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The Role of Notaries in The Implementation of The Use of State Property After Regulation of The Minister of Finance No. 115 /PMK.06/2020 Concerning The Use of State-Owned Goods

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Abstract

The regulations getting renewed and revised, Utilization asset related regulations also become the one that are treated the same periodically. The release of newest regulation related of the State Owned Goods Utilization, in this case The Provisions of Minister of Finance Regulation Number 115/PMK.06/2020 about State Owned Goods Utilization is a simplified version of all regulations related on State Owned Goods Utilization so far. This purpose of this research is to describe the state of notary deed in terms of cooperation Agreements of utilization which requires several number of State Owned Goods utilization which is done based on agreement made in the form of notarial deed. The type of this research is normative juridical, with the approach of the related laws and regulations to the legal issues that have been researched. This research shows that agreement utilization in the form of rental, cooperation utilization, Build Transfer operate/Build Operate Transfer, Cooperation of infrastructure Provisions (KSPI), and Limited Cooperation for Infrastructure funding, (Ketupi) requires a notary. Notarial deed in the implementation State Owned Goods Utilization agreement, after The Provisions of Minister of Finance Regulation Number 115/PMK.06/2020 about State Owned Goods Utilization released, becomes an authentic proofing tool. The role of notary becomes important in terms of agreement about state owned goods utilization.

Keywords: Deed; Notary; Utilization; State owned goods.

A. Introduction

The implementation of state government is held to realize the goals owned by a country that can give rise to the rights and obligations of a country to be managed into a good system of government in terms of good state financial management. The management of state finances based on the Constitution of the Republic of 1945 "Uud 1945" in principle of its implementation must be carried out openly, professionally and responsibly for the realization of justice for the prosperity of all Indonesian peoples which is realized in the state budget "APBN" and "APBD". The management and utilization of State Property "BAN" has been stated as stated in Law No. 1 of 2004 concerning State Preservation which regulates in which there are 12 (twelve) scopes, one of which regulates the management of investments and state/ regional property. The management of state property and regional property is the most important component in the administrative order of the state which is intended for public services.

The increasingly complex and increasing development of BMN Management still requires optimal management so that its use can be channeled appropriately and effectively for the general public and government. BMN management is the utilization of state property that is not being used in the implementation of its functions. The management of state property does not change the status of BMN, but only changes from its management status.

The management of BMN and BMD is specifically regulated in Government Regulation No. 27 of 2014 concerning The Management of State/Regional Property ("PP 27/2014") which has been changed by the establishment of Government Regulation No. 28 of 2020 concerning Changes to Government Regulation No. 27 of 2014 concerning The Management of State/Regional Property ("PP 28/2020"). The formation of these changes is based on considerations in order to answer various problems and practices that still cannot be solved or accommodated in the previous PP. This is like the dynamics of BAN management related to rent, utilization cooperation and BAN located abroad which usually must be treated specifically.

BMN management consists of "planning needs and budgeting, procurement, use, security and maintenance, assessment, transfer, destruction, elimination, management, supervision and control development, and the latter is related to utilization." The utilization of BAN is a part that has been regulated in Article 27 PP 27/2014 which states "regarding forms of utilization that can be in the form of rent, borrowing and using, utilization cooperation, building for handover or building handover and cooperation in providing infrastructure." The purpose of this form of utilization is so that the implementation of BAN utilization in its implementation is orderly, directed, fair and accountable in realizing the efficient, effective and optimal use of State or Regional Property and can contribute in terms of state-owned goods services that are a contribution from community service, because, the result of such utilization is a non-tax state revenue "PNBP" intended for the use of the state in order to ensuring the greatest welfare of society.

The rules related to the use of BMN have undergone many modifications from time to time, the rules related to BMN were formed in 1995 through the Decree of the Minister of Finance No. 470 / KMK.01 / 1994 concerning Procedures for the Elimination and Utilization of State Property / State Wealth. "PMK No. 470 /KMK.01/1995" which in its decision mentions 3 (three forms) of utilization, namely "rented, begun for handover and loaned. Then, in 2007 "PMK 96 / PMK.06 / 2007 concerning Procedures for the Implementation of The Use, Utilization, Elimination, and Transfer of State-Owned Goods issued and replaced KMK Number 470 / KMK.01 / 1994." The provisions are basically more detailed about the procedures for management and management in BMN, then there are additional rules in the article that mention the form of utilization, namely rent, borrowing and utilization cooperation and building for handover and handover.

In order to respond to the development of good governance in its development (*good governance*) PMK 96 / PMK.06 / 2007 is broken down into several separate rules in accordance with the type of BMN management. The utilization itself is divided into three, namely "PMK Number 78 / PMK.06 / 2014 concerning Procedures for the Implementation of The Use of State Property, PMK Number 33 / PMK.06 / 2012 concerning Procedures for the Implementation of State-Owned Goods Leases that have been changed to PMK Number 57 / PMK.06 / 2016, and PMK Number 164 / PMK.06 / 2014 concerning Procedures for the Implementation of The Utilization of State-Owned Goods in the Framework of Infrastructure Provisions that have been changed to PMK Number 65 / PMK.06 / 2016.

This adjustment of regulations regarding the management of BMN is a simplification of several regulations and is also a way that regulations can be more adaptive to the development of socio-economic activities of the community. The regulation shall govern against the agreement or agreement that was born as the implementation of the regulation. One of them is in terms of the management of BMN there are several agreements that were born to carry out activities for the use of state-owned goods. In treaty law explains that "legal certainty is the

binding force of a treaty. As stated in Article 1338 paragraph (1) of the Civil Code which states that the agreement made legally applies as a law to those who make it.”

An agreement that has been made by the goods manager and the user of the goods has legal power for both, but to make an agreement that can be used as a deed with permanent legal force, it takes the role of a notary in agreeing. The part of notaries is needed in making this cooperation agreement because of the increasing number of people who have private legal relations, one of which is agreements or engagements. A notary is a general official authorised in the making of authentic deeds where most of the provisions have been stipulated in the Law of the Republic of Indonesia on The Position of Notary and in Article 1 paragraph (1) states, "Notary is a general official authorised to make authentic deed and other authorities as intended in this Law". Therefore, based on the above description, there can be found several problems as follows How is the management of state property after the issuance of Regulation of the Minister of Finance No. 115 / PMK.06 / 2020 concerning the Utilization of State Property? Then, What is the role of notaries in the implementation of the management of the utilization of state property?

B. Literature review

Primary legal material is a legal material that is authoritative, meaning it has authority.¹ Laws and regulations related to the problems submitted, namely: a. The Constitution of the Republic of Indonesia in 1945; b. Law No. 2 of 2014 concerning Notary Positions; c. Government Regulation No. 28 of 2020 concerning Amendments to Government Regulation No. 27 of 2014 concerning Management of State/Regional Property; d. Government Regulation of the Republic of Indonesia Number 27 of 2014 concerning The Management of State/Regional Property; e. Regulation of the Minister of Finance number 115/PMK.06/2020 concerning utilization of state property.

Secondary legal materials in the form of all publications on the law that are not official documents that include textbooks, legal dictionaries, legal journals, and comments on court decisions.² related to the role of notaries in the implementation of the use of state property.

C. Research Methods

This research is included in the literature research that is normative juridical, namely by analyzing laws and regulations, legal documents, and books related to the research conducted. The research method used is a normative legal research method. Judging from its nature, this research is descriptively analytical. Analytical descriptive for the author will describe in full the problem regarding the role of notaries in the agreement on the use of state property. The data used is secondary data, while the library material used is primary legal material consisting of laws and regulations related to the substance of the problem. The data collection tool used is the study of documents. The study of the document itself is a way of collecting data by examining the literature related to the object being studied.

D. Results and Discussion

State assets are state wealth that must be managed and maintained properly. The utilization of state property as part of the management of state wealth carried out and pursued by the state with the aim of utilizing goods by third parties is essentially an activity in which it

¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Group, 2010).

² Marzuki, *Penelitian Hukum*.

is a non-procurement of public goods / services that provide benefits for the government by managing assets that cannot be optimally used. In Article 1 number 10 of Government Regulation No. 27 of 2014 concerning The Management of State/Regional Property, it is stated that "utilization is the utilization of State/Regional Property that is not used for the implementation of the duties and functions of Ministries/Institutions/regional device work units and/or optimization of State/Regional Property by not changing the status of ownership."

The meaning of utilization itself based on PP 27/2014 is "the utilization of BMN / BMD which is not used for the implementation of the duties and functions of ministries / institutions / work units of regional devices and / or optimization of State / Regional Property by not changing the status of ownership. Utilization of BMN / Regional assets is carried out by relevant stakeholders in the Central Government and Local Government. In the utilization of these assets, two organs are known, namely Goods Managers and Goods Users." Then the utilization will be managed by the managers of goods as mentioned that "The Goods Manager is an authorized official and responsible for determining policies and guidelines and managing State / Regional Property. The Minister of Finance as the general treasurer of the state acts as the Manager of State Property. While the User of Goods is the official who holds the authority to use State / Regional Property. The Minister / Head of the Institution as the head of the Ministry / Institution is a User of State Property."

The management of state/regional property is carried out based on the principle of "functional, legal certainty, transparency, efficiency, accountability, and certainty of value." BMN basically includes "goods purchased or obtained at the cost of state/regional revenue and expenditure budgets and goods derived from other legitimate acquisitions. Goods derived from other legitimate acquisitions include goods obtained from grants/ donations or similar, goods obtained as an implementation of the agreement / contract." goods that have been obtained in accordance with the provisions of court decisions or laws and regulations basically have a permanent legal force.

The management of BMN in its development has become increasingly complex. However, its implementation cannot be implemented optimally. This is because there are several problems that arise because there are management practices whose handling has not been regulated in the Government Regulation, so with regard to it, then PP. No.38 of 2008 concerning Amendments to PP. No.6 of 2006 was replaced by Government Regulation No. 27 of 2014 concerning the Management of State/Regional Property with consideration in order to answer problems and practices that have not been accommodated. Changes and after replacement are basically the same in terms of arrangements regarding the use of State Property as part of the State Property Management, specifically regarding the Explanation of Government Regulation of the Republic of Indonesia Number 27 of 2014 concerning the Management of State/Regional Property 7 Article 3 paragraph (2) PP. 27 of 2014 which stipulates that "Management of State Property includes Planning needs and budgeting, procurement, utilization, transfer, security and maintenance, assessment, destruction, removal, management, and development, supervision and control."

Regulations regarding the management of state property have undergone changes. These changes were made to produce good governance management. Effective government management is needed in order to be carried out to the maximum and can be accounted for properly to the public. The latest regulation regarding the management of BMN is Regulation of the Minister of Finance number 115 / PMK.06 / 2020 concerning the Utilization of State-Owned Goods, issued as a form of Government response in order to overcome the changes that

occurred in the face of economic conditions and business climate that have been deteriorated due to the Covid-19 pandemic. Problems related to the deterioration of the economy and the business climate that has been bad due to the Covid-19 pandemic requires a strong synergy role by the government and the private sector (private) in order to survive in difficult conditions and help keep economic activities maintained during the pandemic so that it can run / the impact of the Covid-19 pandemic also affects the potential of the use of BMN both from the management level and users who also experience the impact of the pandemic. covid-19.

The implementation of the utilization of state-owned goods in PMK 115/2020 can be carried out with five forms of activities, including Rent, Borrowing and Use, Utilization Cooperation (KSP), Build For Handover / Build Handover (BGS / BSG), Infrastructure Provision Cooperation (KSPI), and Limited Cooperation for Infrastructure Financing (KETUPI). One form of utilization of BMN that is changed to adjust the current conditions is the form of utilization of BMN in the form of rent and Limited Cooperation for Infrastructure Financing (KETUPI). "Rental cooperation is carried out with the aim of optimizing the Utilization of BMN that has not been / not used in the implementation of the duties and functions of the State government, obtaining the necessary facilities in the framework of government administration and / or supporting the duties and functions of Goods User agencies, and / or prevent the unauthorized use of BMN by Other Parties."

The newly created cooperation in the framework of utilization is Limited Cooperation for Infrastructure Financing (KETUPI). "KETUPI is a Utilization scheme that optimizes the role of State Property (BMN) in funding new infrastructure projects. In this KETUPI scheme, private companies are required to pay a certain amount of fees in advance before obtaining the right to operate and improve the operations of BMN and its chosen STATE-OWNED assets." The implementation of KETUPI is carried out in infrastructure BMN in "ministries / institutions to then be transferred to the Ministry of Finance (Kemenkeu) as a Goods Manager, and operated by the State Asset Management Agency (LMAN), namely the Public Service Agency (BLU) under the auspices of the Ministry of Finance. The revenue will be allocated to finance the construction of other public infrastructure. The BMN that can be used in the KETUPI scheme is an infrastructure asset that has been in operation for at least two years and needs to be improved in efficiency based on international standards." Then, for each asset of the KETUPI must have at least 10 years of service life and the reporting has been audited by the CPC.

PMK 115/2020 regulates the rules on the scope and procedures for the use of BMN, so that its role can be wider and utilized optimally by the general public. The issuance of PMK 115/2020 is intended to replace the previous regulation, namely PMK 78 / PMK.06 / 2014 (PMK 78) which also regulates the Utilization of State Property. In it, there are significant and major changes with the issuance of PMK 115/2020 when compared to previous FMDs, among others:

1. The Borrow and Use Scheme is no longer only limited to the Local Government, the Village Government can be a borrowing partner, besides that the loan period for 5 years is not limited to 1x the extension period;
2. In terms of utilization schemes in the form of leases, there are adjustments in rental rates for ultramicro, micro, and small business groups, as well as for infrastructure utilization;
3. In terms of utilization cooperation schemes, there is a fixed contribution adjustment (relaxation) for KSP partners who have the potential to experience a decrease in income due to slowing economic activity due to the Covid-19 pandemic.

PMK 115/2020 provides a number of relaxations in terms of the use of BMN, the basic principles of the use of BMN in its implementation are not only used for the implementation of the duties and functions of ministries / institutions, the concept of utilizing BMN is an optimization of the utilization of BMN that does not change the status of ownership. PMK 115/2020 in its settings does not regulate in detail resulting in its management has a high degree of flexibility. Data from PNPB shows that the utilization of BMN from 2016 to 2020 shows an increase in its management that tends to be volatile.³ The data provides several images, including:

1. That there are still many BMN both in the goods manager and users of goods categorised as *idle or underutilised*, so the contribution to PNPB is still relatively low with a very large potential.
2. That the schemes and rules for the use of our BMN are still considered less attractive both in terms of business calculations and relatively complicated procedures/rules, so many business actors are not interested in utilizing State-Owned Goods and start switching to using privately owned goods or assets.

The condition of the use of BMN in Indonesia which must be understood and realized is a concept of utilization that does not only focus on the utilization of assets that initially idle then have been utilized properly. But the use of BMN must also pay attention to utilization through the "*Highest and Best Use principle*" of the asset in question. In addition, its utilization must pay attention to the level of competition and competition and market demands under abnormal conditions. BMN in this case also competes with private / private property, therefore a flexible BMN management scheme is needed and relevant to the business climate as outlined in PMK 115/2020.

This FMD simplifies business processes and adjusts the tariff on the utilization of state assets or *BMN "due to certain conditions in terms of government assignments, natural disasters, non-natural disasters, and social disasters. Eleventh, in the preparation period for the implementation of KSP and BGS / BSG, The Goods Manager can provide assistance and support in the preparation of KSP and BGS / BSG."* Changes in the regulation also include conditions where some of the provisions of the agreement must be outlined in the form of notarial deed. The requirements for the use of state property in the form of notary deed mentioned for the agreement in terms of lease in the framework of infrastructure cooperation are mentioned in article 25 paragraph (2) of the required lease agreement set forth in the form of a notarial deed. the Utilization Cooperation Agreement (KSP) is mentioned in article 45 paragraph (4), BGS / BSG Agreement in article 64 paragraph (4), KSPI Agreement article 81 paragraph (2), KETUPI Agreement mentioned in article 89 paragraph (3).

Management of state property is carried out with due regard to the following principles:

1. *Functional principles*, namely decision making and problem solving in the field of management of state property carried out by the power of goods users, goods users, goods managers and in accordance with their respective functions, authorities and responsibilities;
2. *The principle of legal certainty*, namely the management of state property must be carried out based on laws and regulations and the principle of propriety and justice;

³ Constantinus Chrisnan Soegihprajoko, "Wujud Konkret Pemanfaatan BMN Yang Dinamis," *DJKN Kemenkeu*, last modified 2020, <https://www.djkn.kemenkeu.go.id/kanwil-balinusra/baca-artikel/13510/PMK-115-Wujud-Konkret-Pemanfaatan-BMN-yang-Dinamis.html>.

3. *The principle of transparency*, namely the implementation of the management of state property must be transparent and open to the rights and participation of the community in obtaining the right information and its participation in securing BMN;"
4. *The principle of efficiency*, namely the use of state property is directed according to the limits of the required needs standards in order to support the optimal implementation of basic duties and functions of government.
5. *The principle of certainty of value*, namely the management of state property must be supported by the accuracy of the number and value of BMN.

Legal certainty in the management of BMN is a principle that must be implemented, one of which is by securing by requiring agreements related to the management of state property to be made by notarial deed. In the previous regulation, PMK Number 57 / PMK.06 / 2016 concerning Procedures for the Implementation of Lease of State Property, there are no conditions where the agreement on rent must be made in the form of a notariil deed, but after the establishment of PMK 115/2020 the lease agreement of state-owned goods must be poured in the form of a notarial deed. changes in the regulations regarding the use of state property are adjusted so that regulations regarding the rental of state property are also required to be formed in the notarial deed agreement.

The Utilization Cooperation Agreement (KSP), the BGS/BSG Agreement, and the KSPI Agreement have been adjusted first to be made in the form of notarial deed in the form of notarial deed in previous regulations. and updated daalm PMK 115/2020 so that all agreements related to the use of state property made uniform must be made in the form of a notarial deed agreement. Agreements in the form of authentic deeds become one way to deal with the challenges faced by asset management over time as the value of state assets continues to increase.

The increase should be in line with the increase and growth of the country's economy, income and expenditure. The challenges in time to close that must be faced are at least related to solving problems with BMN related to legal issues, itegrasi of the BMN management system and the contribution of the use of BMN to state revenue. The number of legal challenges to this makes the need for careful and careful handling and must be made an agreement in the form of a notarial deed which is important because of the optimization of free and clear assets. This method is a preventive measure to solve legal problems and disputes whose implementation is balanced with the spirit of maintaining state rights in the framework of asset security.

In general, "an agreement is defined as an agreement (*either oral or written*) made by two or more parties, each promising to abide by the so-called agreement. The agreement was born because of the agreement, the common will (*consensus*) of the parties." This means that the agreement is not held on a formla basis only. However, it is also done consensually. The implementation of the utilization of state/regional property is stated in an Agreement signed between the User of the Goods and a partner assisted by a notary in the form of a notary deed. A notary is a general official authorized in making deeds. Notaries make authentic deeds that have perfect evidentiary power where the deed can be used as evidence at trial if there is a civil lawsuit or criminal charges from other parties related to the deed he made.⁴

According to Sudikno Mertokusumo, notary deed as authentic deed has the power of external evidentiary value (*Uitwendige Bewijskracht*), Formal (*Formele Bewijskracht*) and Materil (*Materiele Bewijskracht*). The value of external proof is a form of the ability of the deed

⁴ Herlin Budiono, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan Buku Kedua* (Bandung: Citra Aditya Bakti, 2013).

itself to prove its validity as an authentic deed (*acta publica probant sese ipsa*). If viewed from the outside (birth) as an authentic deed and in accordance with the rule of law that has been determined regarding the requirements of the authentic deed, then the deed applies as an authentic deed, until proven otherwise, artimya until someone proves that the deed is not an authentic deed outwardly.⁵

The role of the Notary in the activities of the utilization of state property, created when the parties are present before the Notary voluntarily, asks the Notary to formulate the will of the parties into the deed of cooperation agreement for the use of state property activities, and the role of the Notary is only limited to carrying out his duties as an official mandated to make a deed of agreement on the use of state-owned goods. Based on research conducted by the notary role in the use of state property has a very important role, namely as the only general official authorized to formulate the will of the parties into the form of Notary deed to meet the mandatory requirements in the implementation of the excitement of the use of state / regional property.

The presence of the notary role in the establishment of a state/ regional property utilization agreement as mentioned above, in accordance with the definition of Notary in Article 1 paragraph (1) of UUJN-P states that "Notary is a general official authorized to make authentic deeds and has other authorities as intended in this Law or based on other Laws." The word "*based on other laws*" indicates that PMK 115/2020 is part of several rules governing the existence of Notary authority in it. cooperation agreements in the use of state property which is important to be made in the form of notary deed. because the deed made by the notary is an authentic deed that has perfect evidentiary power and the power of proof itself, namely proof outwardly, formally and materially in the framework of securing state assets which in this case is BMN.

E. Conclusion

After the enactment of PMK 115/2020, the pnjam pakai scheme is not only limited to local governments, but the village local government can become a loan and use partner that lasts for 5 years and is not limited to 1 extension period. There are adjustments in rental rates for ultra micro business groups, micro enterprises and kecl businesses and those aimed at infrastructure utilization. On the side of the utilization cooperation scheme, there is an adjustment of the form of utilization of BMN which is changed to adjust the current condition of the concession, namely the use of BMN in the form of rent and limited cooperation for the provision of infrastructure "KETUPI". The presence of this cooperation is expected to carry out the approval of new infrastructure projects without the burden of additional costs on the state budget.

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⁵ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1977).

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