

Legal Status of Transmigration Land Which Has Been Auctioned By The State Assets Service Office and Auction Until The Certificate is Issued

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Abstract

This study aims to examine the legal status of land rights that can be owned by transmigration communities and the legal protection that can be taken by the community if they feel disadvantaged. The research method used is normative legal research using a statutory approach and a case approach. The government is holding a transmigration program for population equality throughout Indonesia, therefore, a transmigration area was formed as a residential area and a place of business for the community to improve the community's standard of living. Over time, the need for land has increased because community growth is not comparable to the available land, so it often causes disputes. One example of a land dispute that occurs is transmigration land owned by the community that has changed ownership to company land, where the transmigration land owned by the company was obtained by winning an auction. This study was conducted to determine the appropriate legal system in resolving transmigration land disputes whose land is used as an auction object, as well as to find out about the legal protection received by transmigration communities. The results of the study are that the legal status of transmigration land that is used as an auction object should still belong to the transmigration community because transmigration land cannot be transferred, while legal protection for transmigration communities should mean that the land is not used as an auction object by the local government because it still belongs to the transmigration community.

Keywords: *Disputed Land; Legal Protection; Transmigration Land*

1. INTRODUCTION

Historically, the first transmigration in Indonesia was carried out by the Dutch in 1905. The term transmigration was finally introduced by Ir. Soekarno in 1927. After Indonesia's independence, in 1950 the first transmigration was carried out by moving the population of Central Java to Lampung. The government held the first transmigration program as it was intended to equalize the population so that it was evenly distributed in each region because many people only wanted to live on the island of Java which caused an uneven population growth and one of the government's attractions so that people on the island of Java would transmigrate was by providing land to support the needs of the community.¹ This is stated in Law Number 29 of 2009, Amendment to Law Number 15 of 1997 Concerning Transmigration, which defines transmigration as a voluntary move by the community to improve welfare and live in a transmigration area organized by the government.² In this case, the programs developed include developing business opportunities in the agricultural sector, land assets, housing, health and education facilities,

¹ Sara Karuniasari, 'Adaptasi Masyarakat Transmigrasi Jawa Terhadap Kebudayaan Jambi Di Desa Wanareja Rimbo Ulu Tebo 1978-1990' (Universitas Jambi, 2024).

² Fran Adam, 'Pengaruh Transmigrasi Terhadap Perkembangan Wilayah Kepenghuluan Labuhan Tangga Baru, Kecamatan Bangko, Kabupaten Rokan Hilir' (Universitas Islam Riau, 2021).

development in the road sector, and the economy.³ Still with the same regulations, the stages of transmigration implementation include planning transmigration areas, development of transmigration areas, and development of transmigration communities and transmigration areas.⁴

According to the Big Indonesian Dictionary (KBBI), land is the layer of the earth that is above all, the condition of the earth in a place, the layer of the earth that is given boundaries, and materials from the earth; earth as a material in the form of sand, marl, rock, and so on. Meanwhile, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that land has a social function, which includes the earth, water, and the wealth contained therein being controlled by the state and used for the prosperity of the people.⁵ Government Regulation Number 24 of 1997 only defines land as part of the earth's surface, which is a unit of bounded area. Meanwhile, based on Government Regulation Number 18 of 2021, the land is defined as: "Land is the surface of the earth, either in the form of land or covered by water, including space above and within the body of the earth, within certain limits whose use and utilization are directly or indirectly related to the use and utilization of the earth's surface".

Land provided by the government is the main capital for transmigration communities. Maintaining land is the same as maintaining life and living.⁶ In human life, having land plays a very important role because humans will be in contact with the land forever.⁷ However, the need for land is not comparable to the amount of land available, causing conflicts of interest from various parties who need and want the land, ranging from individuals, business entities, and government agencies.⁸ This conflict can cause disputes.⁹ Many cases of land disputes occur in society, causing the government to have to provide counseling on the importance of proof of land ownership in the form of certificates.¹⁰ Land

³ Nathalia Tanikwele, Salmon Eliazer Marthen Nirahua, and Erick Stenly Holle, 'Kewenangan Pemerintah Daerah Dalam Pemberian Hak Milik Atas Tanah Bagi Transmigran Di Kabupaten Maluku Tengah', *TATOHI: Jurnal Ilmu Hukum*, 3.6 (2023), p. 603, doi:10.47268/tatohi.v3i6.1820.

⁴ Ibrahim Chalid, *Transmigrasi: Dari Diferensiasi Ke Kohesi Sosial* (Deepublish, 2023).

⁵ Isnaini and Anggreni. A Lubis, *Hukum Agrari : Kajian Komprehensif* (CV. Pustaka Prima, 2022).

⁶ Layyin Mahfiana, 'Sengketa Kepemilikan Hak Atas Tanah Di Kabupaten Ponorogo', *Kodifikasia*, 7.1 (2013), doi:10.21154/kodifikasia.v7i1.215.

⁷ Anggita Anggita, 'Penyelesaian Sengketa Konflik Kepemilikan Tanah Dengan Pendekatan Litigasi Di Pengadilan Tata Usaha Negara', *Savana: Indonesian Journal of Natural Resources and Environmental Law*, 1.01 (2024), pp. 24–38, doi:10.25134/savana.v1i01.30.

⁸ Endang Pandamdari Feyskia Iman Sari Kusumawardhani, 'Tinjauan Yuridis Pemberian Ganti Kerugian Atas Penguasaan Tanah Secara Ilegal Dan Upaya Hukum Warga Serta Pemerintah Kota Bandung Berdasarkan UU Nomor 51 PRP Tahun 1960 (Studi Kasus RW 11 Kelurahan Tamansari Kota Bandung)', 1.2 (2019), doi:https://doi.org/10.25105/refor.v1i2.10468.

⁹ Dinda Ayu Putri Septiani and Edith Ratna, 'Perkembangan Penyelesaian Sengketa Pertanahan Di Luar Pengadilan Melalui Proses Mediasi', *Notarius*, 15.1 (2022), pp. 430–39, doi:https://doi.org/10.14710/nts.v15i1.46052.

¹⁰ Sulasningsih Sulasningsih, 'Peralihan Hak Atas Sertipikat Tanah Hak Milik Eks Transmigrasi Yang Dilakukan Dengan Jual Beli Bawah Tangan (Studi Kasus Para Petani Sawit Di Kabupaten Kampar)', *Lex Librum : Jurnal Ilmu Hukum*, 6.1 (2019), pp. 57–76, doi:http://doi.org/10.5281/zenodo.3600659.

disputes are defined as problems that occur due to clashing needs for land.¹¹ In this case, improvements are needed in the use and arrangement of land for the prosperity of the community, and also the certainty of the law in it.¹² Based on this understanding, land disputes create negative impacts in all fields, so legal uncertainty arises regarding things that are the source of problems, ranging from objects, subjects, and relationships with the parties.¹³ This legal certainty is what causes the space above the land that is the object of the dispute to be in the status quo, so that it cannot be utilized. One of the land disputes that occurred was the existence of transmigration communities who could no longer manage or re-manage their land because the land was already controlled by a company with a Right to Cultivate (HGU) certificate, where the company obtained the land from an auction conducted by the State Asset and Auction Service Office. The global definition of an auction is a sale of goods that is open to the public, negotiated at a written or verbal price that increases or decreases to reach the highest price, preceded by an auction announcement.¹⁴ The principles regarding auctions include the principles of openness, competition, justice, legal certainty, efficiency, and accountability.

In the topics discussed by the researcher, there are several studies that are almost similar, including, first, a journal written by Spynozza Maizar, in this study it focuses more on the regulatory system for how to resolve transmigration land disputes. Second, a journal written by Onny Medaline, in this study it focuses more on the legalization of transmigration land assets as a form of land reform principle implementation program.¹⁵ Third, a journal written by Sovia Vivianti Alfit, in this study it focuses more on the reasons for the occurrence of disputes caused by the lack of coordination with indigenous communities, resulting in inequality in land rights ownership.¹⁶

The land disputes that occurred caused concerns among transmigration communities because the land that should still be controlled and utilized turned out to have been transferred, and the land rights changed. The legal status of the land owned by transmigration communities now has no definite legal certainty. The large number of land dispute cases and problems that arise due to clashing needs for land have led researchers to

¹¹ Imman Yusuf Sitingjak, 'Aspek Hukum Mediasi Atas Sengketa Tanah Oleh Pihak BPN', *Jurnal Ilmiah Maksitek*, 4.3 (2019), pp. 10–17.

¹² Putu Diva Sukmawati, 'Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia', *Jurnal Ilmu Hukum Sui Generis*, 2.2 (2022), pp. 89–95, doi:<https://doi.org/10.23887/jih.v2i2.1015>.

¹³ Irsyadul Muttaqin Iwan Permadi, 'Potensi Sengketa Hak Atas Tanah Di Indonesia', *Justisi*, 9.2 (2023), pp. 201–16, doi:[10.33506/jurnaljustisi.v9i2.2345](https://doi.org/10.33506/jurnaljustisi.v9i2.2345).

¹⁴ Yudha Cahya Kumala, *Lelang Indonesia: Serba Serbi Lelang Dan Pelaksanaannya Di Indonesia* (Deepublish, 2021).

¹⁵ Onny Medaline and Juli Moertiono, 'Legalisasi Aset Tanah Transmigrasi Dalam Rangka Penguatan Reforma Agraria Di Sumatera Utara', *Jurnal Ilmiah Penegakan Hukum*, 10.1 (2023), pp. 21–32, doi:[10.31289/jiph.v10i1.8862](https://doi.org/10.31289/jiph.v10i1.8862).

¹⁶ Sovia Vivianti Alfit and Imam Koeswahyono, 'Penyelesaian Sengketa Hak Atas Tanah Petuanan Dalam Hal Penyediaan Tanah Untuk Penyelenggaraan Program Transmigrasi', *Jurnal Hukum Dan Kenotariatan*, 6.1 (2022), pp. 258–77, doi:<https://doi.org/10.33474/hukeno.v6i1.14158>.

focus on the legal status and protection of transmigration communities whose land is used as an auction object.

2. METHOD

The research entitled *Legal Status of Transmigration Land Whose Land Has Been Auctioned by KPKNL Until the Certificate Is Issued* uses a normative legal research method. This study uses a statutory approach and a case approach. The legal materials used in the study include the 1945 Constitution of the Republic of Indonesia, Law Number 29 of 2009 Amendment to Law Number 15 of 1997 concerning Transmigration, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 Management Rights, Land Rights, Apartment Units, and Land Registration, Regulation of the Minister of Finance Number 213 / PMK.06 / 2020 concerning Auction Implementation Guidelines. Meanwhile, the secondary legal materials used include library research that examines document studies using various secondary data such as laws and regulations, court decisions, and legal theories.¹⁷ The analysis technique used in the research is qualitative data, namely data or information in the form of clear and easy-to-understand sentences, in order to obtain results from the research being studied.

3. RESULTS AND DISCUSSION

3.1 Legal Status of Transmigration Land Whose Land is Used as an Auction Object

Every citizen has the same position in the eyes of the law; in this case must obey the applicable law without exception, by Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Law, in its definition, is the entirety of regulations consisting of norms and sanctions.¹⁸ In addition, it is also the rules and principles that regulate order in terms of realizing the implementation of the rules as a reality in the community environment. Laws are made to regulate and maintain order and justice so that chaos can be minimized or prevented. Law without certainty will lose its meaning because it cannot be used as a guideline for behavior for everyone. Following the principle of *ubi jus ibi jus nullum*, which means where there is no legal certainty, then there is no law.¹⁹

Transmigration is a voluntary population movement carried out by the community to improve welfare and be able to live and settle in the transmigration area implemented by the government, where the meaning is stated in Law Number 29 of 2009, Amendment to Law Number 15 of 1997 Concerning Transmigration. Transmigration land is land given by the government to transmigrants where the land comes from management rights under Article 29 paragraph (2) of Government Regulation Number 3 of 2014 Concerning the

¹⁷ Muhaimin, *Metode Penelitian Hukum* (Mataram University Press, 2020).

¹⁸ Nadya Thamariska, Suzanalisa Suzanalisa, and Sarbaini Sarbaini, 'Penerapan Asas Persamaan Dihadapan Hukum (Equality Before The Law) Terhadap Pelaku Tindak Pidana Umum Suku Anak Dalam (SAD) Di Wilayah Hukum Polres Sarolangun', *Legalitas: Jurnal Hukum*, 15.1 (2023), doi:10.33087/legalitas.v15i1.438.

¹⁹ Aris Munandar Asyri Febriana, M. Arba, 'Implikasi Hukum Pembuatan Surat Kuasa Membebaskan Hak Tanggungan (SKMHT) Yang Dibuat Oleh Pejabat Yang Sudah Tidak Berwenang', *Jurnal IUS Kajian Hukum Dan Keadilan*, 9.1 (2021), pp. 96–111, doi:https://doi.org/10.29303/ius.v9i3.921.

Implementation of Law Number 15 of 1997 Concerning Transmigration as amended by Law Number 29 of 2009 Concerning Amendments to Law Number 15 of 1997 Concerning Transmigration. The land occupied by transmigration communities is land provided by the government to be managed and developed into business activities that are useful and successful, with land ownership rights status under the type of transmigration and main business patterns as stated in Article 29 paragraph (4) of Government Regulation Number 3 of 2014. The rights of transmigration communities to receive guidance, assistance and assistance are also regulated in government regulations.²⁰ In its implementation, the government, as the organizer of the transmigration program, is responsible for providing land for transmigration communities. After the area is determined as the location and area for developing transmigration communities, the transmigration organizer prepares the land for the needs of transmigrants who will live in the area.²¹ The implementation of transmigration is directed at the arrangement and distribution of the population that is even and also balanced with the carrying capacity of nature and a safe environment, in addition to improving the quality of human resources and realizing community integration.²²

In the case raised by the researcher, the community that participated in the transmigration program was inconsistent in managing the land that had been given by the government to be a business to improve their standard of living, however, the transmigration community abandoned the land and no longer took care of it. When the transmigration community wanted to re-cultivate their land, it turned out that it could no longer be managed because the land or land was already owned by a PT (Company) with ownership rights in the form of HGU (Right to Cultivate) obtained from the auction results held by the local KPKNL (State Assets and Auction Service Office).

Government Regulation Number 3 of 2014 concerning the Implementation of Law Number 15 of 1997 concerning Transmigration as amended by Law Number 29 of 2009 concerning Amendments to Law Number 15 of 1997 concerning Transmigration, states that: Article 31 paragraph (1): "Land given to transmigrants and residents who move to new settlements cannot be transferred, unless it has been owned for at least 15 (fifteen) years since placement".

Article 31 paragraph (2): "In the event of a transfer outside the provisions, the land rights for transmigrants and residents are revoked".

With the revocation of land rights, the land returns to being controlled by the state. If a transfer is made, it will certainly have legal consequences, namely that the validity of land

²⁰ Bakti Spynoza Maizar, 'Sengketa Lahan Antara Transmigran Dan Penduduk Setempat (Suatu Kajian Antropologi Hukum Di Kabupaten Nagan Raya)', 2.1 (2018), pp. 164–74.

²¹ Irwan Haryo Wardani, 'Perlindungan Hak Atas Penguasaan Tanah Transmigrasi Di Lahan Usaha II UPT Seunaam IV Provinsi Aceh', *Jurnal Ilmiah Online*, 53.9 (2013), pp. 1689–99.

²² Wildiani, 'Analisis Hukum Tentang Status Kepemilikan Hak Atas Tanah Bagi Transmigrasi', *Journal Article/Legal Opinion*, 2017.

ownership cannot be confirmed by registering the transfer of land rights at the land office.²³ Land that is re-controlled by the state is used for development and the development of transmigration areas. However, the fact is not appropriate because in this case the land was not managed and developed properly; in fact, the local government used the land as an auction object. It should be noted that the transmigration community settled and managed the land and land from 1999 to 2009, which means 10 (ten) years of occupying the land and in 2012, it was discovered that the land had been controlled by a PT (Company) with a Right to Cultivate (HGU). So the transmigration community is not wrong if they feel that the land still belongs to them because, according to the regulations, the land cannot be transferred.

If there is a loss of land rights in the case, then the land cannot be indicated as abandoned land. The requirements for land to be considered abandoned land based on Government Regulation Number 36 of 1998 include intentionally not being used or utilized by the rights holder, and land that is not used by the circumstances, nature, or purpose of granting the rights.

Therefore, the land owned by the transmigration community, although some of the land was not managed properly, the transmigration community still lives in the transmigration area, so their land cannot be indicated as abandoned land. The local government should inform the transmigration community regarding the procedures for managing the land and the risks if the land cannot be reoccupied, as well as legal protection for land rights owned by the transmigration community. Based on the Regulation of the Minister of Finance Number 213 / PMK.06 / 2020 concerning Procedures for Implementing Auctions, states that one of the requirements for an auction is that the land is not in dispute. However, in this case, the auction party did not know that the land was disputed land because, based on the stages of the auction implementation carried out by the seller of the land object, it was under the auction regulations. So that the buyer/winner of the land object feels that they have followed the auction procedures properly. However, the auction can be canceled if the auction conditions do not comply with the provisions, one of which is if the auction object is involved in a dispute. This is in accordance with the transmigration law, where the land cannot be transferred. Meanwhile, for land certificates issued by the National Land Agency (BPN) for Companies with the status of Cultivation Rights (HGU), they can only be implemented after the release of these rights has been completed in accordance with the procedures stipulated in the applicable laws and regulations, in accordance with Government Regulation Number 40 of 1996.

In this case, the legal status of the transmigration land still belongs to the transmigration community, even though it was not managed and maintained properly, the

²³ Rofiq Laksamana Asta Tri Setiawan, Sri Kistiyah, 'Problematika Keabsahan Jual Beli Tanah Di Bawah Tangan Tanah Di Kawasan Transmigrasi', *Jurnal Tunas Agraria*, 4.1 (2021), pp. 22–39, doi:10.31292/jta.v4i1.133.

land is not included in the indication of abandoned land. This is because there is a process that must be gone through before being designated as abandoned land, namely the inventory process of land indicated as abandoned, which is carried out by the land office.²⁴ In addition, if the land already has the status of Right to Cultivate which is owned by the Company, the transmigration community should be given compensation which is charged to the holder of the Right to Cultivate (HGU) as stated in Article 4 paragraph (4) of Government Regulation Number 40 of 1996 which reads: "If on the land granted with the Right to Cultivate there are plants and/or buildings belonging to another party whose existence is based on a legal right, the owner of the building and plants will be given compensation which is charged to the new Right to Cultivate holder."

Meanwhile, the legal status of land ownership rights owned by companies with the status of Land Use Rights (HGU) is less clear because the land is disputed. The abolition of ownership of Land Use Rights (HGU) is stated in Article 34 of Law Number 5 of 1960, namely the term ends; terminated before the term ends because a condition is not met; released by the rights holder before the term ends; revoked for public interest; the land is abandoned; the land is destroyed; a person or legal entity that has a Land Use Rights (HGU) and no longer meets the requirements within 1 (one) year is required to release or transfer the right to another party that meets the requirements.²⁵

3.2 Legal Protection for Communities Whose Land is Auctioned

CST. Kansil views legal protection as a legal effort that must be provided by law enforcement officers to provide a sense of security, both mentally and physically, from disturbances and various threats from any party.²⁶ Meanwhile, according to Philipus M. Hadjon, legal protection facilities are divided into 2 parts, namely preventive legal protection facilities and repressive legal protection facilities.²⁷ In this preventive legal protection facility, legal subjects are allowed to submit objections or opinions before a government decision is final to prevent disputes. Repressive legal protection facilities aim to resolve disputes. The Big Indonesian Dictionary (KBBI) defines protection as things or actions, and so on, to protect. While law is a regulation or rule that is considered binding, which is confirmed by the authorities or government, or also other regulations to regulate social interaction. So legal protection is an effort to protect carried out by the government

²⁴ Nesia Arsyah, Liza Evita, and Amir Mahmud, 'Penetapan Tanah Terlantar Yang Berasal Dari Hak Guna Bangunan PT. Mojokerto Industrial Park: Studi Putusan Mahkamah Agung Nomor 90 PK/TUN/2016', *ADIL: Jurnal Hukum*, 12.2 (2022), doi:10.33476/ajl.v12i2.2114.

²⁵ Supriyanto Afifah Khairunnisa, 'Sengketa Tanah Antara PT. X Dengan Masyarakat Di Desa Darmakradenan Kecamatan Ajibarang Kabupaten Banyumas Provinsi Jawa Tengah', *Business Preneur: Jurnal Ilmu Administrasi*, 1.1 (2019).

²⁶ Fitayatul Ilmiah Mushafi, Emi Badriatur Rif'ah, 'Perlindungan Hukum Terhadap Hak-Hak Masyarakat Desa Dalam Kajian Terhadap UU No. 6 Tahun 2014 Tentang Desa', *Legal Studies Journal*, 3.2 (2023), pp. 75–90, doi:https://doi.org/10.33650/laj.v3i2.7549.

²⁷ Edy Purwito, 'Konsep Perlindungan Hukum Konsumen Dan Tanggung Jawab Hukum Pelaku Usaha Terhadap Produk Gula Pasir Kadaluarsa Di Kota Surabaya', *Dekrit: Jurnal Magister Ilmu Hukum*, 13.1 (2023), pp. 109–29, doi:10.56943/dekrit.v13n1.152.

with many existing regulations. Legal protection can be interpreted as an effort made by the government or authorities to protect the community with many existing regulations. In this case, people who participate in the transmigration program held by the government should be able to use the land or land to be managed and maintained properly. In the event of a transfer outside the provisions, the land rights for transmigrants are revoked. So that the legal protection given to transmigration communities is the legal certainty of the land so that it will not be traded or auctioned by the local government. In this case, the local government must also provide socialization to transmigration communities about the importance of managing land properly as preventive legal protection, where transmigration communities are allowed to submit objections or opinions before a government decision is final. In addition, if transmigration communities feel that their land rights have been taken or controlled by another party, they must receive compensation and repressive legal protection from the party that controls the rights to the land. Therefore, legal certainty is needed in the land sector by making regulations to protect people whose rights are controlled without being known. In this case, regulations that are factual and firm are expected to reduce the occurrence of land disputes.

4. CONCLUSION

Based on the explanation above, it can be concluded as follows the legal status of transmigration land that is used as an auction object, based on Government Regulation Number 3 of 2014 Article 31 paragraphs (1) and (2) still belongs to the transmigration community because the land is not indicated as abandoned land. It can be categorized as abandoned land if the requirements are in accordance with the provisions regulated, and the transmigration land cannot be transferred without the consent of the community. Meanwhile, the status of the PT that has the Right to cultivate is less clear because the land is disputed. Also, legal protection should be obtained by transmigration communities because the land that has been given to them should not be able to be bought and sold, let alone auctioned. The local government should be able to provide socialization to transmigration communities regarding the importance of managing land properly, as preventive legal protection, transmigration communities are allowed to file objections or opinions before a government decision is final. In which objections from the community can file a lawsuit with the State Administrative Court (PTUN).

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