

The Utilization of Idle State Property in Leasing Form

Andi Risma,¹ Achmad Ruslan,² Anwar Borahima,³ Hasbir Paserangi⁴

ABSTRACT : *The regulation concerning the utilization of idle state property in the form of lease in the Law of the Republic of Indonesia No. 1 Year 2004 concerning State Treasury jo Government Regulation of the Republic of Indonesia No. 27 Year 2014 concerning State property Management jo Minister of Finance Regulation of the Republic of Indonesia No. 57 Year 2016 concerning Lease Procedure of State Property jo Minister of Finance of the Republic of Indonesia Regulation No. 250 Year 2011 concerning Management of Idle State property has not able to streamline, efficiently managed, and optimize the utilization of idle state property in the form of lease. This is due to the fact that the above four laws stipulated such enormous authority to property user in determining the plan of the utilization of state property, triggering the property organizer to lose its authority to utilize state property. The lack of supervision on the utilization of state property is due to the Minister of Finance as stipulated in the Minister of Finance Regulation Number 244/PMK.06/2012 beside as an official of state property, as well as an internal supervisor in the utilization of state property whose objectivity cannot be guaranteed in conducting supervision, while external supervision has not been regulated in Minister of Finance of the Republic of Indonesia Regulation No. 244/PMK.06/2012 concerning the Supervision and Control of State property.*

KEYWORDS : *State property, utilization, lease.*

I. INTRODUCTION

In order to provide services to the public, the government requires facilities and infrastructure in various activities. Facilities and infrastructure, which is one of them, is an office building. However, not all Ministries/Institutions have a permanent office building therefore sometimes the Ministry/Institute is forced to rent or ride on other institutions, for example the Ministry of Marine Affairs Coordinator who uses the office of the Agency for the Assessment and Application of Technology as a temporary office because President Jokowi requires all Ministries/Agencies to work immediately even though the Ministry has no permanent office[1].

Anticipation upon this matter, the Ministry/Institution is allowed to propose the construction of office buildings to the government through their respective ministries/institutions with the consideration that construction of office buildings is conducted in accordance with the level of necessity of the Ministry/Institution, because not a few of offices have been built at a high cost but apparently does not used for the implementation of basic tasks and functions of Ministry/Institution, for example the National Land Agency which is a Non-ministerial Government Institution located on Jalan Cendrawasi Makassar has 3 building units for nine hundred billion rupiah (900 M). Similarly the office of the Ministry of Justice and Human Rights, located at Jalan Sultan Alauddin Makassar, has 5 units of buildings worth one billion five hundred million rupiah (1.5 M)[2]. This happens because of the lack of mature planning and may be due to the rationalization of employees and even merger (merging) of two offices into one, such as the National Land Agency and the Directorate General of Spatial Planning of the Ministry of Public Works are merged into one ministry institution named the Ministry of Agrarian and Spatial Planning[3]. Ministry of Forestry and Ministry of Environment are merged into one ministry institution named the Ministry of Forestry and Environment, Ministry of Public Works and Ministry of Public Housing are merged into one ministry institution named the Ministry of Public Works and Public Housing[4]. Hence if the procurement of office facilities is not targeted properly and executed inefficiently and not paying attention to the level of requirement of respective Ministry/institution will become fruitless and will ultimately burden the state budget both in terms of procurement and in terms of maintenance.

Due to the construction of office facilities and infrastructure is conducted through state budget (APBN), it is categorized as State property stipulated in Article 1 Number 10 of Law No. 1 Year 2004

¹ Doctoral Student, Postgraduate of Hasanuddin University, Makassar, Indonesia

² Professor, Faculty of Law, Hasanuddin University, Makassar, South Sulawesi, Indonesia.

³ Professor, Faculty of Law, Hasanuddin University, Makassar, South Sulawesi, Indonesia.

⁴ Senior Lecture, Faculty of Law, Hasanuddin University, Makassar, South Sulawesi, Indonesia.

concerning State Treasury jo Article 1 Number 1 of Government Regulation of the Republic of Indonesia No. 27 Year 2014 concerning Management of State property[5] under the control of the state and managed by the government through the Ministry/Institution. Due to the office building is a state property intended for Ministries/Institutions as a means of providing services to the public, the Ministries/Institutions should use it for the execution of duties and functions, but if the State Property mentioned is not yet or not used it in the framework of the main task of Ministries/Institutions, it may be utilized either by the Ministries/Institutions concerned or other Ministries/Institutions or third parties in the form of rent, land use, cooperation of utilization, built operate transfer, and cooperation of infrastructure procurement[6].

The utilization intended is utilization of State property (Barang Milik Negara, hereinafter "BMN") which has not or has not been used for the implementation of the main tasks and functions of the Ministry/Institution hereinafter referred to as idle state property, or optimizing the State property by not changing the ownership status[7]. One of the forms of utilization intended is in the form of rent that is the utilization of State property by another party within a certain period and receive cash reward[8]. The objective is to implement the utilization of State property which is orderly, directed, fair, and accountable in order to grant the utilization of State property which is efficient, effective, and optimal as well may contribute in service matter to society because the result of the utilization is non tax state revenue (PNBP) which will of course be used by the state for the welfare of society as much as possible. In addition, the use of state property can reduce the burden of APBN, which is related to the reduction or loss of maintenance costs due to the responsibility of the lessee, and also if the state property is not utilized and left unused or unorganized, then it is possible that irresponsible parties may conduct illegal occupation due to the state property is recognized as his own, consequently the government will incur a certain amount of costs when conducting the business of returning assets through the court. Utilization of state property can also be useful for society, because the utilization can open employment and increase the income of society through utilization of rent by a third party in the form of company, it will absorb new employment because the business will be opened by utilizing state property will be able to creating needs of employees/workers, thereby society may earn income as employees or workers[9].

The legal regulation concerning the utilization of state property are regulated under Law No. 1 Year 2004 concerning State Treasury specially in chapter VII governing the Management of State property, and as the implementing regulation of Law No. 1 Year 2004 specifically in chapter VII, then The Government Regulation No. 6 Year 2006 concerning Management of State Property as amended by Government Regulation No. 38 Year 2008 on the Amendment of Government Regulation No. 6 Year 2006, but in its implementation, State Property Management is growing and complex therefore it cannot be implemented optimally due to some problems that arise as well as the existence of management practices that its management cannot be implemented with the Government Regulation, thereby with regard to it, then Government Regulation No. 38 Year 2008 concerning Amendment of Government Regulation No. 6 Year 2006 replaced by Government Regulation No. 27 Year 2014 on the Management of State/Regional Property with the consideration in order to be able to answer the problems and practices that have not been accommodated in the previous Government Regulation, such as the dynamics of the management of state property related to the lease, cooperation of utilization and State property in abroad which must Treated specifically. In addition, there are multiple interpretations of the provisions in Government Regulation No. 6 Year 2006 concerning Public Service Body (BLU), Non Tax State Revenues (PNBP), as well as cases that arise in the management of state property such as the Financial Audit Board (BPK) audit findings demanding the government to complete Government Regulation No. 6 Year 2006[10].

While specifically regarding the lease of state property as a form of utilization of state property technically is regulated in Minister of Finance Regulation No. 33/PMK.06/2012 concerning Procedures for Implementation of State property Leases as amended by of the Minister of Finance Regulation No. 174/PMK.06/2013 on Amendment to Minister of Finance Regulation No. 33/PMK.06/2012, and replaced with Minister of Finance Regulation Number 57/PMK.06/2016 concerning Procedure Implementation of State Property Leases. Article 4 paragraph (1) of Minister of Finance Regulation No. 57/PMK.06/2016 provides that "Renting of State property is conducted with the purpose of optimizing the utilization of State property which has not / not used in the implementation of duties and functions of state administration and prevent the use of state property by another party unlawfully". Furthermore, in paragraph (2) of the regulation stipulates that "Renting of state property is performed as long as it does not harm the state and does not interfere with the execution of duties and functions of state administration, thereby if any state property has not or not used in the execution of duties and functions of government then the lessee of the property must submit state property to the Ministry/Institution of the Property Management unit concerned to the Property Management in this case is the Ministry of Finance. These provisions are followed up by Minister of Finance Regulation No. 250/PMK.06/2011 concerning the Procedures of Management of Unused Property to Organize Duties and Functions of Ministries/Institution. Article 2 of Minister of Finance Regulation No. 250/PMK.06/2011 expressly stipulates that "the property user are required to submit idle state property (excess) to the property organizer", but the provisions in Article 2 are disallowed by Article 3 that although stated as Idle, but the state property cannot be submitted to the property organizer if it has been planned to be utilized by the relevant

Ministries/Institutions prior to the end of the third year or has been planned to be utilized within two years from the date the state property is indicated as idle state property. Consequently, the state property cannot be utilized by the property organizer for the ministry/ institution in any form of necessity, including its leasing to other parties because the utilization of state property must be under the notice and permission from the Property Organizer, thereby the state property actually provides benefits for non tax state revenue, on the contrary, it encumbers the state budget in terms of its maintenance. If this matter continues, then it will not only cause a loss for the state finances, but the state also fails to realize the welfare for the society because the state is suspected not yet optimal in performing its obligations in utilizing State property. Therefore, an ideal step in the utilization of State property is required.

Based on the above explanation, the problem that will be discussed in this paper is how is the nature of providing the opportunity to the property user on the plan of utilization of the idle state property? And how is the supervision to the implementation of utilization of the idle State property in the form of rent?

II . RESEARCH METHODS

Type of Research

This type of research used the type of normative-empirical legal research. Normative aspects used secondary data that is descriptive[11] and data analysis that is qualitative. For empirical research used primary data that emphasize more in interview aspect.

Research Location

This research is conducted in Jakarta and Makassar especially at the Ministry of Finance of the Republic of Indonesia, with the consideration that both locations can represent the territory of Indonesia in the case of the utilization of State property in the form of rent.

Types and Data Sources

The types and sources of data used in this study were primary data and secondary data. Primary data was data that obtained directly from the research location in the form of interviews, while secondary data was data that needed to complete primary data, such as primary legal material consisting of legislation related to the utilization of state property in the form of rent, and secondary legal materials consisting of books, papers, seminar results, scientific papers related to this research.

Data Collection Techniques

The data collection techniques used were direct observation of the utilization of state property in the form of rent, as well as interviews conducted by respondent, consisting of property organizing officials, property user officials, and third parties as the lessee.

Data Analysis

This study used a qualitative analysis of data analysis that did not use numbers, but described the findings with words[12].

III. RESULTS AND DISCUSSION

A. The Nature of Providing Opportunity of Idle State property Utilization to The property User Before 3 Years Since It Indicated as Idle.

State properties in the form of land and buildings have a strategic role in the implementation of duties and functions of government thereof they must be managed properly, effectively, and optimally. The management in practice encounters major challenges especially related to the existence of idle land and buildings, or better known as idle state property, example state property in the form of land and/or buildings that are not used for the purpose of performing the duties and functions of the Ministry/Institution[13].

The nature of providing the opportunity to the property user to utilize the idle State property is intended to: 1. Make effective use of State property in the sense that all idle state property is used to fully to support government services to society; 2. The efficiency of state finance expenditure either from procurement cost or maintenance cost and security; 3. Optimize state financial revenue from the utilization of idle state property in the form of rent. This is indispensable to ensure that limited resources can be maximally utilized by minimizing the costs incurred as minimum as possible, therefore the use of state property can contribute to the country's economic growth and improve society's lives.

To achieve the above objectives, the property user shall report and submit the idle state property to the property organizer therefore the property organizer may utilize state property for the execution of duties and functions of the Ministry/Institution in need or utilize it in the form of lease to the third party[14]. The obligation of the property user to deliver the state property shall be exempted if the property user has a plan to use the state property before the end of the third year and declared through the written application submitted by

the property user to the property organizer, starting since state property is indicated as idle state property[15]. It is intended that the Ministry/Institution as a user of property can streamline the utilization of BMN idle, in the sense that all BMN idle is used fully to support government service to the public, and also to finance the state finance expenditure both from procurement cost and maintenance cost and security, Making savings because it no longer needs to cost the construction of new buildings.

However, the plan to utilize BMN idle in the form of rental of building owned by Ministry of Transportation and Ministry of Religion which is reported by the user of property to the property manager has not been realized until the end of third year since stated idle indicated. The cause is[16]:

1. Condition of buildings that are not feasible to use so that requires funds for repairs.
2. There is a maintenance fee but is not used in accordance with its designation, because it is revised for other expenses such as shopping for property and other unexpected shopping.
3. The wrong planning, because basically the user of the property filed the proposal of utilization just to buy time to keep the cost of maintenance.
4. There is no monitoring from the property manager on the utilization plan of BMN idle by the user of the property.

The above conditions are strengthened by Nur Huseng (Section Head of State Property Management, State Property Office and Jakarta Auction IV), stated that: "The obstacles that often occur in the field over the plan of idle BMN utilization are generally caused by poor planning Mature, because basically the user of property proposed the utilization to the manager of property only to gain time for the BMN idle still get the cost of maintenance, and also there is a concern if the BMN idle is submitted to the manager of property, then there is a possibility if one day needed, Will find it difficult to get back the idle BMN"[17].

The constraints mentioned above resulted in the utilization of BMN idle ineffective and optimal, causing losses to the state, since in addition to not being able to contribute to state financial revenue, also the BMN idle still burden the country in terms of maintenance.

In order that the utilization of idle state property in the form of rent can be effective, efficient, and optimal, then according to the author, the matter that must be conducted by the property organizer as the party responsible for the utilization of state property as follows:

1. Not passive, meaning that the property organizer not only awaits the report from the property user but is active in controlling the state property in the Ministry/ Institution.
2. Not giving such wide authority to the property user in terms of determining the state property, which is included in the idle category, including the utilization plan, but the property user must remain in coordination with the property organizer in determining the status of idle state property.
3. Regular property organizers perform document and physical inspection of state property to sharpen their role in determining idle state property.

B. Supervision on Utilization of Idle State Property

Supervision of the utilization of state property as one of the cycles in the management of state property holds strategic and urgent function in optimizing the utilization of state property as part of state finance[18]. Supervision of state property contains an understanding of the process of determining the parameter of success and actions to be taken that support the achievement of expected results in accordance with the objectives set by the rules applicable in the framework of realization of proper asset management[19]. The notion of supervision of state property contains two important things namely state property supervision objectives and substance of state property supervision objectives. The target of state property supervision is "the process of determining the success of state property and taking actions that support the achievement of expected results", while the substance of state property supervision objectives is "achievement of state property management objectives that have been established in accordance with the rules applicable in the framework of realization of asset management"[20].

Supervision of the use of state property is regulated in Minister of Finance Regulation No. 244/PMK.06/2012 On the Supervision and Control of State property, which is an elaboration of Articles 90 to 95 of the Government Regulation No. 27 Year 2014, which regulates the issue of supervision and control of state property. The implementation of the supervision of state property is based on the Minister of Finance Regulation No. 244/PMK.06/2012 performing the management of state property and the officials/employees who manage the state property[21], therefore in this Minister of Finance Regulation is divided into two outlines related to the implementation of supervision, namely the implementation of supervision within the scope of authority of the property organizer, as well as the implementation of supervision within the scope of authority and obligations as the property user/power of the property user[22].

1. Supervision by the Property user/Proxy of Property Users

The property users are the officials holding the authority of the utilization state property[23]. Minister/Chairman of the institution as the head of the Ministry/Institution is the user of state property is authorized and responsible for supervising the utilization of state property under his control[24]. The proxy of property user shall be heads of work units or officers designated by the property user to utilize property in their control as good as possible[25], and hereinafter referred to as internal controllers in the utilization of state property.

The proxy of property user is an organizational unit closest to the existence of state property thereby supervision of state property rests on it. While the property user has more functions to monitor the implementation of supervision by the proxy of property user. The scope of supervisory activities undertaken by the property user/proxy of property user is in the case of monitoring and controlling on the utilization of state property. Monitoring by the property user is incidental monitoring, while the monitoring performed by the proxy of property user is incidental and periodic monitoring.

Implementation of monitoring by property user/proxy of property user is monitoring on suitability between executions of utilization of state property, which is under the control of property user/proxy of property user with the provisions of legislation[26]. Thereby, what is meant by monitoring is to compare the implementation of the activities in accordance with the existing laws and regulations whether it is appropriate or not. Therefore the implementation of monitoring by the property user/proxy of property users is focused on the obedience aspects of existing regulations[27]. That is, that the implementation of monitoring must be in accordance with Regulation of the Minister of Finance No. 244/PMK.06/2012 concerning Supervision and Control of State Property, because if when monitoring the user of the property/proxy of property user finds the conditions requiring to take the necessary action, then as soon as possible the user of the property/proxy of property user carry out the follow-up action from Monitoring, that is doing the controlling action on the condition found. For example, a form of utilization that is inconsistent with the approval of the property manager, the type of business for rent is not in accordance with the contract between the user of the property and the tenant, or if the utilization of idle BMN has not been approved by the property manager.

There are 4 (four) main objectives of the controlling of state property, namely: (1) to update the bookkeeping of state property in the State property Management Information System (SIMAK BMN), (2) to realize structuring effort in the Administration of State property in all work units (Satker) of Central government agencies, (3) presenting corrections of fixed asset value on the ministry/Institution financial reports, and (4) conducting continuation act upon the structuring effort and management of State Assets that is orderly and optimal[28]. Matters that are included in the object of controlling the state property currently the assets controlled by the Ministry/Institution, including those located at the Public Service Bodies (BLU). While the meaning of the BLU is an agency in the government environment established to provide services to the public in the form of the provision of property and/or services sold without prioritizing profit and in conducting its activities based on the principles of efficiency and productivity, such as assets derived from Deconcentration and Co-Administration funds, former assets of National Banking Restructuring Body (BPPN), Bank assets in Liquidation, former Foreign/Chinese used assets, ex-Contractor Cooperation Contract (KKKS) assets, and other assets, such as a grant of state property, namely the transfer of ownership of state property from the central government to the regional government or to another without reimbursement based on legislation are designated as state property[29].

The direction of the control of state property as in order the utilization of state property in every property user more accountable and transparent, therefore the state property can be optimized upon its utilization to support the service function to society, and its possibilities upon the function of budgeter in the utilization of state property can contribute state financial revenue[30]. Therefore, the use of state property must be closely monitored and controlled to avoid mismanagement, loss and unutilized, thereby to improve the supervision function, the role of government internal supervisor is very important.

The subsequent action taken by the property user/proxy of property user on the result of monitoring and control is to request the government internal monitoring apparatus in this case the Inspectorate General (IRJEN) of each Ministry/Institution as the property user or the Finance and Development Supervisory Institution (BPKP) to undergo audit over the results of monitoring and controlling in accordance with existing laws and regulations. If it is found that there are irregularities in the use of state property, and may even take legal action if the audit results are proven to be irregularities involving the property user and procurement of property and property organizers as well third party[31]. This action is conducted to hold accountable users of the property/proxy of the property if it is proven to commit acts of deviation on the use of state property.

2. Supervision by the Property Organizer.

The supervision of state property by property organizer, hereinafter referred to as the internal supervisor of the utilization of state property based on Article 26 Paragraph 1 Regulation of the Minister of Finance No. 244/PMK.06/2012 shall be carried out by the Director General, the Head of Regional Office of Directorate General of the State Administrative Office (Kanwil DJKN) and the Head Office of Ministry of State and Auction (KPKNL) of Ministry of Finance of the Republic of Indonesia.

The term "policy" means behavior or actions that reflect virtue for every official person, while "wisdom" in the sense of law has meaning as an action that leads to the goal as the exercise of the power of officials or government organs[32]. The concrete form of government policy can be attributed to Riant Nugroho D.'s opinion[33]. The matters that divide government policy into three groups: (1) policies that are macro or general, or fundamental; (2) a *meso* or intermediate public policy; (3) micro public policies. The same opinion is expressed by M.Solli Lubis[34] stating: "Policy or kebijakan contained in official documents, even in some form of legal regulation, is also implied and contained the main policy, for example in the Law, Government Regulation, Presidential Decree, Ministerial Regulations, Regional Regulation, and others.

The property organizer is an authorized official and is responsible for establishing policies and guidelines as well as organizing state property[35]. If the implementation of surveillance of state property in the domain of property users is more dependent on the power of the property user, therefore the supervision is within the scope of the property organizer, the role of the State Wealth Service Office and Auction (KPKNL) is very large, because KPKNL is a unit of property organizers in which its execution rely on interaction directly with the power of the respective property user of the Ministry/institution. Especially for the utilization of state property, which has obtained the letter of property organizer based on Article 26 Paragraph 1 Regulation of the Minister of Finance No. 244/PMK.06/2012 therefore supervision shall be exercised by the management of the property that has issued the letter of approval intended.

Supervision conducted by property organizer on the utilization of state property in the form of monitoring and investigation. Monitoring by property organizer on the utilization of state property consists of periodic monitoring which is conducted at least once a year, and incidental monitoring conducted at any time no later than 5 (five) working days after received written reports from the public or information from the mass media[36]. Investigations may be conducted by property organizer, if from the monitoring result there is any indication of irregularities, the investigation is conducted to collect evidence or information that can alter bright and clear about a problem for settlement and control, and if there is an indication of the loss of state investigation, therefore the Director General on behalf of the Minister of Finance may request the Government's internal supervisors to audit.

The existence of property organizers and the property user/proxy of property users as supervisors in the utilization of state property creates a raises doubts in terms of objectivity testing for both, where the two supervisors are no other than users of state property, so as the user of state property as well as the supervisor, the transparency of supervision is impossible. Related to this, Arifin P. Soeria Atmadja states that "when it is seen from the perspective of accounting principles that must cling to the incompatible principle, the audit function on management and responsibility in one agency or institution will have a negative impact and counterproductive to the objectivity and effectiveness of examination result that may lead to Corruption, Collusion, and Nepotism (KKN)"[37]. Therefore, in order to supervise the utilization of state property can run as expected, the independence of supervisors will determine the objectivity of inspection quality. This independence according to Yuli Indrawati shall cover[38]: Finance, resources, and organization as well as the position of the body itself in the governance structure especially to the unit that is being examined. Therefore, it is necessary to establish an external supervisor who has a position parallel to the unit that is being examined, because the supervisor with higher position will suppress the object that is being examined. In opposite way the examined object will suppress the supervisors who are under the examined. Thus, objectivity that is required in each examination result cannot be achieved maximally.

IV. CONCLUSION

The nature of providing opportunity to the property user on the plan of utilization of idle state property in the form of rent before 3 years since stated indicated as idle, intended to streamline, efficiently managed and optimize the utilization of idle state property. However, these three things have not been implemented properly, caused by several factors, among others; (1) property organizer gives full authority upon the utilization plan of idle state property to property user (2) There is no regulation regarding the requirement for the property user to report the existence of idle state property, (3) The utilization of idle state property in the form of rent has not become the main concern for Ministry of Finance as property organizer. The supervision of the utilization of idle state property in the form of rent is not enough if only performed by property user and property organizers, because the two supervisors as well as supervisors as well as users of state property, where the objectivity of both are doubtful, an external supervisor whose position is parallel to the object (unit) that is being supervised.

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