

# **Incomplete Sanctions for the Non-Procedural Transfer of Non-Public Village Treasury Land**

**Adinda Salma Rachmantya<sup>1\*</sup>, Hamidi Masykur<sup>1</sup>, Supriyadi<sup>1</sup>**

<sup>1</sup>Faculty of Law, Brawijaya University Malang, Indonesia

\*Corresponding Author E-mail [adindasalma2000@gmail.com](mailto:adindasalma2000@gmail.com)

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## **ABSTRACT**

This study aims to analyze the regulatory gap concerning sanctions in the transfer of village treasury land for non-public purposes that are not conducted in accordance with procedures under Minister of Home Affairs Regulation No. 3 of 2024, and to formulate an ideal sanction framework to ensure legal certainty and the protection of village assets. This research employs a normative juridical method with statutory, conceptual, and case approaches, supported by primary, secondary, and tertiary legal materials, and analyzed descriptively. The findings indicate that although the regulation provides more detailed procedures for the transfer of village treasury land, there is still a normative gap regarding firm sanctions for procedural violations. This condition weakens legal enforceability, creates opportunities for abuse of authority, and generates legal uncertainty in practice, as reflected in the case of Pandanlandung Village. Therefore, a reconstruction of sanction arrangements is required, encompassing administrative, civil, and criminal classifications, along with an integrated law enforcement mechanism. Such regulation is expected to enhance regulatory effectiveness, strengthen the protection of village assets, and ensure legal certainty in the management of village treasury land.

**Keywords** : incompleteness of norms, legal sanctions, village treasury land, transfer of village assets, legal certainty.

## **1. INTRODUCTION**

Land, as part of agrarian resources, holds a strategic position in the life of society and the administration of the state. In the Indonesian legal system, state control over land as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia constitutes the normative foundation for the state to regulate, manage, and supervise land utilization in order to achieve the greatest prosperity of the people. This concept of control is public in nature, granting the state authority to determine policies, regulations, and administrative actions related to land utilization (Harsono, 2008). One implementation of this principle is reflected in the management of village treasury land as part of village assets.

Village treasury land is a strategic asset that functions not only as a source of village revenue but also as an instrument to support governance, development, and community empowerment at the village level. Within the framework of administrative law, the management of village treasury land must be based on the principles of legality, accountability, and transparency to prevent irregularities (Widjaja, 2014). However, in practice, the management of village assets, particularly in relation to the transfer of village treasury land, still faces various legal issues of both structural and implementation nature.

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In recent regulatory developments (state of the art), the management of village assets has been strengthened through Minister of Home Affairs Regulation No. 3 of 2024, which provides more detailed provisions regarding village asset governance, including the mechanism for transferring village treasury land. Normatively, this regulation is intended to strengthen legal certainty and improve the quality of village asset governance, which was previously regulated in more general terms in earlier regulations. Nevertheless, despite these regulatory updates, the implementation of these norms still leaves fundamental issues unresolved, particularly concerning the regulatory aspect of sanctions.

In academic and normative discourse, previous studies have generally examined village asset management from the perspective of village governance, good governance principles, and general administrative law aspects. Several studies have also highlighted the importance of supervision and accountability in village treasury land management. However, these studies tend to focus on conceptual aspects of asset management and have not specifically addressed the normative gap regarding sanctions in unauthorized transfers of village treasury land under the latest regulation, particularly Minister of Home Affairs Regulation No. 3 of 2024. This reflects a significant research gap, namely the absence of a systematic and specific analysis of normative weaknesses in sanction regulation and the formulation of an ideal reconstruction model of sanctions within the context of administrative law governing village assets.

This issue becomes more prominent because, in practice, unauthorized transfers of village treasury land still frequently occur. This is not only due to weak supervision but also due to the absence of clear and operational legal consequences within the applicable regulation. The incompleteness of sanction norms is a critical issue, as in legal theory, sanctions constitute an essential element in ensuring the effectiveness of a legal norm. Sanctions function not only as coercive instruments but also as preventive mechanisms to deter legal violations (Soekanto, 2007).

Without clear, firm, and operational sanction provisions, legal norms tend to lose their enforceability and fail to provide optimal legal protection. This condition also undermines the achievement of legal objectives, namely certainty, justice, and utility (Asshiddiqie, 2010). Empirically, weak sanction regulation also reinforces patterns of irregularities in village treasury land management, as village officials do not bear proportional legal responsibility for deviant actions (Rahardjo, 2018).

Furthermore, from a good governance perspective, this condition reflects weaknesses in accountability and transparency in village governance. Village officials, who are supposed to be responsible for asset management, instead have excessive discretionary power without effective



control mechanisms. This contradicts the principles of good governance, which emphasize accountability, transparency, and legal certainty (Widodo, 2019).

From a normative standpoint, the incompleteness of sanctions in Minister of Home Affairs Regulation No. 3 of 2024 also indicates disharmony within the legislative system. Ideally, every regulation should be harmonized both vertically and horizontally with other legal instruments. However, in this case, the regulation of sanctions has not been fully integrated with higher-level laws or other sectoral regulations, creating legal loopholes that may be exploited by certain parties (Asshiddiqie, 2020).

Based on these conditions, there is an academic and normative urgency to address the research gap concerning the sanction framework in the transfer of village treasury land. This research is important not only to identify regulatory weaknesses but also to propose a more systematic and implementable normative reconstruction. Accordingly, the legal issues addressed in this study are: (1) how the incompleteness of sanction regulations in the unauthorized transfer of village treasury land for non-public purposes under Minister of Home Affairs Regulation No. 3 of 2024 can be analyzed, and (2) how to formulate an ideal sanction framework to ensure legal certainty and protection of village assets.

This study aims to normatively analyze the inadequacy of sanction provisions in the aforementioned regulation and to formulate a more comprehensive, systematic, and applicable sanction model. Thus, this research is expected to contribute both theoretically to the development of legal studies, particularly in agrarian law and administrative law, and practically as a policy recommendation for improving relevant legislation. The urgency of this research lies in the importance of protecting village assets as part of state wealth that must be sustainably managed. Without adequate sanction mechanisms, the potential for irregularities will persist and become difficult to control. Therefore, a reconstruction of legal norms is required to provide both a deterrent effect and legal certainty for all stakeholders involved.

Theoretically, this research contributes to the development of legal science, particularly in administrative law and agrarian law concerning village asset management. Practically, the findings are expected to serve as a reference for policymakers in improving regulations and as guidance for village officials in carrying out their duties in accordance with applicable legal provisions. Ultimately, this study not only identifies existing problems but also offers an alternative solution in the form of a clearer, more assertive, and implementable sanction framework. This proposed solution is expected to address the weaknesses in Minister of Home Affairs Regulation No. 3 of 2024 and strengthen the village treasury land management system in a sustainable and equitable manner.

## 2. RESEARCH METHODS

This study employs a normative legal research method (doctrinal legal research) focusing on the analysis of legal norms concerning the regulation of sanctions in the transfer of village treasury land for non-public interests conducted in violation of procedural requirements as stipulated in Minister of Home Affairs Regulation No. 3 of 2024 on Village Asset Management. This method is chosen because the issue under examination relates to incomplete norms, which create legal uncertainty and potential disharmony in their implementation. The approaches used in this study include the statutory approach as the primary approach, supported by a conceptual approach and a case approach. The statutory approach is emphasized as the primary method because the analysis of norm structures, regulatory hierarchy, and the consistency of sanction arrangements in village asset management constitutes the central focus of this research. This approach is conducted by examining relevant legislation, including Law No. 6 of 2014 on Villages and its amendments, Minister of Home Affairs Regulation No. 1 of 2016 on Village Asset Management, and Minister of Home Affairs Regulation No. 3 of 2024. Meanwhile, the conceptual approach is used to examine legal doctrines and concepts related to sanctions, village asset management, and the principle of legal certainty in the formation of legislation. The case approach serves as a supporting method to analyze legal practices or events related to the transfer of village treasury land in order to understand the implementation of norms in practical reality. The types and sources of legal materials in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations relevant to the research object. Secondary legal materials consist of legal literature such as books, scientific journals, previous research, and scholarly opinions relevant to the issues of sanction regulation and village asset management. Tertiary legal materials include legal dictionaries, encyclopedias, and other sources that provide additional explanations for primary and secondary legal materials. The technique of collecting legal materials is conducted through library research, namely by inventorying, identifying, and reviewing various legal sources relevant to the research problem. All collected legal materials are then systematically classified according to the main issues under study. The technique of legal material analysis in this study is carried out qualitatively using legal interpretation and legal reasoning methods. Legal interpretation is conducted through grammatical, systematic, and teleological interpretation to understand the meaning of norms and identify deficiencies in sanction regulation. Furthermore, a prescriptive analysis is conducted to formulate an ideal regulatory concept for sanctions in the transfer of village treasury land in order to ensure legal certainty and protect the interests of rural communities. Thus, this study is expected to produce a comprehensive, systematic, and argumentative analysis of existing incomplete norms, as well as provide



recommendations for regulatory improvements in the future, based on the normative framework of legislation as the primary analytical foundation

### 3. RESULTS AND DISCUSSION

#### **Incompleteness of Norms Regarding Sanctions for the Transfer of Village Treasury Land for Non-Public Interest Purposes Conducted in Non-Compliance with Procedures under Minister of Home Affairs Regulation No. 3 of 2024**

The research findings indicate that Village Treasury Land within the framework of Minister of Home Affairs Regulation Number 3 of 2024 holds a strategic position as a village asset that functions both as a source of Village Original Income (Pendapatan Asli Desa/PADes) and as an instrument for the social welfare of village officials. Normatively, this land is under the control and/or ownership of the village government and is recorded in the village inventory. However, there exists a gap between normative provisions and their implementation, particularly in the practice of transfer of rights that does not fully comply with the stipulated procedures (Widodo, 2019).

Historically, Village Treasury Land originates from customary (ulayat) land or land acquired by the village, thus possessing a communal character that requires strict legal protection. Nevertheless, existing regulations have not fully accommodated this characteristic, thereby creating room for procedural deviations in asset management at the village level (Rahardjo, 2018). Furthermore, its utilization as “bengkok” land (land allocated as compensation for village officials) remains dominant and is normatively valid as a form of remuneration. However, in practice, there has been a functional shift toward more personal control, indicating weaknesses in supervision and potential conflicts of interest (Sutedi, 2020).

Regarding land transfer, Minister of Home Affairs Regulation No. 3 of 2024 essentially restricts the mechanism through land exchange schemes to ensure asset sustainability. However, research findings show that formal procedures such as village deliberation (musyawarah desa) and tiered approval processes are often not substantively implemented, resulting in decisions that tend to be elitist and merely administrative in nature (Widodo, 2019). In the context of transfers for National Strategic Projects, although the regulation requires independent valuation and land replacement obligations, in practice delays in providing replacement land are still found, resulting in temporary depletion of village assets (Arba, 2021). Meanwhile, for public interest purposes, the flexibility in compensation forms opens the possibility of mismatches between compensation value and the economic value of the land, indicating weak control and valuation mechanisms (Harsono, 2017).

The most problematic condition occurs in transfers for non-public interests, where private development practices such as housing or industrial estates show indications of value imbalance and potential village losses due to low-quality replacement land (Santoso, 2020). This strengthens the indication of moral hazard in village asset management, where village interests are not always the primary orientation (Rahardjo, 2018). From the perspective of procedural compliance, village deliberation, which should function as an instrument of participation, often becomes merely formalistic and does not reflect genuine deliberation. This condition explains why violations continue to occur despite the existence of detailed procedural norms (Widodo, 2019).

The most crucial finding is the absence of explicit sanctions within Minister of Home Affairs Regulation No. 3 of 2024 concerning violations in the transfer of Village Treasury Land, particularly for non-public interests. This normative gap creates weaknesses in law enforcement, as there are no clear legal consequences for procedural violations. From a legal theory perspective, this reflects the incompleteness of norms due to the absence of effective sanctions as a coercive instrument for compliance (Kelsen, 2008). Although the legal system generally recognizes administrative, civil, and criminal sanctions, in this context there is no explicit regulation that integrates these three mechanisms in a firm and coherent manner (Hadjon, 2015).

Administrative sanctions may serve as corrective instruments; however, the lack of detailed regulation makes their application discretionary and potentially inconsistent (Sutedi, 2020). From a civil law perspective, compensation mechanisms are rarely pursued due to limited legal capacity at the village government level. Meanwhile, the criminal law approach is also ineffective because there are no specific criminal provisions within the regulation, thus relying only on general provisions that are less contextually relevant (Arba, 2021; Harsono, 2017).

Thus, the violations that occur can be understood as a result of a combination of normative incompleteness, weak supervision, and the absence of firm sanctions. This condition creates a broad discretionary space in the management of Village Treasury Land, which is potentially subject to abuse (Widodo, 2019).

Theoretically, these findings confirm that legal effectiveness does not solely depend on the existence of procedural norms, but also on the completeness of the sanction structure and enforcement mechanisms attached to them. Therefore, regulatory reconstruction is needed, not only in an administrative-procedural sense but also in strengthening sanction mechanisms to achieve legal certainty and protection of village assets (Kelsen, 2008).

**Ideal Regulatory Framework for Sanctions on the Transfer of Village Treasury Land for Non-Public Interest Purposes**

The regulation concerning the transfer of Village Treasury Land under Minister of Home Affairs Regulation No. 3 of 2024 has essentially established a relatively strict procedural framework, ranging from village deliberations to tiered approvals from the regional government and the Minister of Home Affairs. Normatively, this mechanism is intended as a control instrument to ensure that village assets remain within the corridor of public interest (Widodo, 2019). However, the research findings indicate a fundamental weakness, as the regulation is not accompanied by an adequate sanction design, thereby limiting the coercive force of the norm.

The absence of explicit sanctions for violations of the transfer procedures of Village Treasury Land demonstrates the existence of an incomplete norm within the regulation. In practice, this creates room for moral hazard among village officials, as there are no clear legal consequences for procedural deviations (Arifin, 2020). Consequently, the existing procedural norms tend to be administrative and formal in nature, yet weak in terms of enforcement.

Research data also show that procedural violations still frequently occur, particularly in the form of transfers carried out without tiered approval or without a valid basis of public interest. This condition indicates that the existing norm has not yet produced an effective preventive effect. From a legislative theory perspective, norms without sanctions tend to be declarative rather than operational (Asshiddiqie, 2018), and they also generate legal uncertainty in their implementation (Masykur, 2019). As a result, law enforcement becomes inconsistent because it depends on the interpretation of officials outside the regulatory framework (Rahardjo, 2017).

From a legal theoretical perspective, sanctions constitute an essential element in maintaining the binding force of norms, not only as punishment but also as instruments of social control and prevention. The absence of clear sanctions causes norms to lose their coercive character inherent in law (Kelsen, 2006). In addition, the lack of classification of violations also reflects weak normative design, as there is no differentiation between minor and serious violations, leading to disproportional enforcement (Marzuki, 2021).

Theoretically, this condition reflects a gap between ideal norms and positive norms, where obligations and prohibitions are not followed by structured legal consequences (Soekanto, 2015). The impact is evident in the low level of compliance, since in legal compliance theory, the effectiveness of norms is strongly influenced by the clarity of sanction risks (Tyler, 2006). Furthermore, ambiguity in the authority to impose sanctions between central and local governments further weakens supervisory effectiveness (Hadjon, 2019).

Based on these findings, an ideal regulation should position sanctions as an integral part of the norm rather than merely a complementary element. Sanctions should be explicitly formulated in the Ministerial Regulation as a *lex specialis* governing village asset management (Indroharto, 2016), with clear classifications of violations ranging from minor to severe. Each category must be accompanied by proportional sanctions, such as administrative warnings, annulment of transactions, to dismissal or criminal consequences if elements of a criminal offense are fulfilled (Santoso, 2020).

In addition, the mechanism for imposing sanctions must be systematically formulated, including procedures for examination, evidence assessment, and objection mechanisms to ensure the principle of due process of law in administrative law (Friedman, 2011). Strengthening the supervisory system is also crucial, particularly through coordination among village governments, regional governments, and internal supervisory apparatus (Widodo, 2019).

Furthermore, the integration of administrative and criminal sanctions should be considered to anticipate cases that may result in state financial losses, including indications of corruption offenses (Arifin, 2020). Thus, the regulation is not only administrative in nature but also has a responsive capacity toward serious violations. In conclusion, the main weakness of the current regulatory framework lies in the absence of a comprehensive sanction design. Reformulating the sanction norms is an urgent necessity to ensure legal certainty, effective supervision, and protection of village assets. An ideal regulatory framework must integrate obligations, prohibitions, and sanctions in a balanced manner so that the legal system functions comprehensively and operationally in the management of Village Treasury Land.

#### **4. CONCLUSION**

The regulation concerning the transfer of Village Treasury Land (Tanah Kas Desa) under Minister of Home Affairs Regulation No. 3 of 2024 reveals normative incompleteness, particularly in relation to the absence of clear and operational sanctions for procedural violations. This condition weakens the enforceability of the law, creates legal uncertainty, and opens up opportunities for abuse of authority in the management of village assets.

Therefore, a regulatory reformulation is required to comprehensively and proportionately regulate sanctions based on the classification of violations, accompanied by a clear enforcement mechanism within the framework of administrative law. Strengthening the supervisory system and inter-agency coordination is also an essential factor in ensuring compliance and the effectiveness of regulatory implementation.

Thus, the effectiveness of regulation is not solely determined by procedural completeness, but also by the clarity of sanction norms as an instrument of legal control. Accordingly, regulatory strengthening is necessary to ensure legal certainty and the protection of village assets

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