third-party claims, insufficient legal evidence, and complications surrounding the certification of regional land assets (Prasetyo & Widodo, 2022). This approach aims to identify the discrepancy between das sollen (the prevailing legal norms) and das sein (the empirical reality of legal implementation). This discrepancy is particularly pertinent to the legal safeguarding of local government-owned land, as manifested in various Audit Reports from the Supreme Audit Agency and judicial decisions concerning regional land asset disputes (Rahmawati & Nugroho, 2023).

Third, the conceptual approach serves as a methodological step to identify norms as legal propositions (Hadjon & Djatmiati, 2009). The comprehension of these concepts is intended to facilitate the analysis of legal materials, thereby elucidating the underlying meanings of specific legal terminologies. These terminologies include the State's Right of Control, the right of use, the right of management, regional property, regional assets, as well as land control and safeguarding (Hajar, 2015). This conceptual framework is instrumental in achieving scientific clarity and justification derived from legal concepts rooted in established legal principles, doctrines, and the perspectives of legal scholars. Ultimately, it serves to address the complexities surrounding the control and safeguarding of local government-owned land, which currently experiences disharmonization across multiple legal regimes (Muhjad & Nuswardani, 2012).

As a consequence of its normative research design, this study is inherently prescriptive, offering imperatives through the provision of legal argumentation on the research issue (Wignjosoebroto, 2013). The research process is directed toward discovering norms that will serve as the foundational justification for reformulating the control and safeguarding of local government land (Hadjon & Djatmiati, 2009). This prescriptive nature allows the researcher to legally evaluate the facts or legal events occurring in the practical administration of land control by local governments, determining their validity according to the law (Marzuki, 2011).

The sources of legal materials utilized in this study consist of primary, secondary, and tertiary legal materials (Ali, 2015). Primary legal materials encompass authoritative statutes and regulations (Soekanto & Mamudji, 2015). Secondary legal materials include textbooks, scientific journals, research reports, and official documents such as the Audit Reports of the Supreme Audit Agency (BPK) and monitoring reports from the Corruption Eradication Commission (KPK) (Marzuki, 2011). Furthermore, non-legal materials were obtained via unstructured interviews with competent informants specializing in regional asset management and land affairs (Huberman & Miles, 2009). Data analysis was executed using a prescriptive-evaluative approach through grammatical, historical, authentic, systematic, and sociological methods of interpretation (Hartono, 2006). The systematic method involves analyzing all components by considering their respective roles and interactions to ensure the full realization of the established objectives; the harmonious or heterogeneous interplay between these elements ultimately determines the outcome and the success of the intended goals (Azmi et al., 2022). Consequently, the interview data were analyzed qualitatively through the stages of data reduction, data display, and conclusion drawing (Janesick, 1994). The validity of the analytical process was ensured through the triangulation of legal sources and theoretical triangulation, utilizing the Welfare State Theory, the Theory of Legal Certainty, and the Theory of Authority (Miles & Huberman, 1994).

RESULTS AND DISCUSSION

The Conception of the State's Right of Control as the Philosophical Foundation for Land Mastery by Local Governments

Research findings demonstrate that the State's Right of Control (Hak Menguasai Negara or HMN), as stipulated in Article 33 paragraph (3) of the 1945 Constitution and further elucidated in Article 2 of the Basic Agrarian Law (UUPA), serves as the fundamental constitutional basis for land mastery by local governments (Harsono, 2003). The HMN paradigm does not position the state as a landowner in a private capacity; rather, it identifies the state as the supreme organizational embodiment of the people's power, endowed with the public authority to regulate, administer, manage, and oversee the allocation and utilization of land to achieve optimal public prosperity (Hadjon, 2007).

A comprehensive analysis of this concept reveals that HMN encompasses five primary functions: regulation (regelendaad), administration (bestuursdaad), management (beheersdaad), supervision (toezichthoudensdaad), and policymaking (beleidsdaad) (Ridwan HR, 2016). These five functions confer upon the state extensive authority to intervene in agrarian regulation while concurrently establishing boundaries to prevent the exploitation of such authority for private gain (Sumardjono, 2008).

Within the context of regional governance, HMN is devolved through decentralization mechanisms, thereby positioning local governments as the executors of state authority at the municipal level (Manan, 1994). This devolution is delegative in nature, entailing a transfer of both responsibility and liability, which empowers local governments to act autonomously in the control and management of land to facilitate governmental operations and public services (Ridwan HR, 2016).

Nevertheless, the study also identifies a practical deviation in the interpretation of HMN, wherein its original premise as a public authority has ostensibly shifted toward a form of administrative ownership by local governments (Andora, 2021). This conceptual displacement is primarily driven by the prevailing framework of state financial law, which categorizes land as a monetarily appraisable asset that is "owned" by the local government, despite the fact that the theoretical construct of HMN fundamentally rejects the notion of private ownership (Law Number 17 of 2003).

The Position of Local Governments in Land Control: Between Public Authority and Administrative Ownership

Research findings identify an underlying ambivalence in the position of local governments regarding land control (Andora, 2021). On the one hand, in accordance with agrarian law, local governments function as executors of public authority, authorized to control land solely through the right of use (hak pakai) or the right of management (hak pengelolaan) (Harsono, 2003). The right of use confers limited authority to utilize land specifically for governmental duties, whereas the right of management affords broader authority, including the prerogative to transfer portions of the land to third parties (Parlindungan, 1994). Neither of these classifications constitutes absolute ownership; rather, they are functional rights strictly constrained by the objectives for which they were granted (Harsono, 2005).

On the other hand, under state finance law and regional property management regulations, local governments are positioned as de facto landowners. This conceptualization occurs because land is recorded as a regional asset on financial balance sheets and is governed by asset ownership principles, encompassing inventory, valuation, utilization, and alienation (Law Number 1 of 2004). An analysis of this ambivalence indicates that the tension between these dual roles originates from a fundamental paradigmatic divergence: agrarian law is oriented toward the social function of land, whereas state finance law prioritizes the economic value of assets (Sumardjono, 2005).

Consequently, in practical land management, local governments predominantly favor an administrative asset-ownership approach over strict adherence to agrarian legality (Supriyadi, 2010). This tendency is evidenced by the significant volume of local government land recorded as assets within the Goods Inventory Card (Kartu Inventaris Barang/KIB) that remains uncertified under formalized land rights (Corruption Eradication Commission, 2024). Such circumstances not only precipitate legal uncertainty but also engender the risk of state financial losses, as land with ambiguous legal status is highly vulnerable to third-party claims or misappropriation by local government officials (Audit Board of the Republic of Indonesia, 2023).

Local Government Land Tenure in Practice: Between De Facto Dominance and De Jure Weakness

Research indicates that land tenure practices by local governments in Indonesia remain predominantly characterized by factual (de facto) control, whereas juridical (de jure) ownership is frequently unfulfilled (Santoso, 2012). This de facto possession is evidenced by the physical utilization and management of land for governmental administration and public services, including the construction of government offices, schools, hospitals, roads, markets, and other public amenities (Sembiring, 2016). Nevertheless, such physical occupation is not consistently accompanied by juridical legitimacy in the form of land rights certificates (Andora, 2021).

An analysis of this phenomenon reveals that the prevalence of de facto control stems from several key factors. First, urgent administrative and public service demands compel local governments to prioritize immediate land utilization over the resolution of legal formalities (Supriyadi, 2010). Second, the intricate and protracted nature of land certification procedures serves as a significant impediment (Government Regulation Number 24 of 1997). Third, a substantial portion of local government land derives from historical occupation or asset transfers from preceding administrations, resulting in incomplete or entirely missing historical documentation (Harsono, 2003). Fourth, there is an absence of specialized mechanisms designed to streamline the certification process for government agency lands (Andora, 2021).

The implications of this de facto dominance profoundly affect the legal protection of local government land assets (Mertokusumo, 2006). In numerous land dispute cases, local governments are unable to defend their land tenure in court due to the absence of land certificates, which serve as definitive evidentiary instruments (Santoso, 2012). Furthermore, the registration of land within the Goods Inventory Card (KIB) and regional financial balance sheets is not recognized as valid evidence within the civil evidentiary framework (Supriyadi, 2010). Consequently, this demonstrates that administrative safeguarding, when devoid of corresponding juridical protection, fails to afford sufficient legal security for local government land assets (Hadjon, 2007).

Safeguarding Land as Regional Property: Administrative, Juridical, and Physical Dimensions

Research findings indicate that, in practice, the safeguarding of regional government land remains predominantly administrative, whereas juridical and physical safeguarding have yet to be optimally implemented (Government Regulation Number 28 of 2020). Administrative safeguarding is executed through the inventory, recording, and administration of land as Regional Property within the Goods Inventory Card (KIB) and regional financial reports (Minister of Home Affairs Regulation Number 19 of 2016). This measure is mandatory and constitutes an integral component of the regional financial management accountability system (Law Number 1 of 2004). Nevertheless, this administrative approach exhibits a fundamental vulnerability, as it does not necessitate a land rights certificate as a prerequisite for recording (Supriyadi, 2010).

Juridical safeguarding, which ought to serve as the principal foundation for the legal protection of land, has not been sufficiently prioritized (Andora, 2021). The certification of regional government land progresses slowly due to various impediments, including budget constraints, incomplete historical documentation, and inadequate coordination between regional governments and the National Land Agency (Corruption Eradication Commission, 2024). An analysis of this discrepancy suggests that these three forms of safeguarding should operate simultaneously and hierarchically: juridical safeguarding acting as the primary prerequisite, followed by administrative safeguarding for formal recording, and physical safeguarding serving as on-site protection (Supriyadi, 2010).

In practice, however, this sequence is inverted; administrative safeguarding dominates, while juridical safeguarding is relegated to a supplementary role, and physical safeguarding is frequently deficient (Government Regulation Number 28 of 2020). Consequently, land administratively recorded as a regional asset remains susceptible to disputes and unauthorized occupation (Audit Board of the Republic of Indonesia, 2023). Furthermore, in certain instances, land that has been physically fenced and guarded may still be claimed by third parties due to the absence of legally valid juridical proof of ownership (Santoso, 2012).

Normative Conflict between Agrarian Law and State Finance Law as the Root of the Problem

Research findings indicate that the fundamental issue concerning the control and safeguarding of local government land is a systemic normative conflict between the agrarian law regime and the state finance law regime (Andora, 2021). This conflict is highly complex, as both legal frameworks are predicated upon distinct constitutional foundations (Harsono, 2003). Agrarian law is derived from Article 33 paragraph (3) of the 1945 Constitution, which designates land as an object of public control governed by the principle of social function. Conversely, state finance law is rooted in Articles 23 and 23C of the 1945 Constitution, which classify land as a fiscal asset capable of monetary valuation (1945 Constitution of the Republic of Indonesia).

A comprehensive analysis of this normative conflict reveals four primary dimensions (Andora, 2021). First, there is a conflict concerning the principle of legality: the Basic Agrarian Law (UUPA) mandates a land certificate as legitimate evidence of rights, whereas the Regional Property (BMD) law permits the administrative recording of assets devoid of certification (Law Number 5 of 1960). Second, a terminological conflict exists wherein the UUPA prohibits local governments from holding freehold titles (hak milik), while state finance law employs the term "regional property" (milik daerah), thereby obfuscating the distinction between public control and private ownership (Harsono, 2003). Third, a conflict of legal consequences arises because agrarian law allows third parties to petition for rights over uncertified land, whereas BMD law explicitly necessitates the recording of such land as a government asset (Government Regulation Number 24 of 1997). Fourth, an institutional conflict is evident, as the obligation for land certification is distributed between two separate entities (BPKAD and ATR/BPN) lacking a binding coordination mechanism (Ridwan HR, 2016).

These four dimensions of conflict are mutually reinforcing, engendering an inconsistent framework that fails to provide legal certainty regarding local government land (Hadjon, 2007). Consequently, a parcel of land may be administratively acknowledged as a regional asset while juridically retaining the status of state land, leaving it legally vulnerable to rights applications by external parties (Sembiring, 2016). Consequently, societal conflict is a prevalent phenomenon, particularly when driven by economic determinants. Such friction can manifest at any moment when divergent interests clash within a given social framework. However, conflicts that arise within a community are not inherently destructive, nor are they solely a source of instability. In certain instances, they yield positive ramifications, serving as a motivational catalyst to enhance the future quality of life by resolving underlying issues and establishing a foundation for progressive social change. Conversely, it is not uncommon for conflict to also produce adverse consequences, such as the failure to achieve objectives, the impediment of communication, and even the cultivation of hostile attitudes.

Regulatory Dualism and Legal System Fragmentation as Impediments to Legal Certainty

Research findings indicate that regulatory dualism and the fragmentation of the legal system serve as primary impediments to the realization of legal certainty in local government land tenure (Hubaidi, 2020). Regulatory dualism is evidenced by the existence of two parallel operational frameworks: the agrarian legal system, which is predicated on land rights, and the regional asset management system, which is founded upon financial administration (Andora, 2021). These two systems possess divergent logic, procedures, and parameters for success, rendering their practical integration highly challenging (Sumardjono, 2011). An analysis of this dualism reveals that the fragmentation of the legal system manifests across three distinct levels (Andora, 2021). At the normative level, an inconsistency exists between the UUPA (Basic Agrarian Law) and the State Finance Law, as well as the Government Regulation concerning Regional Property (BMD) Management (Law Number 5 of 1960).

At the institutional level, there is a separation of authority between ATR/BPN as the land authority and BPKAD as the regional asset manager, functioning without adequate coordination mechanisms (Ridwan HR, 2016). At the data and information level, the land information system (Land Office Computerization/KKP) is not integrated with the regional asset information system (SIPD), engendering data duplication and discrepancies (Minister of Home Affairs Regulation Number 19 of 2016). This fragmentation yields three significant implications. First, local governments lack unambiguous guidelines regarding the prioritization of agrarian legality resolution versus asset recording (Supriyadi, 2010). Second, the certification process for local government land is decelerated due to the absence of specialized procedures tailored to accommodate the characteristics of government agency land (Government Regulation Number 24 of 1997). Third, a squandering of resources occurs as local governments are obligated to independently administer two disparate systems (Hubaidi, 2020). Ultimately, this condition demonstrates that in the absence of systemic harmonization and integration, establishing legal certainty over local government land remains elusive, notwithstanding the presence of various regulations mandating land certification (Hadjon, 2007).

Regulatory Disharmony Between Government Regulation Number 28 of 2020 and Government Regulation Number 24 of 1997

Research findings indicate that the regulatory disharmony between Government Regulation Number 28 of 2020 concerning the Management of State/Regional Property and Government Regulation Number 24 of 1997 concerning Land Registration constitutes a primary factor contributing to the disorderly administration of regional government land tenure (Government Regulation Number 28 of 2020). Government Regulation 28/2020 mandates regional governments to certify all regional land assets to establish legal protection. However, this regulation lacks comprehensive provisions regarding the certification procedures for government agency land, which frequently possesses unique characteristics, such as incomplete historical documentation, continuous occupation since the colonial era, or inadequately documented asset acquisition mechanisms (Supriyadi, 2010). Conversely, Government Regulation 24/1997 stipulates that comprehensive proof of title and a transparent history of land tenure are mandatory prerequisites for the issuance of land certificates (Government Regulation Number 24 of 1997).

An analysis of this regulatory friction reveals that regional governments are situated in a dilemmatic predicament (Santoso, 2012). On the one hand, they are legally obligated by Government Regulation 28/2020 to certify all land assets; on the other hand, they are frequently unable to satisfy the rigorous administrative prerequisites established by Government Regulation 24/1997 due to documentary deficiencies (Andora, 2021). This predicament is further exacerbated by the absence of specialized mechanisms or procedural exemptions for government-controlled land within the national land registration framework (Harsono, 2003). Consequently, numerous regional government lands that have been utilized for public purposes for decades remain uncertified, thereby exposing them to persistent legal vulnerabilities (Komisi Pemberantasan Korupsi, 2024).

Furthermore, this regulatory disharmony engenders inconsistencies within dispute resolution practices (Mertokusumo, 2006). During judicial proceedings, judges predominantly rely on Government Regulation 24/1997 as the primary legal reference, rendering the registration of assets in the Goods Inventory Card (KIB) insufficient in terms of evidentiary value (Santoso, 2012). Ultimately, these circumstances underscore the critical and immediate necessity for regulatory harmonization between the two aforementioned government regulations (Hadjon, 2007).

Weak Institutional Coordination as a Structural Impediment to Regional Land Asset Certification

Research findings indicate that the deficiency in institutional coordination among regional governments, the National Land Agency (ATR/BPN), and the Ministry of Finance constitutes a significant structural barrier to the accelerated certification of regional land assets (Ridwan HR, 2016). There is an absolute absence of regulations explicitly mandating a coordination mechanism among these three institutions within the context of regional government land certification (Hadjon, 2011). An analysis of this coordination deficit reveals that each entity operates autonomously in accordance with its own sectoral regulations, lacking any binding convergence (Andora, 2021). Regional governments (via BPKAD) are responsible for recording and securing assets based on Government Regulation Number 28 of 2020, yet they do not possess the authority to issue land certificates (Government Regulation Number 28 of 2020). Conversely, ATR/BPN holds the jurisdiction to issue certificates under Government Regulation Number 24 of 1997, but it lacks comprehensive data on regional assets and is under no obligation to prioritize applications submitted by regional governments (Government Regulation Number 24 of 1997). Furthermore, the Ministry of Finance, acting as the national manager of State-Owned Property (BMN), possesses a vested interest in asset certification but is not directly involved in the operational processes on the ground (Law Number 1 of 2004).

The absence of a formalized coordination mechanism yields several critical implications. First, there are no binding collective targets among the relevant institutions regarding the acceleration of the certification process (Ridwan HR, 2016). Second, there is a lack of a data-sharing framework bridging the regional asset information system (SIPD) and the land information system (ATLAS/KKP) (Minister of Home Affairs Regulation Number 19 of 2016). Third, there is no unified mechanism involving all three institutions for resolving disputes or addressing technical obstacles in the field (Hadjon, 2007). Consequently, the certification process for regional government land proceeds at a sluggish pace, remains uncoordinated, and frequently stagnates due to an ambiguity of responsibilities and follow-up procedures (Corruption Eradication Commission, 2024). Ultimately, this coordination failure results in the absence of periodic evaluations of certification achievements and a lack of legal consequences for regional governments that fail to fulfill their certification obligations as mandated by Article 49 paragraph (1) of Law Number 1 of 2004 (Law Number 1 of 2004).

The Juridical Implications of Inadequate Land Safeguarding on Legal Certainty and Regional Asset Protection

Research findings indicate that the inadequate safeguarding of regional government land yields profound juridical implications for legal certainty and the protection of regional assets (Santoso, 2012). The primary implication is the weakened legal standing of regional governments in land disputes. Uncertified land lacks absolute evidentiary weight in court; consequently, regional governments frequently fail in litigation despite having factually occupied and utilized the land for public utility over many years (Mertokusumo, 2006). An analysis of this implication reveals that within the civil procedural law system, documentary evidence possesses varying degrees of evidentiary strength. Authentic deeds (including land certificates) constitute absolute and binding evidence, whereas entries in the Asset Inventory Card (KIB) are not authentic deeds but rather internal administrative documents lacking equivalent evidentiary power (Supriyadi, 2010). The second implication is the heightened potential for state financial losses. Uncertified land is highly susceptible to claims by third parties possessing customary or colonial-era documents, such as girik, letter C, or eigendom verponding (Harsono, 2003).

In numerous instances, third parties successfully prevail in court, compelling the release of land utilized for public facilities or necessitating compensation at a value substantially exceeding the initial acquisition cost (Badan Pemeriksa Keuangan Republik Indonesia, 2023). The third implication is the impediment to the optimal utilization of regional assets. Land with ambiguous legal status presents significant challenges for third-party partnerships through schemes such as Utilization Cooperation (KSP), Build-Operate-Transfer (BOT), or other collaborative frameworks that strictly require legal certainty as a fundamental prerequisite (Andora, 2021). Consequently, this hinders regional government efforts to augment Regionally-Generated Revenue (PAD) and optimize idle assets (Supriyadi, 2010). The fourth implication is the deterioration in the quality of regional government financial reporting. The Audit Board of the Republic of Indonesia (BPK) consistently issues audit qualifications regarding the incompleteness of ownership documents for fixed assets in the form of land, which adversely affects the overall audit opinion (Badan Pemeriksa Keuangan Republik Indonesia, 2023). This demonstrates that deficiencies in land safeguarding not only impact the legal domain but also critically compromise public accountability (Hadjon, 2007).

A Reformulation Model of Local Government Land Tenure Based on the Integration of Agrarian Law and State Finance Law

The research findings establish that the ideal reformulation model for local government land tenure must be predicated on the integration of agrarian law and state finance law within a unified and harmonious systemic framework (Andora, 2021). The proposed model comprises three fundamental pillars. The first pillar emphasizes the reinforcement of agrarian legality as the primary foundation for land control. Within this paradigm, any land under the jurisdiction of a local government is mandated to possess a right-to-use certificate or a management right certificate as a prerequisite for legal tenure (Hadjon, 2007). The formal registration of land as Regional Property may only be executed subsequent to the issuance of said certificate, or alternatively, on a provisional basis with a maximum time limit of three years (Ridwan HR, 2016).

Local governments failing to fulfill this certification obligation within the stipulated timeframe shall be subject to administrative consequences, specifically a moratorium on land utilization and a reduction in the performance evaluation of the regional head (Law Number 1 of 2004). The discourse surrounding this first pillar demonstrates that the assertion of agrarian legality as the fundamental basis serves as a resolution to the longstanding conflicts concerning the principle of legality (Harsono, 2003). By establishing the certificate as an imperative prerequisite, it precludes the existence of land that is administratively recognized as a regional asset yet inherently lacks juridical legal certainty (Santoso, 2012).

The second pillar of the reformulation model entails the harmonization of regulations across various legal regimes. This objective is actualized through three specific forms of amendment (Andora, 2021). First is the amendment of Article 49, paragraph (1) of Law Number 1 of 2004, which incorporates a certification time limit, a priority obligation for ATR/BPN, and a provisional status for the registration of uncertified assets (Law Number 1 of 2004). Second is the revision of Article 42 of Government Regulation Number 28 of 2020, which establishes a safeguarding hierarchy designating juridical safeguarding (certification) as the fundamental prerequisite prior to administrative and physical safeguarding (Government Regulation Number 28 of 2020). Third is the addition of Article 45A to Government Regulation Number 24 of 1997, which formulates specialized procedures for the land certification of government agencies. This includes the provision that a Goods Inventory Card (KIB) verified by APIP and/or BPK can serve as supporting evidence during field verification, particularly for lands lacking comprehensive historical documentation (Government Regulation Number 24 of 1997).

The examination of this second pillar asserts that regulatory harmonization need not be contingent upon the protracted process of amending the UUPA; rather, it can be effectively executed through the modification of these three existing derivative regulations (Supriyadi, 2010).The third pillar entails the enhancement of institutional coordination, actualized through the formulation of a Joint Regulation involving the Minister of Home Affairs, the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), and the Minister of Finance (Ridwan HR, 2016). This regulatory framework mandates annual data synchronization between the Regional Financial and Asset Management Agency (BPKAD) and the Land Office, necessitates the allocation of certification funds within the Regional Revenue and Expenditure Budget (APBD), and requires data integration between the Regional Government Information System (SIPD) and the ATR/BPN's ATLAS/KKP. Furthermore, it stipulates the establishment of a Regional Asset Certification Coordination Team (TKSAD) in each regency and municipality, comprising the Head of BPKAD, the Head of the Land Office, and the Regional Inspector (Hadjon, 2011).

The primary mandate of the TKSAD is to mitigate technical impediments in the field and to document certification progress as a component of the Regional Government Administration Report (LPPD) (Minister of Home Affairs Regulation Number 19 of 2016). An analysis of this third pillar indicates that fortifying institutional coordination is paramount to resolving the systemic fragmentation that has persistently served as a structural barrier (Andora, 2021). Consequently, the implementation of a binding coordination mechanism ensures that the certification process for regional government land is executed in an integrated and quantifiable manner (Ridwan HR, 2016).

A Reformulation Model for Safeguarding Local Government Land Assets Based on Hierarchy and System Integration

The findings of this study establish that the reformulated model for safeguarding local government land assets must be highly hierarchical and integrated, transitioning away from the partial and fragmented approaches observed in current practices (Supriyadi, 2010). The proposed model designates juridical safeguarding as the primary foundation, administrative safeguarding as the formal documentation framework, and physical safeguarding as the mechanism for on-site protection (Government Regulation Number 28 of 2020). These three dimensions of safeguarding must be executed simultaneously while adhering to a definitive sequence of priorities (Hadjon, 2007). An academic analysis of this hierarchical model indicates that juridical safeguarding, specifically the certification of land rights, constitutes the vital initial phase; this is predicated on the fact that only a formalized land certificate provides absolute legal certainty and definitive evidentiary validity in a court of law (Santoso, 2012). Subsequent to the issuance of the certificate, administrative safeguarding is implemented through formal registration within the Asset Inventory Card (KIB) and its incorporation into local government financial statements (Supriyadi, 2010). Physical safeguarding—encompassing the construction of fencing, the installation of boundary markers, and the placement of identification signboards—is executed as the ultimate measure once the preceding two safeguarding phases have been thoroughly fulfilled (Minister of Home Affairs Regulation Number 19 of 2016).

Furthermore, this reformulation model underscores the critical imperative of integrating data systems across relevant institutional bodies (Andora, 2021). The regional asset information system (SIPD), administered by the Ministry of Home Affairs, must be seamlessly interconnected with the land information system (ATLAS/KKP) managed by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Minister of Home Affairs Regulation Number 19 of 2016). Such integration guarantees that every land parcel registered within the SIPD corresponds to a specific certificate number or, at a minimum, an active certification application number currently under process (Ridwan HR, 2016). This operational mechanism will effectively mitigate data duplication and informational discrepancies, while simultaneously optimizing the national monitoring process for land certification achievements (Corruption Eradication Commission, 2024). Additionally, the model emphasizes the profound necessity of enhancing human resource capacities within both the Regional Financial and Asset Management Agency (BPKAD) and the Land Office, coupled with the allocation of adequate and sustainable budgets designed to accelerate the certification of local government land assets (Supreme Audit Agency of the Republic of Indonesia, 2023).

The examination of this reformulation model indicates that its successful implementation is fundamentally contingent upon three critical factors (Andora, 2021). First, strong political will from both central and regional governments is imperative to elevate the certification of regional asset land to a national priority (Ridwan HR, 2016). Second, the provision of adequate budgetary resources is essential, considering the substantial expenditures required to certify thousands of land parcels across Indonesia (Supriyadi, 2010). Third, a transformation of the legal culture within regional government bureaucracies is necessary, shifting from a predominant focus on administrative safeguarding to a greater prioritization of juridical protection (Hadjon, 2007). Without the convergence of these three elements, even the most theoretically robust reformulation model will fail to achieve effective implementation (Santoso, 2012). Consequently, this research not only articulates a normatively ideal model but also distinctly identifies the pivotal factors requisite for its successful execution in practice (Andora, 2021).

CONCLUSION

Based on the comprehensive results and discussions delineated, this research concludes that the control and safeguarding of local government-owned land in Indonesia currently confront systemic issues stemming from a conflict of norms between the agrarian legal regime and the state finance legal regime. This conflict engenders regulatory dualism, wherein land may be administratively recognized as a regional asset yet lacks juridical legal certainty in the form of land rights certificates. The prevailing practice of land control by local governments is predominantly de facto, while de jure control remains incompletely fulfilled. Consequently, the legal standing of local governments in land disputes is compromised, rendering regional assets susceptible to third-party claims. Furthermore, the study identifies that regulatory disharmony between Government Regulation Number 28 of 2020 and Government Regulation Number 24 of 1997, coupled with deficient institutional coordination among the Regional Financial and Asset Management Agency (BPKAD), the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), and the Ministry of Finance, constitute primary structural impediments that decelerate and fragment the certification process of regional land assets. Therefore, a comprehensive reformulation is imperative, predicated upon three fundamental pillars: (1) fortifying agrarian legality as the foundation by mandating right-of-use or management right certificates as prerequisites for legitimate land control; (2) harmonizing cross-regime regulations through the amendment of three pivotal legal instruments (the State Treasury Law, the Government Regulation on Regional Property Management, and the Government Regulation on Land Registration); and (3) enhancing institutional coordination via a Joint Regulation among the three respective ministries, which stipulates obligations for data coordination, budget allocation, information system integration, and the establishment of a Regional Asset Certification Coordinating

Team. The successful implementation of this reformulative model is highly contingent upon three factors: the political will of both central and local governments, the provision of adequate budgetary allocations, and a paradigm shift in the bureaucratic legal culture from administrative safeguarding to juridical safeguarding.

The findings of this research can be operationalized through the promulgation of a new Government Regulation serving as a lex specialis for the certification of state and regional land assets, which delineates specific procedures for government institutional land. Furthermore, implementation necessitates amending Article 49 of Law Number 1 of 2004 by incorporating certification deadlines and provisional statuses; revising Article 42 of Government Regulation Number 28 of 2020 to establish a safeguarding hierarchy wherein certification serves as the principal prerequisite; and inserting Article 45A into Government Regulation Number 24 of 1997 to regulate field verification utilizing the Item Inventory Card (KIB) as corroborating evidence. Additionally, it requires the issuance of a Joint Regulation by the Minister of Home Affairs, the Minister of ATR/BPN, and the Minister of Finance concerning mandatory annual data coordination, the integration of the Regional Government Information System (SIPD) with the ATLAS/KKP systems, and the establishment of Regional Asset Certification Coordinating Teams across all regencies and municipalities. Local governments must also ensure the sustainable allocation of certification budgets within the Regional Revenue and Expenditure Budget (APBD) and integrate certification milestones as key performance indicators for regional heads within the Local Government Administration Report (LPPD).

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