

LEGAL SECURITY OF OWNERSHIP OF LAND CERTIFICATES POST EXCHANGING FOREST AREA FOR RESIDENTS RELOCATION IN NGROTO DUSUN, WONOGIRI, CENTRAL JAVA

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Abstract

This study aims to discuss the description of the implementation process of exchanging forest areas for the relocation of residents and legal certainty of ownership of community land certificates after the relocation of community forest area exchanges in Dusun Ngroto. The research method used in this research is juridical-empirical descriptive by using qualitative data analysis methods to review literature and events that actually occurred through observation and interviews. The research location is in Ngroto Hamlet, Pare Village, Selogiri District, Wonogiri Regency. The results of the discussion found that 1) The background to the relocation was due to the fact that in March 1999 in the Ngroto Hamlet area a landslide occurred resulting in as many as 43 family cards (115 people), supporting factors for relocation including social relations, economy, community involvement and participation with the government while the inhibiting factors are infrastructure, policies that underlie relocation based on humanitarian considerations. 2) Legal certainty of ownership of land certificates after the relocation residents have not obtained the rights to the land they occupy regarding evidence of land certificates, the Wonogiri Regency Government is in the process of eliminating the land ownership rights of residents who have been victims of the landslide disaster 11.66 Ha (Eleven and Sixty Six One Hundred Hectares) with a replacement land obligation of 13.11 Ha (Thirteen and Eleven One Hundred Hectares) totaling 44 (forty four) plots of land.

Keywords: Legal Certainty, Ownership Of Land Certificates, Exchanging Forest Areas, Relocating Residents

Abstrak

Penelitian ini bertujuan untuk membahas gambaran proses pelaksanaan tukar menukar kawasan hutan untuk relokasi warga dan kepastian hukum kepemilikan sertifikat tanah warga pasca relokasi tukar menukar kawasan hutan warga di Dusun Ngroto. Metode penelitian yang dilakukan terhadap penelitian adalah yuridis empiris bersifat deskriptif dengan menggunakan metode analisis data secara kualitatif mengkaji kepustakaan dan peristiwa yang terjadi sebenarnya melalui kegiatan observasi dan wawancara. Lokasi penelitian di Dusun Ngroto, Desa Pare, Kecamatan Selogiri, Kabupaten Wonogiri, Jawa Tengah. Hasil dari kajian yang diperoleh bahwa 1) Latar belakang adanya relokasi disebabkan bulan Maret Tahun 1999 di wilayah Dusun Ngroto terjadi bencana tanah longsor yang mengakibatkan sebanyak 43 kartu keluarga (115 jiwa), faktor pendukung

relokasi antara lain hubungan sosial, ekonomi, keterlibatan dan partisipasi masyarakat dengan pemerintah sedangkan faktor penghambatnya adalah sarana prasarana, kebijakan yang mendasari pertimbangan relokasi atas kesejahteraan. 2) Kepastian hukum kepemilikan sertifikat tanah warga pasca relokasi belum memperoleh akan hak-hak atas tanah yang ditempatinya mengenai bukti sertifikat tanah, Pemerintah Kabupaten Wonogiri sedang melakukan proses penghapusan hak milik warga korban bencana tanah longsor syarat untuk mengukur batas lahan pengganti kawasan seluas 11, 66 Ha (Sebelas dan Enam Puluh Enam Perseratus

Hektar) dengan kewajiban lahan pengganti seluas 13,11 Ha (Tiga Belas dan Sebelas Perseratus Hektar) sebanyak 44 (empat puluh empat) bidang tanah.

Kata Kunci: Kepastian Hukum, Kepemilikan Sertifikat Tanah, Pertukaran Kawasan Hutan, Relokasi Warga.

INTRODUCTION

The Indonesian state is a legal state seen in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Indonesia as a legal state is basically obliged to provide and guarantee legal certainty or protection to every citizen for the life of the nation and state as stated in Article 28D Paragraph (1) of the 1945 Law states that everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law. Law enforcement in Indonesia, everyone hopes that the law will be established on actual events, then these events cannot be reversed and must be implemented in accordance with applicable legal rules, then legal certainty can be realized.¹

Land is a basic need for every citizen to obtain land rights and protect the land they desire. Land is a gift from God Almighty and has very high value economically, sociologically, and a person's status in social life. Then land as a support for prosperity and well-being in accordance with the provisions of Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia.²

In connection with the above issues, now there is a guarantee of legal certainty and certainty of land rights. In order to obtain legal certainty and ownership of land rights, the public is obliged to register land to obtain a land rights certificate as a means of strong proof of ownership of land rights as confirmed in the provisions of Article 19 paragraph (2) letter c UUPA and Article 32 paragraph (1) of the Regulations Government Regulation Number 10 of 1961 concerning Land Registration, has finally been revoked and re-identified as Government Regulation Number 24 of 1997 concerning Land Registration.³

Natural disasters that often occur in Indonesia during the rainy season are landslides. Landslides are the movement of slope-forming material in the form of rock, debris, soil, or mixed materials moving down or off the slope, which is known by the public as ground movement. This also happened in 1999 in Ngroto Hamlet, Pare Village, Selogiri District, Wonogiri Regency, causing residents to lose their homes. Action against natural disasters is carried out through relocation in accordance with Minister of Home Affairs Decree Number 131 of 2003 concerning Guidelines for Disaster Management and Handling of Refugees in the Regions.⁴

The relocation resulted in a swap agreement (ruislag) or exchange of forest areas

¹ Andi Batara Bintang Darnus, Syahrudin Nawi, and Sri Lestari Poernomo, 'Analisis Perlindungan Hukum Terhadap Pemegang Sertifikat Milik Atas Tanah Yang Mengalami Sengketa', *Journal of Generalis (JLS)*, 3.8 (2022), 4.

² *Undang-Undang Dasar 1945 Amandemen* (Indonesia).

³ Pemerintah Republik Indonesia, *Government Regulation Number 24 of 1997 Concerning Land Registration* (Lembaran Negara Republik Indonesia, 1997).

⁴ Pemerintah Republik Indonesia, *Minister of Home Affairs Decree Number 131 of 2003 Concerning Guidelines for Disaster Management and Handling of Refugees in the Regions*, 2003.

between the community represented by the Wonogiri Regency Government and Perhutani. In the agreement, ownership of land certificates is obtained with a land ratio of 1:1 (one to one). The process of implementing the forest area exchange took place from 2000 to 2023 and the application has not yet been completed. The Wonogiri Regency Government has submitted an application for an expert permit to move from protected forest to production forest because the relocation location has protected forest status. In the Minister of Environment and Forestry Regulation Number 7 of 2021⁵ concerning Forestry Planning, Changes in the Allocation of Forest Areas and Changes in the Function of Forest Areas and Use for exchanging forest areas, there are requirements for function experts from protected forests to production forests. However, in reality, the swap agreement (ruislag) or exchange of forest areas in Ngroto Hamlet is currently unclear regarding land rights in the form of ownership of land certificates where residents are only given promises for 23 years. Now, de facto residents have occupied the land, while de jure the Wonogiri Regency Government is still in the process of requesting an exchange of forest areas with Perum Perhutani. So, based on the description above, researchers are

RESEARCH METHODE

The method used to solve the problems in this research is a descriptive empirical juridical method using qualitative data analysis methods reviewing literature and events that actually occurred through observation and interviews. This research studies in depth the principles of law, statutory regulations, jurisprudence, and opinions of legal experts and views the law comprehensively.

DISCUSSION

1. Overview of the Forest Area Exchange Implementation Process for the Relocation of Residents in Ngroto Hamlet

In March 1999 in the Ngroto Hamlet area, Pare Village, Selogiri District, Wonogiri Regency, a landslide occurred which resulted in the lives of 43 families (115 people) being feared for their lives. This natural disaster was caused by heavy rain with a slope of ± 70 degrees where the area of residential land, including agriculture prone to natural disasters, was ± 13 hectares (thirteen percent of a hectare).

According to Sri Wahyudi as Chair of the Ngroto Hamlet Residents' Association, the background to the relocation was a ground movement disaster which had worried the residents, because the ground cracks reached 80 centimeters and their depth could not be predicted. Residents' houses have also experienced a slope, including many house pillars that have been damaged. This incident was reported by residents to local officials and then a policy emerged to relocate residents. The regional government only provides land and then residents build it with their own funds.

Figure 1 . Map of Ngroto Hamlet



⁵ Pemerintah Republik Indonesia, *Regulation of the Minister of Environment and Forestry Number 7 of 2021 Concerning Forestry Planning, Changes in the Designation of Forest Areas and Changes in the Function of* interested in conducting research with the title "Legal Certainty of Ownership of Land Certificates After Exchanging Forest Areas for the Relocation of Residents in Ngroto Hamlet, Pare Village, Selogiri District, Wonogiri Regency".

Source: Land Affairs of Wonogiri Regency

Based on Law Number 24 of 2007 concerning Disaster Management in Article 3 paragraph⁶ (2) there are principles in disaster management, including fast and precise, priority, coordination and integration; empowered and effective, transparency and accountability, partnership, empowerment, non-discrimination and non-proletarianism. The Ministry of Public Works determines several basic provisions that must be considered in residential relocation activities, namely⁷:

- 1) Relocation is carried out while taking into account the daily life and sustainability of those being moved with all physical and non-physical conditions and the population of the destination of the move.
- 2) Relocation considers the impact of relocation on parties who are considered vulnerable (vulnerable persons).

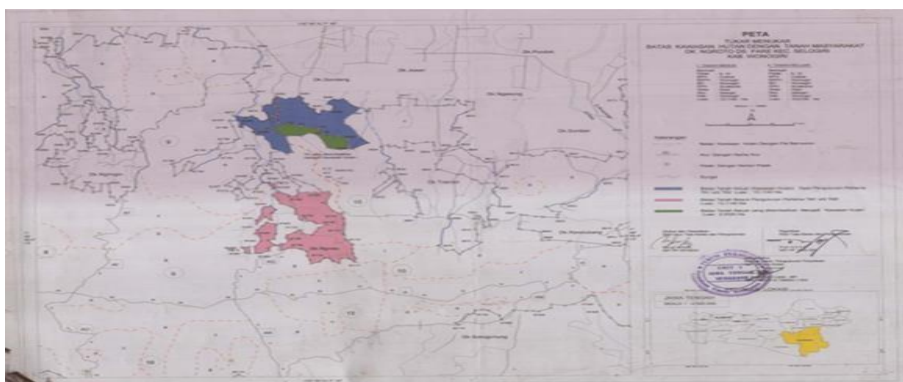
The policy underlying relocation is based on humanitarian considerations. The Wonogiri Regency Government has taken relocation policy steps, namely ordering all residents in that location to move their residence to a location that is safer from disasters.

2. Legal Certainty of Ownership of Residents' Land Certificates After Relocation in Exchange of Residents' Forest Areas in Ngroto Hamlet

In principle, a land title can be applied for if it has completed certain regulations, control and use of rights must have legal principles to protect legal certainty and provide legal protection for owners of land rights through certificates.⁸

Based on the Decree of the Minister of Environment and Forestry of the Republic of Indonesia Number SK.23/MENLHK/SETJEN/PLA.2/1/2022 concerning Changes in the Function of Some of the Main Functions of Protected Forest Areas to Become Permanent Production Forests in Wonogiri Regency, Central Java Province with an Area of 11.66 Ha through the Governor of Central Java with letter Nokmor 522/0000493 dated 16 January 2020, submitted a proposal to change the function of the Forest Area covering an area of 11.66 Ha in Plots 10a and 10b RPH Cubluk , BPKH Wonogiri, KPH Surakarta which functions as a Protected Forest into a Production Forest for the relocation of residents of Ngroto Hamlet, Pare Village, Selogiri District, Wonogiri Regency who were affected by the natural landslide disaster.⁹

Figure 2 . Map of Exchanging Forest Area Boundaries with Dk Ngroto Community Land.



⁶ Pemerintah Republik Indonesia, *Law Number 24 of 2007 Concerning Disaster Management*.

⁷ Hasrul Hadi, 'Strategi Adaptasi Dan Relokasi Pemukiman Warga Akibat Bencana Banjir Pasang Air Laut', *Geodika Journal*, 1.1 (2017), 13.

⁸ Fadhilla Aditia Putri, Ngadino, and Irma Cahyaningtyas, 'Status Hukum Sertipikat Hak Atas Tanah Yang Diterbitkan Di Atas Kawasan Hutan (Studi Putusan 50/G/2014/Ptun.Smg)', *Notarius*, 14.2 (2021).

⁹ Minister of Environment and Forestry, *Decree of the Minister of Environment and Forestry Number SK.23/MENLHK/SETJEN/PLA.2/1/2022 Concerning Changes in the Function of Some of the Main Functions of*

The state doctrine based on law (*de rechstaat*) which is believed in Indonesia is known to be proven by Article 1 paragraph (3) of the 1945 Constitution. The Wonogiri Regency Government applies the principle of legality by fulfilling the rights of its citizens regarding their housing or settlement needs. This is in accordance with Law Number 32 of 2004 concerning Regional Government , Regional Government refers to the general principles of state administration in the form of the principle of legal certainty and in implementing regional autonomy it has the authority to handle it itself.

Based on the Government Regulation of the Republic of Indonesia Number 104 of 2015 concerning Procedures for Changing the Designation and Function of Areas in Article 15 paragraph (1) that approval in principle for exchange of forest areas is given for a maximum period of 2 (two) years from the issuance of the approval in principle by the Minister and can be extended a maximum of (twice) each for a maximum period of 1 (one) year. Article 15 paragraph (2) regulates that approval in principle given by the Minister contains obligations for holders of approval in principle that at least include:¹⁰

- 1) complete clear and clear replacement land;
- 2) sign the Forest Area Exchange minutes;
- 3) implement the boundaries of the requested Forest Area;
- 4) bear the costs of boundary delineation and reforestation on replacement land.

The Wonogiri Regency Government has passed the 2 (two) year time limit since the approval was issued by the Minister to fulfill one of the obligations that must be fulfilled as an applicant for the forest area exchange policy, namely the obligation to pay compensation payments. In its application letter, the Wonogiri Regency undertakes that there are obligations that must be fulfilled for the forest area exchange process. The Wonogiri Regency Government submitted a request for relief to be exempted from the costs of standing compensation and reforestation for humanitarian reasons, but did not receive the appropriate answer/response. Apart from that, the process of exchanging forest areas in Ngoro Hamlet is still ongoing because they have already occupied land belonging to Perhutani KPH Surakarta due to urgent conditions. So the initial problem of not having legal certainty regarding land rights stems from the lack of communication regarding the payment of compensation for stands and reforestation.

In 2010, communication between the Wonogiri Regency Government was re-established, based on a copy of the letter planning and proposing the required land/land exchange costs of IDR 252,509,250 through the 2010 Wonogiri Regency APBD, and the budget was approved by the Wonogiri Regency DPRD through amendments to the 2010 Wonogiri Regency APBD.

In the Decree of the Minister of Environment and Forestry of the Republic of Indonesia Number SK.23/MENLHK/SETJEN/PLA.2/1/2022 concerning Changes in the Function of Some of the Main Functions of Protected Forest Areas to Become Permanent Production Forests in Wonogiri Regency, Central Java Province with an Area of 11.66 Ha there are explanations including:

- 1) Based on the Forest Area Map of Central Java Province, Attachment to the Decree of the Minister of Forestry Number SK.359/Menhut-II/2004 dated 1 October 2004, it is located in the Protected Forest Area and based on the management area, it is included in the management area of Perum Perhutani, RPH Cubluk, BKPH Wonogiri, KPH Surakarta;
- 2) To the north is bordered by other use areas, to the south by protected forest areas, to the west by protected forest areas and other use areas and to the east by protected forest areas;
- 3) Located in the Bengawan Solo River Basin area;

¹⁰ Pemerintah Republik Indonesia, *Law Number 32 of 2004 Concerning Regional Government*

- 4) Based on the 1:50,000 scale Semi-Detailed Soil Map published by the Center for Research and Development of Agricultural Land Resources in 2017, the soil type at the research location is latosol;
- 5) The proposed location has a slightly steep to steep topography and the average rainfall (1997-2017 period) is 1,843 mm/year and the average rainfall is 105 days/year with a rainfall intensity of 17.53 mm/rain;
- 6) Based on the results of the scoring calculation, an area of ± 8.89 Ha (eight and eighty-nine percent of hectares) meets the criteria for Limited Production Forest function (score 130) and an area of ± 2.77 Ha (two and seventy-seven percent of hectares) meets the criteria for Permanent Production Forest (Score 110);
- 7) There are no permits for the use of forest areas or social forestry;
- 8) Land cover based on the results of the interpretation of the SPOT Mosaic Image 6/7 of 2016-2018 and the results of analysis from Google Earth is mostly in the form of mixed plantations (34%), settlements (33%), Perum Perhutani's remaining forest plantations (25%) and shrubs (8%);
- 9) There are no protected wildlife;
- 10) Ecologically, the change in function from a Protected Forest area to a Production Forest area does not have a significant impact on biodiversity because the area is small, located on the edge of the area so it does not create fragmentation;
- 11) It was proposed as a residential relocation area for residents from Ngroto Hamlet due to the landslide disaster in 1999 and since 2000, the Forest Area of Plot 10a and Plot 10b has been used as a residential area for RT residents. 03/RW. 011 Traman Hamlet, Pare Village, Selogiri District, Wonogiri Regency;
- 12) The physical condition of Traman Hamlet consists of 8 permanent houses and 9 semi-permanent houses, as well as public facilities and social facilities in the form of rebated roads, electricity networks, mosques, warehouses, posts, 5 (five) water tanks and burial areas;
- 13) The residents of Traman Hamlet have handed over ownership rights to the land in Ngroto Hamlet to the Wonogiri Regency Government, but the rights base (certificate/Later C) has not been removed from the Wonogiri Regency Land Office;
- 14) Based on biophysical, socio-economic as well as legal and institutional aspects, the proposed change of function between the main functions from a Protected Forest Area to a Production Forest Area proposed by the Governor of Central Java covering an area of 11.66 (eleven and sixty-six percent of hectares), the Integrated Team recommends that it be processed further with the criteria of Limited Production Forest covering an area of 8.89 Ha (eight and eighty-nine percent of hectares) and Permanent Production Forest covering an area of 2.77 Ha (two and seventy-seven percent of hectares);
- 15) The results of the review based on the provisions of the statutory regulations on the proposed Change in Forest Area Function on behalf of the Governor of Central Java can be considered as a Protected Forest Area to become a Permanent Production Forest Area covering an area of ±11.66 Ha (eleven and sixty-six percent of hectares).

Based on the Government Regulation of the Republic of Indonesia Number 23 of 2021 concerning the Implementation of Forestry, there are criteria for including protected forests and permanent production forests regulated in Article 31 paragraph 3 letters (b) and (c), as follows:

- a. Protected Forest, if it meets the following criteria:
 - 1) Forest areas with factors such as slope class, soil type and rainfall intensity after each multiplication by the weighing number have a total value greater than 175 (one hundred

- and seventy-five);
- 2) Forest areas that have a field slope of 40% (forty percent) or more;
 - 3) Forest areas located at an altitude of 2,000 m (two thousand meters) or more above sea level;
 - 4) Forest Areas that have soil that is very sensitive to erosion with field slopes of more than 15% (fifteen percent);
 - 5) Forest areas which are water catchment areas, and/or
 - 6) Forest areas that protect coastal areas.
- b. Permanent Production Forest, if it meets the criteria for a Forest Area with factors of slope class, soil type and rain intensity, after each of them is multiplied by the bulk figure having a total value of less than or equal to 175 (one hundred and seventy five), outside the Protected Area, the Area Nature Reserve Forest, Nature Reserve Forest Area, Nature Conservation Forest Area, and Buru Park.

Work Plan and Map for Area Boundary Arrangement Approval for the release of Forest Area for the relocation of landslide disaster victims in Ngroto Hamlet in the Permanent Production Forest area in Wonogiri Regency, Central Java Province with a scale of 1:25,000 has been approved by the Director of Forest Area Measurement and Management on behalf of the Director General Forestry Planning and Environmental Management.

Kurniati Saddarmaningsih SP, M.Si as the land division of the Wonogiri Regency Dispera & KPP, stated that the application for changing the function of the protected forest area to production has finally come out. There is no certainty about residents' land certificates yet because there must be a boundary delineation process first. The Wonogiri Regency Government stated that 90% of the preparations had been completed but the obstacle that still existed was the Ministry of Environment and Forestry as the one that gave the permit so that stakes could not be installed in the protected forest area. Before the boundary arrangement is complete, the certificate cannot be issued.

The arrangement of forest area boundaries in the context of approval for the release of forest areas is carried out in stages of activities as regulated in Article 50 paragraph (4), including:

- 1) making Boundary Route Maps;
- 2) boundary measurement and installation of definitive boundary signs;
- 3) mapping of definitive Boundary Arrangement results;
- 4) Creation and entry of released BATB and Boundary Maps; and Reporting to the Minister.

Decree of the Minister of Environment and Forestry of the Republic of Indonesia Number: SK.1245/MENLHK/SETJEN/PLA.2/12/2022 dated 13 December 2022 concerning Approval of the Release of Permanent Production Forest Areas for the Relocation of Landslide Disaster Residents of Dukuh Ngroto, Pare Village. Selogiri District in the name of the Wonogiri Regency Government in Wonogiri Regency, Central Java Province covering an area of 11.66 Ha Through the Minister of Forestry with letter Number S.287/Menhut-11/2004 dated 18 August 2004 gave approval for the reservation exchange of forest areas with a ratio of 1:1 (one to one) for the relocation of residents of Dukuh Ngroto, Pare Village, Selogiri District who were affected by the natural landslide disaster located in KPH Surakarta covering an area of 10,612 Ha.

The evidentiary strength of the certificate of land rights owned by the owner of the right is actually provided with full and strong guarantees from the provisions of the law because the certificate contains physical data and juridical data written and recorded at the local Land Office, so the recorded data is deemed to be valid. Correct.¹¹

¹¹ I Made Citra Gada Kumara, I Ketut Kasta Arya Wijaya, and Luh Putu Suryani, 'Kepastian Hukum Pemegang

The purpose of land registration is regulated in Article 3, Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, is:

to provide legal certainty and protection to holders of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights in question;

- 1) to provide information to interested parties, including the Government, so that they can easily obtain the data needed to carry out legal actions regarding registered land plots and apartment units;
- 2) for the implementation of orderly land administration.

The procedure for obtaining ownership rights to land is the Government's obligation to carry out land registration throughout Indonesia as regulated in Article 19 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Principles¹², this article includes:

- 1) Measuring, mapping, and land bookkeeping;
- 2) Registration of land rights and transfer of these rights;
- 3) Providing letters of proof of rights, which act as a strong means of proof.

Land registration can be carried out if the swap agreement is completed, proven by a Decree of the Minister of Forestry regarding the release of forest areas, determination of forest area boundaries, and designation of replacement land as an area¹³.

The issuance of a land title certificate results in the holder obtaining legal certainty and legal protection for the rights that have been registered. Apart from getting a certificate as a facility to differentiate the holder's rights regarding land rights protected by law. The existence of land registration as a form of communication of reports regarding parts of land means that the competent authority, namely the Government, has no difficulty in obtaining information as a legal act regarding registered plots of land and flats.

CONCLUSION

The background for the relocation was because in March 1999 in the Ngroto Hamlet area there was a landslide disaster which resulted in as many as 43 families (115 people) fearing for their lives. This natural disaster was caused by heavy rain with a slope of 70 degrees where the residential land area included natural disaster-prone agriculture covering an area of 13 Ha. Supporting factors for relocation include first, social relationships with neighbors, relatives, availability of gatherings and other facilities in the old place; Second, economic, namely the distance to the livelihood of the new location, the majority of whom are farmers; Third, the involvement of community participation with the local government regarding matters of coordinating disaster mitigation. Meanwhile, the inhibiting factor for relocation is the lack of infrastructure to level the new location, where re-structuring the community has to pay its own costs. The policy that underlies relocation is based on humanitarian considerations. The Wonogiri Regency Government has taken relocation policy steps, namely ordering all residents in that location to move their residence to a location that is safer from disasters.

The legal certainty of ownership of land certificates is that residents after the relocation of the forest area exchange incident in Ngroto Hamlet have not yet obtained the rights to the land they occupy regarding proof of land certificates. This is because the Wonogiri Regency Government is in the process of eliminating the land ownership rights of residents of landslide disaster victims as a condition for structuring replacement land boundaries for an area of ±11.66 Ha with an obligation for replacement land covering an area of 13.11 Ha totaling 44 plots of land.

¹² Pemerintah Republik Indonesia, *Law Number 5 of 1960 Concerning Basic Regulations on Agrarian Principles* (Indonesia: Lembaran Negara Republik Indonesia, 1960).

¹³ Handika Afghani Imansyah, Rahayu Subekti, and Purwono Sungkowo Rahatjo, 'Ruislag Tanah Kehutanan Menjadi Milik Warga Sebagai Upaya Reforma Agraria Bagi Warga Terdampak Bencana', *Journal of Pacta*

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