

## The Implementation of Lease Agreements for Village Treasury/Cash Land by the Government

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**Abstract.** *The purpose of this research to study the implementation of the lease agreement on village treasury land carried out by the Pamengkang Village Government and State Junior High School of 2 Mundu Cirebon Regency, as well as to study the management and utilization of village treasury land which was leased to State Junior High School of 2 Mundu Cirebon Regency. This research method uses descriptive analysis. The specifications of the research used are library research, interview techniques and document studies. Source of data used in the form of primary data obtained by interview results. Based on the results of the study, it was concluded: 1) the implementation of the lease agreement on village treasury land by the Pamengkang Village Government and State Junior High School of 2 Mundu Cirebon Regency with the approval of the BPD (Village Consultative Body). Leases are made for a certain period of time, rental period of 1 year. Each year the agreement is renewed with a different price agreement. The Pamengkang village government annually submits a proposal to the school for an increase in the price of land rent, and the school negotiates with the Pamengkang village government to agree on a price to be agreed upon that year as outlined in the agreement. 2) management and utilization of village treasury land that is leased out for the management of the land is carried out for the public interest and the village's original income. The Pamengkang village government only provides the enjoyment/use of the land for a certain period of time, or in other words, the owner only hands over power over the goods by way of leasing, not to own it.*

**Keywords:** Agreement; Lease; Treasury; Utilization; Village.

## 1. Introduction

Soil is the outermost layer of the earth's crust, is one of the sources of natural wealth whose existence is still very much needed by living things, especially humans. The relationship between humans and land is very close because humans use land as a place to live to live by building a building or house. Land is also one of the main requirements for the development of an area for the sake of the development of existing modernization. So that land has a very important position in human life.<sup>1</sup>

Land as a gift from God Almighty needs to be preserved and fertile and to avoid any destruction. Development that continues to increase and develop will involve land issues, so land is a strategic factor in national development. For this reason, rents are still considered very important, including land leases. This can be seen in the Civil Code Article 1548 which reads as follows:

"Lease is an agreement by which one party binds himself to provide the other party with the enjoyment of an item, for a certain time and with the payment of a price, which certain party later is able to pay."<sup>2</sup>

The object in the lease agreement is goods or objects, both movable and immovable provided that the goods or objects being leased are lawful, meaning that they do not conflict with laws, order and decency. So, in a reciprocal agreement where the rights and obligations of one party face each other, there are two agreements on the other. These rights and obligations are the result of a legal relationship, namely a relationship regulated by law.<sup>3</sup>Judging from the provisions of article 1548, the village is an area in which activities can be carried out for rent, including renting village treasury land with the aim of building the village.

The village as a public legal entity that is given authority over village treasury land rights, is obliged to use the village treasury land to be used as a means of supporting rural development. In the framework of village development, one source of village income comes from village treasury lands. This can be known in Act no. 32 of 2004 concerning regional government article 212 paragraph (3)

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<sup>1</sup>Arba, HM 2015, "Indonesian Agrarian Law", Sinar Graphic, Jakarta, p. 19.

<sup>2</sup>Civil Code, Article 1548

<sup>3</sup> H. Riduan Syahrani, 2004, "Intricacies and Principles of Civil Law", PT Alumni, Second Edition, Bandung, page 196

letter a namely "one of the village's original income comes from the results of village treasury lands".<sup>4</sup>

In Article 76 paragraph (1) of Act No. 6 of 2014 concerning Villages, it stipulates: "Village assets can be in the form of village treasury land, communal land, village markets, animal markets, boat moorings, village buildings, fish auctions, agricultural product auctions, forest belongs to the village, springs belong to the village, public baths, and other assets belong to the village."<sup>5</sup>Based on this article, one of the village assets that can be controlled and utilized is village treasury land. Management of village treasury land is carried out to improve welfare and improve the standard of living of village communities and to increase village income.

Utilize Village assets properly and optimally. Then it can directly provide income to the village as a source of income and development budget. This village income can be used to support village administration, and can improve community welfare.<sup>6</sup>There are several types of utilization of village assets based on Article 9 of the Minister of Home Affairs Regulation Number 4 of 2007 concerning Guidelines for Village Wealth Management as follows:

1. Rent
2. Lease
3. Utilization cooperation; and
4. Build handover and build for handover.

Article 10 paragraph (1) Regulation of the Minister of Home Affairs Number 4 of 2007 Concerning Guidelines for Village Wealth Management stipulates that: Utilization of village assets in the form of rent as referred to in Article 9 Letter a is carried out on the basis of:<sup>7</sup>

- a. Profitable village
- b. The maximum period is 3 (three) years according to the type
- c. Village wealth and can be extended; and
- d. Determination of rental rates is determined by decision of the Head
- e. Village after obtaining BPD approval.

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<sup>4</sup>Law no. 32 of 2004 concerning regional government article 212 paragraph (3)

<sup>5</sup>Act No. 6 of 2014 concerning Villages Article 1

<sup>6</sup>Cosmas Giawa, 2013 "Management of Village Treasury Land to Increase Village Original Income. Thesis, "High School of Rural Community Development, Yogyakarta, p. 12

<sup>7</sup>Regulation of the Minister of Home Affairs Number 4 of 2007 article 10 paragraph (1)

The village government manages village treasury land either by the government itself or by other parties. One form of village treasury land management is by utilizing village treasury land, one of which is by leasing, cooperative utilization, building handover and building handover. Utilization of village treasury land by leasing it on village treasury land by a third party (investor) will be developed without changing the rights held by the village.

Land tenure rights in the village can be interpreted into two, namely: juridical control and physical control, as well as civil and public aspects. Mastery in a juridical sense is control based on rights, protected by law and generally authorizes the right holder to physically control the land being claimed, for example using and taking advantage of the land being claimed, and not handing it over to other parties. While physical control is giving authority to other parties to physically control land, for example renting land to other parties.<sup>8</sup>

Pamengkang Village is one of the villages in the Mundu sub-district, Cirebon Regency, a developing village that has the potential for business and education development. So that the Human Resources (HR) of village communities are reliable, and able to compete with other regions, a qualified education is needed. Through education the village community becomes smart and prosperous so that the village will continue to increase the progress and welfare of its people. In the field of education, initially in the Mundu sub-district there was only one school, namely State Junior High School of 1 Mundu which is located in Luwung village. But as time went on, because human resources were increasing and the education sector was getting higher and much needed, in 2010 the Pamengkang Village Government built educational facilities in the Pamengkang area which were built on village treasury land. This is intended so that people's access to school is closer and there is no need to go to the city. So, State Junior High School of 2 Mundu was built which is located in Pamengkang Village for the State Junior High School of 2 Mundu school building under the auspices of the Education Office. Because it was built on village treasury land, it means that the school leases the land to the Pamengkang Village Government. In the village

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<sup>8</sup>Eka Purwati, 2017, "Status of Bengkulu Land Rights which are used as School Building Land in Paetugaran Village, Punggelan District, Banjarnegara Regency", UNNES Thesis, Semarang, page 1 accessed on 16 July 2022 at 13.00 WIB

treasury lease agreement, land utilization has been regulated in accordance with the village treasury land lease agreement.<sup>9</sup>

Implementation of village treasury land lease agreements is usually carried out by the Village Head or Village Government officials. The Village Head in this case acts as the subject who leases the village treasury land. In the Village Regulation in Pamengkang village which regulates the utilization of the village treasury land lease (which is made by the village government and the BPD with reference to the laws and regulations above) it is stated that the village treasury land lease provisions are stipulated by Kuwu/Village Head after deliberations with the BPD and the lessee. The nature of the lease agreement on village treasury land in Indonesia is adjusted to the principle of deliberation and consensus. The lease agreement only gives usage rights to the lessee. So that the status of land rights handed over by the lessor to the lessee is not a property right. The management is also carried out by the Village Government, and the cultivation is carried out by the Village Head during the term of office.

## **2. Research Methods**

The approach used in this study is a descriptive analysis approach. The research approach method used in this thesis is a sociological juridical legal research method. The specification of this study uses descriptive analysis, which describes the problems that become the object of research based on the data obtained when the research was carried out. The type of data used in this study is primary data which includes the Civil Code, the Agrarian Law Book, and regulations. As well as secondary data containing books, journals and other documents. Collecting research data using interview techniques and studying documents or library materials. The data analysis method used in analyzing the data is qualitative analysis.

## **3. Results and Discussion**

### **3.1. Implementation of the Lease Agreement on Village Treasury Land which was carried out by the Pamengkang Village Government and State Junior High School of 2 Mundu Regency of Cirebon**

Land is the most noble gift from Allah SWT, because humans are only ordered to preserve and make good use of it. The leasing of village treasury land in

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<sup>9</sup>Interview with Mr. Pulung Jujuaidin, Secretary of Pamengkang Village on 07 December 2021 at 11.00

Pamengkang Village, Mundu District, Cirebon Regency is carried out by means of a leasing contract, special conditions for being able to practice leasing contracts, the transaction process for leasing village treasury land contracts. If someone leases land to the tenant on a mutually voluntary basis and not because of coercion, and the object being rented is paid for using money, it is emphasized in the form of an object that is in accordance with the agreement of each party.

According to Gustav Radburch's theory of legal certainty as one of the goals of law, it can be said as part of efforts to achieve justice. The real form of legal certainty is the implementation or law enforcement of an action regardless of who does it. With legal certainty, everyone can predict what will happen if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.<sup>10</sup>With this legal certainty, villages are now given the freedom to regulate their own territory, economy and society through the 2014 Village Law. By being given the authority to regulate their own territory, villages are also able to develop their own economy. There are many ways to develop the village economy, one of which is through the utilization of village assets as village potential, one of which is by leasing village treasury land.

The village has original village assets which can be in the form of land, ponds, springs or other natural resources. The village has many assets, one of which is village-owned land. The land belonging to this village is land that is certified in the name of the village. What is meant by village treasury land is land that can be used economically to provide income for the village head. In addition, village treasury land can also be used for the benefit of the village, such as for village development. The land will be leased from the results of the land and also pay rent to the village. Several villages that have successfully used their village treasury land are Pamengkang Village in Mundu District, Cirebon Regency, West Java.

In the Village Regulation in Pamengkang village which regulates the use of village treasury land leases (which are made by the village government and the BPD with reference to the laws and regulations above) it is stated that the village treasury land lease provisions are stipulated by Kuwu/Village Head after deliberations with the BPD and the lessee. This village treasury land is village

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<sup>10</sup>Crepido Journal, Journal Regarding the Fundamentals of Legal Thought: Philosophy and Law Science Available online at <https://ejournal2.undip.ac.id/index.php/crepido/> Volume 01, Number 01, July 2019

wealth and belongs to the village, the land is not allowed to transfer ownership rights to other parties without the consent of all village residents, including even the village head or village officials. However, the village land may be rented out by those who are given management rights, meaning that the village head and village officials as people who are given management rights can rent out the village treasury land.

As with the problems above, village treasury land is leased with a lease agreement, and of course refers to the legal terms of an agreement that must comply with the provisions of Article 1320 of the Civil Code, which states that in order to have a valid agreement, 4 conditions need to be met, namely:

- 1) Agreement of the parties in the agreement;
- 2) Capability of the parties in the agreement;
- 3) A certain thing;
- 4) Halal reasons.

If an agreement does not meet the subjective requirements, then the agreement can be canceled, whereas if an agreement does not meet the objective requirements, then the agreement is null and void. Can be canceled, meaning that one of the parties requests the cancellation, the agreement itself is still binding on both parties, as long as it is not canceled, not canceled (by the judge) at the request of the party entitled to ask for the cancellation earlier (the party who is incompetent or the party who gave the agreement freely).

In article 1548 of the Civil Code which reads:

*"Leasing is an agreement by which one party binds himself to give the other party the enjoyment of an item, for a certain time by paying a price that the last party is willing to pay for".*

Article 1548 of the Civil Code provides a definition regarding the agreement of the parties who bind themselves, in which one party surrenders the enjoyment of an item with a stipulation of time, and an agreement regarding the rental price by the parties. This means that it is legal and binding at the moment an agreement is reached regarding its basic elements, namely goods, price, and terms of time.

The parties to the village treasury land lease agreement are the Pamengkang village government which provided the lease represented by Kuwu Pamengkang

and State Junior High School of 2 Mundu represented by the Cirebon District Education Office. The implementation of the agreement explains that the land owner/government of Pamengkang village only provides the enjoyment/use of the land or is only used for a certain period of time, or in other words the owner only hands over power over the property to the lessee and not to own it. In the lease agreement, the goods handed over are not the property rights of the goods, such as buying and selling in general, but only mere control over the use and collection of the goods for a certain period of time agreed in the agreement.

The property right to the goods remains in the hands of the lessor, so in essence this lease situation is not intended to continue continuously but in the future, the use and collection of the goods will definitely return to the owner of the goods. Thus, the surrender is only in the nature of handing over power over the object being rented.

The lease of village treasury land for the school building occupied by State Junior High School of 2 Mundu is carried out for a certain period of time, namely every year the agreement is renewed with a different price agreement. The Pamengkang village government annually submits a proposal to the school for an increase in the price of land rent, and the school negotiates with the Pamengkang village government to agree on a price to be agreed upon that year which is set forth in the agreement.<sup>11</sup>

The school can use the land that is rented for the school building and enjoy the results of the land, namely by having land for educational facilities. The party who rents out will receive a counter-performance in the form of money to increase the village's original income (PAD) which was agreed beforehand and the lease agreement is based on deliberation.

The background to holding land leases is a practice that has been passed down from generation to generation. And to run the wheels of government, of course the village has an APBD and APBD revenue funds sourced from the state and PAD sourced from original income in the village through village treasury land leases.

Leased land treasury of Pamengkang village, Mundu District for the total ±7,000 M2 requested by the Head of the Cirebon District Education Office for State

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<sup>11</sup>Interview with Mr. Pulung Jujuidin, Secretary of Pamengkang Village, on 15 July 2022 at 14.00 WIB



Junior High School of 2 Mundu according to Book C which is located in the Kedungkopo Block, Persil Number 42, Class S. II, Area  $\pm 7,000$  M<sup>2</sup> for rent IDR 15,000,000 in 2021 and every year the rental price is always renewed. Initial implementation so that an agreement occurs:

1. The school, namely State Junior High School of 2 Mundu, asked the Pamengkang Village Government to lease the village treasury land so that Human Resources in Pamengkang Village have increased and the education sector is getting higher. In addition, so that people's access to school is closer.
2. After that, the Pamengkang village government made a letter of recommendation to the local sub-district office.
3. Sheet of validation results and recommendations issued by the sub-district office for renting village treasury land.
4. Approval from the BPD as an institution that supervises the performance of the village head and has the right to assist the village head in approving village treasury land leases.
5. A statement of no objection signed by the village head and the head of the BPD stating that there is no objection or coercion that the village treasury land is used for educational facilities. In addition, the location of the existence of the village treasury land is not in dispute and is physically owned by Pamengkang village.
6. Published the Regional News of Cirebon Regency regarding the village treasury land lease requested by the Education Office for State Junior High School of 2 Mundu Cirebon.
7. Make a letter of lease agreement for the village treasury land, namely the first party is the Pamengkang village government represented by the Pamengkang village head, the second party is represented by the head of the Cirebon district education office, known by the Mundu sub-district head and the Head of the Pamengkang Village BPD.

The rental period is for 1 year and can be extended for a certain period by making a new agreement in accordance with the applicable Village Regulations, besides that the price for the rental has also changed. Usually the Pamengkang village government makes a proposal addressed to the Education Office to increase the annual rent, but the price used is according to the agreement of both parties and there is no coercion. For the method of payment, the school deposits the rent through the Village Treasury Account at the designated Village Cash Holder Bank, these rules have been stated in the village treasury land agreement attached.<sup>12</sup>

The description above shows that the land owner/government of Pamengkang

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<sup>12</sup>Interview with Mrs. Putri Rachmawati, Chief of Finance on July 28, 2022 at 11.00 WIB

village only gives enjoyment/use of the land or is only used for a certain period of time, or in other words the owner only hands over power over the property to the lessee and not to own it. This is in accordance with Article 1548 of the Civil Code, which means that it is valid and binding at the moment an agreement is reached regarding its main elements, namely goods, price, and terms of time. In addition, village treasury land is a type of village wealth that can be fully utilized for the public interest in carrying out the wheels of government. One of the uses is by way of a rental system.

### **3.2. Management and Utilization of Village Treasury Land Leased to State Junior High School of 2 Mundu, Cirebon Regency**

In administering government, implementing development and especially providing services to the community, the Village Government requires adequate sources of income, one of which is the utilization of Village Treasury Land. ) states that the utilization of village assets is divided into four, namely leasing, borrowing, cooperation in utilization, building-to-handover or building-to-handover. Furthermore, the utilization of village assets must be stipulated in the Village Regulations which are regulated in Article (3) paragraph 1. If the Village government is implementing the utilization of village assets owned, it must have a Village Regulation. If the village government wants to take advantage of village assets in the form of rent, they must have a village regulation. The legal action of the village government that rents out with other parties in utilizing its village assets, the government acts as a legal entity and is subject to private law. So the village government, if it enters into an agreement in the form of a lease, must comply with Article 1320 of the Civil Code as a legal requirement for an agreement, namely agreement, skill, certain things and lawful causes.<sup>13</sup>

According to Article 1 paragraph (2) of Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights, what is meant by management rights are control rights from the state whose implementation authority is partly delegated to the holders. According to Ali Achmad Chomzah, what is meant by management rights are ownership rights over state land with the intention of being used by the holder himself, also by the holder of giving something of a right to a third party. The existence of management rights in land law is not mentioned in the BAL, but is implied in the

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<sup>13</sup>Zakiah Noer, "Utilization of Village Treasury Land in the Form of Leases", Vol 9 No.2 (2020) Journal of Pro Hukum: Research Journal in the Field of Law, University of Gresik

general explanation statement, that: guided by the objectives mentioned above, the state can grant such land to individuals or entities with a right according to designation and needs, for example property rights, usufructuary rights,

Management rights are not a type of land rights regulated in the BAL. The arrangement of state land management rights has experienced significant development, particularly in terms of the authority possessed by management rights holders to transfer part of the land to third parties. This is interesting to study, holders of management rights which can be government agencies, regional governments, BUMN and BUMD are given civil rights to hand over the use of management rights granted by the state to third parties through an agreement.<sup>14</sup>

Utilization of village treasury land is regulated at the national level, district level, and with each village having a different way of utilizing village treasury land. At the national level, village treasury land management is regulated in Minister of Home Affairs Regulation (Permendagri) number 1 of 2016 concerning Village Asset Management. In Permendagri number 1 of 2016 article 11 concerning Management of Village Assets, it is stated that village treasury land can be utilized in four ways, namely leasing, borrowing, sharing cooperation and building-handover. However, the Permendagri does not regulate the technical implementation. Provisions regarding the management of village treasury land are further regulated in the district regulations of each region. Furthermore, the utilization of village assets must be stipulated in the village regulations regulated in article (3) paragraph 1. If the village government is implementing the utilization of village assets, it must have a village regulation. If the village government wants to take advantage of village assets in the form of leases that are owned, then they must have the Perdes.

A village asset will be very useful if it is managed very well by the village government. Good village asset management is carried out based on applicable regulations and has guidelines for its management. Management of village assets is carried out based on appropriate regulations, in which these activities can be in the form of utilizing village treasury land, and other activities mentioned in Permendagri Number 1 of 2016. In managing them, it is very important for

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<sup>14</sup>Sulation Rongiyati, "Utilization of Land Management Rights by Third Parties", Scientific Journal of Law Vol.5 No.1, June 2014

villages to refer to village asset management guidelines in managing village assets. .

Village treasury land which is a village asset that needs to be managed properly by dividing village treasury land according to village needs. The distribution of village treasury land carried out by the village government needs to be reviewed from how much the village needs to carry out development. Village asset management is carried out when the village government has divided it into several fields, such as the distribution for community welfare, education, health, and maybe also for the economy, but this has not yet been seen in the village. With the needs of a village, the village government needs to know how to properly manage village assets using existing guidelines.

Meanwhile, the technical management of village treasury land is handed over to each village. Management of village treasury land is also different in each village. This is because each village has differences in potential, culture and level of welfare of human resources. The village head carries out the rights, powers and obligations of the village government leadership, namely managing his own household and is the main organizer and person in charge in the fields of government, development and society in the context of village government affairs.<sup>15</sup> Village development goals also vary, some want to create justice for villagers or some aim to increase village income. Land for the village treasury is utilized by the village government itself and in cooperation with other parties (for the public interest, private companies and the community)

According to Bentham, the purpose of law is to provide the greatest benefit and happiness to as many people as possible. So, the concept puts expediency as the main goal of law. Its size is the greatest happiness for as many people as possible. Judgment of good or bad, fair or not this law really depends on whether the law is able to give happiness to humans or not. Benefit is defined as happiness (happiness).<sup>16</sup> So the relationship obtained from the theory of legal expediency with the management and utilization of village treasury land which is leased to State Junior High School of 2 Mundu means that there are benefits or useful results from the lease agreement, including the Pamengkang village government obtaining a counter-performance in the form of rent money to

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<sup>15</sup>Eufamia Shela Indriansyah, "Optimizing the Management and Utilization of Village Treasury Land by Village Heads in Bantul District", <http://e-journal.uajy.ac.id/23764/1/1705127901>

<sup>16</sup>Ulûmuna, The Application of Legal Usefulness Theory, Journal of Islamic Studies Vol.3 No.1 June 2017

increase original income village (PAD) which aims for village development, while the school gets a place for the teaching and learning process so that human resources (HR) in Cirebon, especially in Pamengkang village experience an increase in the education sector. From the lease agreement, benefits or results are obtained that are useful for the public interest and the greatest possible welfare for all the people.

If there is a transfer of rights from the Pamengkang Village Government to the Education Office (State Junior High School of 2 Mundu) in the use of the village treasury land, then the village treasury land already belongs to the Education Office, but if there is no transfer of rights from the Village Government to the Education Office. Education, then the land still belongs to the Village Government as Village Land. Village land is a village asset that is not allowed to be transferred except for public purposes provided that it is done by exchanging assets. As stated in Article 33 CHAPTER III Part One of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2016 concerning Management of Village Assets, namely as follows:<sup>17</sup>

1. Exchange of village assets in the form of land for development for the public interest as referred to in Article 32 letter a, is carried out in accordance with statutory provisions.
2. The exchange as referred to in paragraph (1) is carried out under the following conditions:
  - a) The exchange is carried out after an agreement has been reached on the amount of compensation according to a price that benefits the village by using the fair value calculated by the appraiser;
  - b) If the replacement land is not yet available, the replacement land can be given in advance in the form of money;
  - c) Replacement in the form of money as referred to in letter b must be used to buy land equivalent replacement;
  - d) Replacement land as referred to in letter c is preferably located in the local village; and
  - e) If the location for replacement land is not available in the local village as referred to in letter d, the replacement land can be located in one sub-district and/or village in another sub-district which is directly adjacent.

Rights status the land used as building land for the State Junior High School of 2 Mundu school building is Village Land whose existence is still owned by the Pamengkang Village Government, because the use of the village treasury land was not carried out by relinquishing land rights or exchanging village assets

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<sup>17</sup>Regulation of the Minister of Home Affairs Number 1 of 2016 article 33

because until now it remains the same and does not change places. The land lease for the treasury of Pamengkang Village, Mundu District with a total area of 7,000 M2 requested by the Head of the Cirebon Regency Education Office for State Junior High School of 2 Mundu according to book C, Pamengkang Village is located at:

No	Village	Block	Parcel	No. C	Class	Area (M <sup>2</sup> )
1	Pamengkang Village, Mundu District	Kedungkopo	42	-	S.II	7,000

Pamengkang Village only has book C, namely as initial evidence according to Article 1866 of the Civil Code, to obtain a land right in registering land where these lands are lands that are subject to customary law. Excerpts from letter C can be used as proof of ownership of land rights when the land or object in question has never been certified. The function of Letter C itself is as proof of ownership of land rights and administrative requirements when the land is to be certified. Even though the village treasury land in Pamengkang village has not been registered and only has a Letter C book originating from customary land, the use of the land is still valid and has legal force. So the management of the land can also be carried out for the interests and income of the village. The use of the village treasury land is only based on a lease agreement between the Pamengkang Village Government and the Cirebon district Education Office by allowing them to use the village treasury land. There is evidence in the form of a village treasury lease agreement which is renewed every year to determine the rental price. Regarding the relinquishment of land rights for the construction of the school building, it still belongs to the Pamengkang Village government, and the school is only limited to renting it. For the management of village treasury land in Pamengkang village, it is written in the Peraturan of Pamengkang Village, Mundu District, Cirebon Regency Number 02 of 2020 concerning "Increase in the Extension of Village Treasury land leases requested by the Cirebon Regency Education Office for the Construction of State Junior High School of 2 Mundu Cirebon".

The Pamengkang village treasury land that was leased as the land for the school building for State Junior High School of 2 Mundu is a state-owned asset, while the land used is an asset belonging to the village. The Pamengkang Village Government also does not have the authority if the village treasury land is given to the Education Office, because the land is a village asset, is state land whose power is handed over to the Regional Government, managed by the Village Government, and cultivated by the Village Head during the term of office. The school can use the land that is rented for the school building and enjoy the results of the land, namely by having land for educational facilities.

Village Asset Management is a series of activities starting from planning, procurement, use, utilization, security, maintenance, deletion, transfer, administration, reporting, assessment, guidance, supervision and control of Village assets. Village asset management is led by the Village Head and assisted by the Village Secretary. Provisions regarding Village asset management:

1. Village assets in the form of land when borrowed or leased must obtain written permission from the Regent/Mayor.
2. Village assets in the form of land are certified in the name of the Village Government.
3. Village assets in the form of buildings must be equipped with proof of ownership status and administered in an orderly manner.
4. Village assets can be insured according to the financial capacity of the village and carried out in accordance with statutory provisions.
5. Village assets are prohibited from being handed over to other parties as payment for bills to the village government.
6. Village assets are prohibited from being mortgaged or used as collateral to obtain a loan.

There are 2 ways to manage village treasury land in Pamengkang Village, namely:

1. The auction system is intended for land/agricultural fields. The village is auctioning the land to the community for rent and the results of the auction are included in the village's original income (PAD) for the APBdes. The procedure is as follows:
  - a. The village government submits a TKD auction permit to the local District Office;
  - b. After the permit is issued, an auction committee is formed
  - c. The tender committee makes an announcement;
  - d. The auction committee determines the minimum TKD price limit;
  - e. Implementation of the auction, which consists of:

- 1) TKD price offer to bidders;
  - 2) If the bid does not reach the minimum limit, the auction committee will hold a deliberation to make a decision;
  - 3) The highest bid is determined as the auction winner;
  - 4) Preparation of Minutes of Auction.
- f. The results of the auction are entered into the village treasury and constitute the Village Budget.
2. Rental system. The village treasury land lease is determined by the Kuwu/Village Head after deliberations with the BPD and the lessee. This lease is written, and there is an agreement that is renewed annually to set the rental price. The rents include rents for kiosks, education and health agencies.

The management and utilization of village treasury land which is leased to State Junior High School of 2 Mundu is included in the second lease system. The leased land is intended for education, the utilization of which is given for the general interest of the surrounding community. The public interest according to the doctrine, both in the form of laws and other provisions, places more emphasis on the type of the public interest itself and does not interpret it based on the category of public interest. The public interest facilities according to Presidential Decree Number 55 of 1993, include:<sup>18</sup>

- a) Public roads, sewers;
- b) dams and other irrigation structures, including irrigation canals;
- c) Public hospitals and community health centers;
- d) Seaport or Airport or Terminal;
- e) worship;
- f) Education or school;
- g) Public market or inpres market;
- h) public burial places;
- i) Public safety facilities, such as embankments, flood, lahar, and other disasters;
- j) Post and telecommunication;
- k) sports facilities;
- l) Radio television broadcasting stations and their supporting facilities;
- m) Government offices;
- n) Facilities of the armed forces of the Republic of Indonesia.

The village treasury land leasing system aims to increase village income, which is the Village Revenue and Expenditure Budget (APBDes). The proceeds from the management of the village treasury land are used for the purposes of administering village government, which among other things is for village

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<sup>18</sup>Presidential Decree Number 55 of 1993



development activities. The management mechanism by means of a leasing system or through an auction in Pamengkang Village is guided by the Cirebon Regent's Decree Number 51 of 2001 concerning Procedures for Management, Ordering and Transfer of Land Rights to the Village Treasury (Cirebon Regency Gazette of 2007 Number 40 Series E.29) Income from management of village treasury land provides a sizable income to the APBDes which is used one of them for village development, namely for the rehabilitation of the Pamengkang multi-purpose building.

The description above shows that the village treasury land that is administered to run all the wheels of government in the village fulfills the elements of "using" and "collecting results". Articles 10 and 11 of Permendagri No. 1 of 2016 emphasizes the function of village treasury land which can only be used and utilized without eliminating the ownership status of village treasury land. Then Articles 25 and 32 of Permendagri No. 1 of 2016 prohibits the transfer of village treasury land other than through capital participation in village-owned enterprises (BUMDes) and exchanges for public and national interests. Village assets in the form of land can only be exploited and used for the benefit of administering village governance, public interests, and national interests.

#### **4. Conclusion**

The implementation of the lease agreement on the village treasury land carried out by the Pamengkang Village Government and State Junior High School of 2 Mundu Cirebon was carried out with the approval of the BPD (Village Consultative Body). The first party, in this case the Pamengkang Village government, represented by the Head of Pamengkang village, and the second party, State Junior High School of 2 Mundu, represented by the head of the Cirebon district Education Office. The implementation of the agreement explains that the land owner/government of Pamengkang village only provides the enjoyment/use of the land or is only used for a certain period of time, or in other words the owner only hands over power over the property to the lessee and not to own it. The lease period is for 1 year and every year the agreement is renewed with a different agreement. The Pamengkang Village Government annually submits a proposal to the school for an increase in land rental prices and the school negotiates with the Pamengkang Village government to approve the agreed price. So thus the ownership rights of the land remain with the party that leases it, namely the Pamengkang Village government.

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### *Regulation:*

- [1] Act No. 32 of 2004 concerning regional government article 212 paragraph (3)
- [2] Act No. 6 of 2014 concerning Villages Article 1
- [3] Civil Code, Article 1548
- [4] Presidential Decree Number 55 of 1993
- [5] Regulation of the Minister of Home Affairs Number 1 of 2016 article 33
- [6] Regulation of the Minister of Home Affairs Number 4 of 2007 article 10 paragraph (1)

### *Interview:*

- [1] Interview with Mr. Pulung Jujuaidin, Secretary of Pamengkang Village on 07 December 2021 at 11.00
- [2] Interview with Mrs. Putri Rachmawati, Chief of Finance on July 28, 2022 at 11.00WIB