



Basis For The Validity Of The Finance Minister's Policy In Determining Rental Price Of State-Owned Building Utilization

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Abstract - This article discusses the Minister of Finance's policy in determining the rental price for utilization of State Property Buildings as a sustainable effort in the management of State Property which is not only oriented towards administrative burdens and functions but also in making various innovations that can contribute to the State Budget (APBN) to produce more optimal, effective, and efficient State Property Management. Researchers use a normative legal approach to examine various provisions in the form of laws, regulations of the Minister of Finance, and references in the form of books, journals, articles, etc. that are relevant in regulating the validity of the Minister of Finance's policy in determining the rental price of utilization of State-Owned Buildings. In addition, researchers also analyze conformity with applicable legal principles, such as the principles of justice, legal certainty and expediency as the basis for the validity of policies in determining rental prices for the utilization of State-Owned Buildings. The Minister of Finance has issued regulations on the Utilization of State Property through Minister of Finance Regulation Number 115 of 2020 with one of the forms of utilization is the lease of BMN Objects, in the form of land and / or buildings; and / or other than land and / or buildings, the rental amount is the result of multiplying the basic rental rate and the rental adjustment factor. Enforcement of the principle of legal justice to ensure fairness and transparency for the community through a series of processes by considering factors such as market value, utilization requirements, and the needs of various parties, as well as avoiding any form of discrimination in the decision-making process taken by the Minister of Finance as the goods manager. Legal certainty ensures that state property is used transparently and accountably within a clear legal and regulatory framework. Benefit is maximising society benefits—including economic growth, social development, and environmental sustainability—through efficient state property usage.

Keywords: *Policy Validity; Rent Pricing; Utilization of State-Owned Buildings;*

I. INTRODUCTION

The government, in this case the Minister of Finance, is responsible to the President for organizing government affairs in the field of State Finance and State Assets. One of the functions of the Ministry of Finance is to manage state property / assets.[1]. The Minister of Finance has direct supervision over the Directorate General of State Assets (DJKN), an Echelon I vertical organisational entity responsible for managing State Property (BMN). The Central Government Financial Report for 2022 estimates that BMN's total worth is Rp.6,660 trillion. This amount includes Rp.204.8 trillion for current assets, Rp.5,956.5 trillion for fixed assets, and Rp.498.3 trillion for other assets. Along with the development of BMN management and the increasing value of BMN managed by DJKN from year to year, of course this will change the mindset/paradigm of BMN management which was originally only cost-oriented (cost center) and not just an administrative function but also to support government functions in the form of investment, so that the state is required to innovate in increasing the added value of BMN and contributing to the State Budget (APBN) through an increase in Non-Tax State Revenue (PNBP). Total State Property under the management of the Directorate General of State Assets amounted to Rp6,660 trillion, consisting of current assets of Rp204.8 trillion, fixed assets of Rp5,956.5 trillion, and additional assets of Rp498.3 trillion. In addition, DJKN is also authorized to conduct government investment. The 2022 government investment of Rp3,503 trillion consists of permanent investment in State Capital Participation of 2,631 trillion, permanent investment in BLU of 8.96 billion, other permanent investments of 632.3 trillion, revolving funds of 11.24 trillion and other non-permanent long-term investments of 221.93 trillion.[2] Many factors affect the rental price of buildings in an area, such as the condition of the building and supporting facilities close to the venue, and so on. These various factors affect the rental price of the building and provide a reference for decision makers to be able to determine the rental value in the context of optimal management by considering various factors.[3]

II. LITERATURE REVIEW

According to the Law of the Republic of Indonesia Number 25 of 2004 concerning the National Development Planning System, the definition of policy is the direction / actions taken by the Central / Regional Government to achieve goals. Policy is an idea that serves as the basis for plans, leadership, and task execution. Apart from individuals, policies are also commonly applied to governments, organizations, and groups in the private sector. References to "policy or policy review" can refer to processes that involve making important decisions for an organization. This process includes determining various options, such as program or spending priorities, and choosing the best one based on consequences.[4] The government issues many policies to carry out its administrative duties. Part of this process involves making a list of potential choices, such as expenditure or programme priorities, and then picking the best one according to the outcomes.[4]. According to Irfan Islamy (1999), policy is an action that includes rules of wisdom, while wisdom comes from the word "wisdom", which means actions that require deeper consideration. According to M. Solly Lubis (2007), wisdom is deep thought and consideration that serves as the foundation for policy formulation. The word "Government" comes from the word "Order", while "Order" comes from the word "Command", which means telling people to do something. Government is the body that governs a country (a region of the country) or the body that governs a country (such as a government cabinet).

The following are some definitions of government policies presented by several experts:

1) Mc Rae dan Wilde

Government policy is defined as "A set of actions chosen by the government that have an important effect on a large number of people", which means that government policy consists of various government activities and decisions that affect many people. Therefore, a government decision that affects only one or a few people cannot be called a government policy;

2) Thomas R. Dye

Whatever the government chooses to do something or not do something" is the definition of government policy. If the government decides to do something, such as prohibiting residents in an area from building houses on their land for certain reasons, but not prohibiting them from building houses on their land. Both government actions have the same social impact.

3) Young dan Quinn

According to this definition, government policies are actions made and implemented by government bodies that have the legal, political, and financial authority to do so."[5]

Evaluation of State or Government (public) Policy According to Suyatna (2009: 63), must fulfill 7 (seven) requirements, namely:

- 1) Relevance, namely Policy evaluation must provide information to policy makers and actors. They must also be able to provide the right solution when various problems arise;
- 2) Significance, i.e. Policy actors must get new and important information from policy evaluation beyond what they consider clear and easy to understand;
- 3) Validity, i.e. Policy evaluation must be able to provide a fair and persuasive judgment about the real results of the program or policy;
- 4) Reliability, i.e. Policy evaluation should be able to prove that the results of the evaluation are not based on information through an imprecise measurement process;
- 5) Objectivity, i.e. Policy evaluation must provide a perfect and impartial (biased) conclusion report, where the information allows the evaluators to reach the same conclusion;
- 6) Timeliness: Policy evaluation must provide timely information in conditions where a decision must be made;
- 7) Usability: Data from policy evaluations should be easily understood and used by policy makers and other policy actors. [6]

In the process of BMN utilization proposed by Ministries/Institutions, DJKN always considers various aspects, both from the needs of K/L for the utilization of idle BMN and prospective tenants to consider profit, potential tenant needs, and overall economic conditions. In addition, relevant laws and regulations, such as the State Finance Law, Minister of Finance Regulations and other provisions as guidance in forming the basis for this policy. According to Nahdi (2018), the market data method is the best for determining property rental rates because market data will provide a more objective assessment of the magnitude of the influence of demand and supply forces in the market, where market data is not only based on a single value but within a certain range of values. In order for the resulting value to be accurate and accountable, the valuation to determine the rental value of BMN must be carried out systematically. If the resulting value is inaccurate, it will cause the rental price to be undervalue or overvalue, which may cause the purpose of BMN utilization to be less effective. If the resulting value is overvalue, prospective tenants will decrease, and state revenue will also decrease. If the resulting value is undervalued, the rental income that will be deposited into the state treasury will also decrease. Therefore, the rental rate must be at a fair value, which means that optimizing idle BMN can increase non-tax state revenue (Kurniawan, 2016).[7] Buildings that have not been optimally utilized, are one of the resources that can be utilized in supporting and building more resilient and sustainable urban areas, with various proposals for several work proposals to develop the potential and possibilities of various alternative uses of buildings that are more suitable.[8] Land rental rates in the city center, or market, are the highest, and land rental rates get lower the farther away from the city center. Von Thunen used the demand curve, an economic concept, to determine how land rent relates to distance to the city center. Not all production activities have the ability to pay their land rent in the same way. The greater the ability, the more likely it is that production activities will be located near the city center. The conclusion of Von Thunen's theory is that land prices in the city center are the highest and will decrease with distance from the city center." [9] Urban economists in the city of Chicago, USA have long understood the theoretical importance of transportation infrastructure and accessibility to the location choices of households and businesses. using a readily available dataset on rental transactions in the Chicago metropolitan area to explore the factors that influence industrial property rents. Proximity to transportation infrastructure, property features, lease term, and local neighborhood characteristics are among the factors considered. The empirical results show that property, rent, and local demographics affect rents. Transportation infrastructure has less impact on industrial properties as rail lines and interstate highways are usually close by. Rental term structure premiums tend to rise and vary over time. In addition, the model was used to create a constant rent quality index for the commercial property market in Chicago. The estimated constant quality index shows a smaller increase in rents from 2003 to 2008 compared to average rents and asking rents, and a larger decrease until the end of 2011.[10]

III. METHOD

The research methodology utilizes a normative legal approach, which aims to solve the problem at hand and traditionally involves the examination of various legal theories, principles, and doctrines. New arguments, theories, or concepts that emerge from legal research serve as blueprints for solving the problems that have been identified.

(Peter Mahmud Marzuki, 2005).[11] This research comprehensively analyzes the provisions in the form of laws, regulations of the Minister of Finance, and references in the form of books, journals, articles, etc. that are relevant in regulating the validity of the Minister of Finance's policy in setting rental prices for the utilization of State-Owned Buildings. This research also aims to understand the legal framework of the validity of the Minister of Finance's policy in determining the rental price for the utilization of State-Owned Buildings and to analyze its conformity with applicable legal principles, such as the principles of justice, legal certainty and expediency. Furthermore, it draws a conclusion whether the Minister of Finance Regulation on the basis of policy validity in determining the rental price for the utilization of State-Owned Buildings has a strong legal basis and is in accordance with applicable legal principles.

IV. RESULT AND DISCUSSION

A. *Regulation Of BMN Utilization Through Lease*

The government was present at the beginning of the State Financial reform through regulations to regulate BMN Utilization which is one type of BMN Management, through Law Number 17 of 2003 concerning State Finance, Law Number 1 of 2004 concerning State Treasury. Furthermore, the Government also regulates in Government Regulation (PP) Number 6 of 2006 concerning BMN / D Management as amended by PP Number 38 of 2008 concerning Amendments to PP Number 6 of 2006 concerning BMN / D Management. Furthermore, the Government revoked the two PPs and replaced them with PP Number 27 of 2014 concerning BMN / D Management and in the context of BMN management, the Government through the Ministry of Finance has issued several implementing regulations through Minister of Finance Regulation (PMK) Number 78 of 2014 concerning Procedures for BMN Utilization and PMK Number 57 of 2016 concerning Procedures for Lease Implementation. PP No. 27 of 2014 has also been amended by PP No. 28 of 2020 concerning Amendments to PP No. 27 of 2014 concerning BMN / D Management and as an implementing regulation, PMK No. 115 of 2020 concerning BMN Utilization has also been established which also revokes several previous PMKs, namely PMK No. 78 / PMK.06 / 2014, PMK No. 164 / PMK.06 / 2014, and PMK No. 57 / PMK.2016. [12] One form of BMN utilization according to these provisions is leasing, which is the use of BMN by other parties for a certain period of time and receiving cash rewards. The main provisions of the lease listed in PMK Number 115 of 2020, are when BMN utilization can be carried out as long as it does not interfere with the implementation of the duties and functions of the state government by optimizing government buildings that have not / are not used in carrying out the duties and functions of the state government. The lease object includes BMN, in the form of land and / or buildings; and / or other than land and / or buildings, the rental amount is the result of multiplying the basic rental rate and the rental adjustment factor.

B. *Principles Of Legal Justice, Legal Certainty And Legal Expediency*

1. The Principle of Justice The law must fulfill a sense of justice for society. By its nature, justice is individualistic, subjective, and not generalized. Punishment does not function optimally if justice and legal certainty are set aside. Ideally, the basic principles of justice, which are the basic principles of philosophy, will be used to enforce the law. The basic values of expediency and legal certainty are values that apply sociologically and must be applied juridically. According to the fifth principle of Pancasila, which reads "Social justice for all Indonesian people", justice serves to safeguard and protect every human right and obligation, create social order, and promote social welfare. Every person has the inherent right to a life free from injustice, and the state has an obligation to ensure that its citizens enjoy this right. Equity in all spheres of society—the legal, political, economic, and national life systems—must be upheld at all times.[13]
2. The Principle of Legal Certainty ensures that all citizens will be granted their rights and obligations in accordance with the law, and it safeguards individuals or organisations from arbitrary actions. If the government is capable of ensuring legal certainty, community life will be more organised and orderly.. The purpose of the establishment of law is solely to be useful for humans. And the consequence of the formation of the law will be the presence of penalties that function to generalize and apply to everyone.[14] With legal certainty, people are protected from arbitrary actions of various law enforcement agencies when carrying out their duties in society. Legal certainty is one of the metrics employed to assess the clarity of the rights and obligations outlined in a law. This metric necessitates evidence to guarantee that the law can be accounted for. [15]

3. The government's implementation of law enforcement is eagerly anticipated by the entire community. Law enforcement does not only aim to retaliate or compensate for criminal acts, but also has a greater goal of providing benefits and positive impacts. It is also expected that legal benefits are able to provide happiness for many people. Jeremy Bentham was the first to develop the theory of utilitarianism, or the theory of expediency, as a reaction to the idea of natural law in the 1800s and 1900s. Bentham denounced the idea of natural law because he thought it was vague and uncertain. Moving from the abstract, idealistic, and a priori to the concrete, materialistic, and fundamental, One of the purposes of law is to provide benefits to achieve happiness." [16] The utilitarian school posits that the advantages of law can be quantified by the extent to which it induces the greatest pleasure in individuals. This school contends that happiness is a reality regardless of whether a law is morally sound or immoral; rather, it is contingent upon whether the law is capable of bringing joy to the community. In accordance with the principle of utilitarianism, an individual can generate pleasure by engaging in an activity that they desire. [14]

C. *The Application Of The Principles Of Legal Justice, Legal Certainty And Legal Expediency In The Validity Of The Finance Minister's Policy In Determining The Rental Price For The Utilization Of State-Owned Buildings.*

- ⇒ It is crucial to uphold the principle of legal equity in the policy of determining rental rates for the utilisation of state-owned buildings to guarantee transparency and fairness for the community. This is achieved through a series of processes that take into account the demands of various parties, market value, and utilisation requirements.. In addition, it is very important to avoid any form of discrimination in the decision-making process taken by the Minister of Finance as the goods manager. The Minister of Finance can ensure fair determination of rental rates for all stakeholders by conducting a thorough and unbiased assessment. This assessment should also establish mechanisms for oversight, accountability, and transparency in the rental rate setting process. These measures are necessary to prevent corruption and improper influence in determining rental rates. Additionally, it is possible to engage proficient and qualified professionals in the task of establishing rental fees for government-owned structures. By enlisting professionals who possess specialised knowledge in real estate appraisal and market assessment, the government can ensure that the rates are fair and just for both the state and tenants, and align with the prevailing market conditions. Transparency in the decision-making process is also essential and can be achieved by establishing clear guidelines and criteria for determining rental rates, as well as by making the process open and widely accessible for public scrutiny. This will enable the government to exhibit its dedication to upholding the principle of legal justice in the administration of state-owned assets. In order to facilitate the input of stakeholders, such as potential tenants and the general public, into the rent determination process, public participation mechanisms and various feedback and evaluation mechanisms should be implemented. This inclusive approach not only fosters transparency but also assists in the resolution of any concerns or complaints that may arise from the rental rate policy. It is important to regularly assess and analyse the rental prices to ensure they align with the evolving needs of renters and the fluctuations of the market. This proactive strategy demonstrates the government's dedication to maintaining equitable rental rates for the use of state-owned properties and its ability to promptly adapt to fluctuations in the real estate market. The commodities manager must devise efficient tactics to maximise the leasing potential of the building in order to earn money, given the intense competition in the short-term leasing market.[16]
- ⇒ The policy of determining rental rates for the use of state-owned buildings is significantly influenced by the enforcement of the principle of legal certainty. The principle of legal certainty ensures that the utilisation of state property is conducted in a transparent and accountable manner within a well-defined legal and regulatory framework. This concept also guarantees that individuals and organisations can engage in the utilisation of state assets with the assurance that their rights and obligations are established and safeguarded by the law. It is highly probable that there will be potential confusion and ambiguity regarding the determination of rental fees in the absence of clear and consistent guidelines. This has the potential to impede transparency and accountability in the utilisation process of state-owned structures, as well as result in potential disputes. Consequently, it is essential for the government to guarantee that the rental rate setting process is consistent with the principle of legal certainty in order to safeguard the interests of the state and tenants, as well as to foster a favourable business and investment environment. The government can enhance public confidence in the utilisation of state-owned buildings by minimising

the risk of discrimination and decision-making through the establishment of a defined framework for setting rental rates. The enforcement of the principle of legal certainty in the implementation of rental tariff setting policies necessitates the consideration of socio-economic factors in addition to adherence to legal principles. It is imperative that the Minister of Finance, as the policy maker, take into account the nature of the property, the local market conditions, and the requirements of potential tenants. The establishment of equitable and competitive rental rates that reflect market value and promote economic growth can be facilitated by a comprehensive evaluation of these factors. In the early and later phases, investment decisions made by private parties can also be influenced by political stability and the percentage of government ownership of an asset.[17] The inclusiveness and transparency of policy implementation can be enhanced by the participation of pertinent stakeholders in the decision-making process, including business associations, tenant representatives, and legal experts. This participatory approach can also offer valuable insights and diverse perspectives that are instrumental in the development of a rent policy that is both accountable and consistent with a sense of justice..

- ⇒ The Legal Expediency Principle underscores the necessity of a beneficial effect on society when utilising state property. This concept is designed to optimise the advantages of state property, which encompass economic expansion, social advancement, and environmental sustainability. It recognizes that the use of state property should not only benefit some specific people or organizations, but should also benefit society as a whole in terms of welfare and progress. All Parties need to consider how long the contract period is to balance between the competitiveness of the rental bid price and the potential revenue generation to be obtained.[18] The principles of justice, legal certainty, and expediency are very important to ensure the accountability, transparency of the use of state assets, which will ultimately benefit society as a whole.

V. CONCLUSION

The government is required to be able to adapt to changing times by innovating BMN management. The paradigm that originally focused only on BMN management, but adjusted the demands of the state and society to answer various challenges and needs. The Minister of Finance as the Goods Manager is trusted to be able to optimize state assets and contribute to the state budget which has only relied on taxes and debt to finance the country's needs. With the capital of state assets with various potentials, it is certainly expected to attract domestic and foreign investors. With a healthy business competition climate and supported by fair regulations, state assets offered by the government are expected to stimulate public interest in contributing to the state budget through the utilization of state-owned buildings. Regulations that have been established by the Government with due regard to the principles of legal justice, legal certainty, and legal expediency provide a sense of security and justice and increase public confidence in the government in the business process of determining rental rates for the utilization of state-owned buildings.

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