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LEGAL RECONSTRUCTION ON LOCAL ASSET MANAGEMENT IN INDONESIA

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ABSTRACT

This work aims at reviewing the regulation regarding the utilization of local government's asset in Indonesia. This is required in order to guarantee the legal certainty in classifying, distributing, optimizing and including transferring the asset for regional government interest. To visualize the above objective, this work applied normative-legal research which emphasizes its analysis on primary and secondary legal materials. All collected legal materials are classified, categorized, analyzed and constructed as well as developed through analytical prescriptive elaboration. The result of this work shows potential conflict of norm which challenges the legal certainty in optimizing collective asset for public welfare. Some conflicting norms touch upon the legal subject inconsistency of regulation in optimizing the regional government's asset. At the end, this work recommends to integrate the various conflicting norms based on coherence principle in order to ascertain the consistency, comprehensiveness and interlinked of norms concerning the optimization of regional asset for public welfare.

Keywords: Regulation, Local Government, Local Asset Properties, Conflict of Norm.

INTRODUCTION

The regional government is demanded to advance further which is socially equitable for all Indonesian people. In order to do so, the government is obliged to provide people's needs in various forms especially in the form of goods and infrastructure¹. Those goods and infrastructure are referred to as Regional Property. Regional goods are all goods purchased or obtained at the expenses of the Regional Budget². Current regulations are Act No. 17 of 2003 concerning state finances, Act No. 01 of 2004 concerning state treasury, Act No. 23 of 2014 concerning regional government which are formulated with government ordinance No. 27 of 2014 concerning regional property, government ordinance No. 28 of 2018 concerning regional cooperation, minister of the internal regulations No. 19 of 2016 concerning guidelines for management of regional property, minister of the internal regulations No. 108 of 2016 concerning classification and codification of regional property, which in its implementation reveals theoretical, juridical, and sociological problems.

Theoretical Problems: Regional properties arise from the right to control the State which is in accordance with article 33 (3) Constitution of the Republic of Indonesia 1945 become 2

¹Yohanes Sogar Simamora, 2005, Dissertation; "*Prinsip Hukum Kontrak dalam Pengadaan Barang dan Jasa oleh Pemerintah*", Post graduate Program, Airlangga University, Surabaya.

²Article 1 number 11 of Act No. 1 of 2004, Article 1 No. 39 of Act No. 23 of 2014 concerning Regional Government, Article 1 No. 2 of Government Ordinance No. 27 of 2014 concerning Management of State and Regional Property, Article 1 No. 16 of minister of the internal regulations No. 19 of 2016 concerning Guidelines for Management of Regional Property.

(two) legal subjects, namely the subject of public private law. The subject of public law is coercive and one-sided, while the subject of private law is the agreement of both parties, which in practice raises many problems.

Juridical Problems: Today's legal facts, regulations or legislation of regulations which become instruments for the utilization of regional property are numerous published. The numerous amounts of laws and regulations governing the same material are the determinants of conflictual norm, inconsistencies in regulations and unclear formulation of legal norms in its regulations so that it does not provide legal certainty, corruption, collusion and nepotism. Those numerous amounts of laws and regulations reflect the ideal arrangement for regional property.

Sociological Problems: Regional government is committed to do a well-organized management toward regional property which is used to facilitate government duties and community services as well as public interest. However, with the amount of legislation of regulations being taken into consideration, which led to differences in planning which brings up fears for government administrators in making policies regarding the regional property. On the other hand, the main obligations of the government which should provide services to the community are hampered and stagnating. Research problem **“What is the nature of Regional Property?”**

RESEARCH METHOD

This research is a normative legal research³ which focuses on principles, systematics, synchronization level, vertical and horizontal, comparative law, and legal history⁴. This research is emphasized on the review of principles of law and synchronized with the various principles and norms of various laws and regulations by reconstructing the management of regional property laws by using a philosophical approach, legislation, and concepts.

RESULT AND DISCUSSION

Regional Property management is the whole activity which includes needs and budgeting planning, application, utilization, security and maintenance, assessment, transfer, destruction, deletion, administration and guidance, supervision and control⁵. Then regionally owned goods are all goods purchased or obtained at the expense of the Regional Revenue and Expenditure Budget or derived from other legal acquisition⁶.

a. Legal Resources for the Management of Regional Property

With regard to the management of regional property, its source of law is a juridical basis for local governments in the management of regional property assets, i.e. act no. 17 of 2003 concerning state finances, act no. 01 of 2004 concerning state treasury, act no. 23 of 2014 concerning regional government which are formulated with government ordinance no. 27 of 2014 concerning regional property, government ordinance no. 28 of 2018 concerning regional

³In Dutch, legal research is defined / called *rechtsonderzoek*, legal research is carried out to find solutions to legal issues that arise in order to provide a prescription of what should be the issue raised, prescription means what is required.

⁴Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta, page. 14

⁵The provisions of Article 1 No. 28, minister of the internal regulations No. 19 of 2016 concerning Guidelines for Management of Regional Property, (State Gazette of the Republic of Indonesia Number 547 on April 11th, 2016)

⁶See Article 1 No. 16 of minister of the internal regulations No. 19 of 2016 concerning Guidelines for Management of Regional Property, (State Gazette of the Republic of Indonesia Number 547 on April 11th, 2016)

cooperation, minister of the internal regulations no. 19 of 2016 concerning guidelines for management of regional property, minister of the internal regulations. Both of these legal sources are provisions that can be used as guidelines in making use of regional property.

b. The Nature of Regional Property

Regional property in the form of movable and immovable property, tangible or intangible that is purchased / financed from the expenses of the Regional Revenue and Expenditure Budget or derived from other legal acquisition, in the form of public infrastructure and superstructure which are essentially aimed to advance public welfare. Regionally owned assets in the form of movable and immovable property in the field of providing education purchased / funded from the expenses of the Regional Revenue and Expenditure Budget or derived from other legal acquisition which are essentially aimed for educating the life of the nation. Regional property in the form of movable and immovable property purchased from the expenses of the Regional Revenue and Expenditure Budget or derived from other legal acquisition to carry out all government affairs and development which are essentially aimed to participate in carrying out world order / peace, and to realize social welfare for all Indonesian people, regional property purchased / funded from the expenses of the Regional Revenue and Expenditure Budget or derived from other legal acquisition which is needed for the administration of state / regional government cannot be changed regarding its ownership, cannot be made dependent or mortgaged to get a loan. Regional properties that are bought / funded from the expenses of the Regional Revenue and Expenditure Budget or derived from other legal acquisition which are not used to carry out government affairs can be deleted from the list of regional properties by selling, exchanging, granting, being included as regional holdings, and / or destroyed in accordance legislation regulations, the ownership transfer of regional properties in the form of land and / or buildings and other than land and / or buildings with a value of more than Rp.5,000,000,000 (five billion rupiah) is carried out after obtaining approval from the *DPRD* (Regional House of Representatives), which consists of:

- 1) Facilities / equipment used by local government administrators to carry out their duties and functions to provide services to the public in the form of office stationery, office buildings, transportation equipment, hospitals, school buildings, etc.
- 2) Public facilities and social facilities whose benefits can be perceived directly by the community such as roads and irrigation, bridges, parks, fields etc.

c. Legal Subjects for Regional Property

The rights to control the state in this case the Regional Government act and are domiciled as a Legal Subject⁷. Local government legal actions can be divided into 2 (two) ways namely the right to control as a subject of public law (coercion) and the right to control as a subject of private law (Agreement of both parties) or can be interpreted as a representative of a Legal Entity (*rechtspersoon*) subjected to and regulated by private law. Whereas the Regional Government's legal actions in the field of Public Law (*Publickrechtelijke*) are as organs which are subject to and regulated by public law. Theoretically, the way to determine whether government actions are governed by public or private law is to look at the position of government in carrying out these actions. If the government acts in its quality as a government, then only public law applies, if the government acts not in the quality of the government, then private law applies⁸, in other words, when the government is involved in civil society and not

⁷Ridwan H.R, *Hukum Administrasi Negara*, 12th edition (PT. Raja Grafindo Persada : Jakarta 2016), Page.109.

⁸N.E. Algra, et.al. in Ridwan HR, *Ibid.* Page.116.

in its position as a party that maintains the public interest, it is no different from the private sector, which is subject to private law⁹. In relation to the regions, it is known that the regions are public legal entities, on the one hand as Overheid in the other hand as Lichaam, as regional Overheidsmeans that carrying out governmental authority or tasks governed by the provisions of public law, as Lichaam, regions are as representatives of legal entities that may act in the field of civil law and thus subject to the provisions of civil law¹⁰.

From the description above, it is known that the legal arrangements for the Management of regional properties have not been regulated consistently and do not have justice, expediency, and legal certainty, in accordance with legal objectives.

CONCLUSION

Basically regional property is the regional wealth which is respected by the State as a means of service of the local Government to the Community and for the general welfare of social justice for all Indonesian people, through the Right to control. The right to control is implemented with 2 (two) arrangements, namely the right to control as subjects of public law and the right to control as subjects of private law. Furthermore, the regulation of management of regional property occurs, inconsistencies, norm conflicts, blurred norms both from the concepts / terms used and the substance that governs the authority of the executor. In order to avoid conflict those norms conflict, regional property arrangements should be regulated by a separate law and regulated in act Number 17 Year 2003 concerning state finances, Law Number 1 Year 2004 concerning state treasury, and act no. 23 of 2014 concerning regional government. There should be regulations which focus on regional property cooperation with other parties.

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⁹C.J.N. Versteden, in Ridwan HR, *Ibid*.

¹⁰BagirManan, *Bentuk-bentukPerbuatanKeperdataan yang dapatdilakukanolehPemerintah Daerah*, Scientific Magazines of Padjajaran University, No. 3, Vol. 14, 1996, page. 27-29.