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Submission date: 26-Jul-2022 07:28AM (UTC+0700)

Submission ID: 1875215141

File name: RECONS_1.PDF (263.14K)


Word count: 6531

Character count: 34325

Reconstruction of Utilization Arrangements for the State Assets in the Form of Land to Increase Non-Tax State Revenue


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Submitted: 2022-05-18

 Revised: 2022-06-19

Published: 2022-06-30



Article Info

Keywords:

Reconstruction; Utilization; State Property; Assets; PNBP.

Abstract

Introduction: Article 33 of the 1945 Constitution of Republic Indonesia mandates the urgency of optimizing the management of state assets, whether in the management of controlled state assets, owned state assets, or separated state assets for improving the maximum benefit of the prosperity of the folk to create a prosperous state (welfare state). One form of owned state wealth is referred to as State Property/Assets (hereinafter abbreviated as BMN).

Purposes of the Research: The author is interested in writing this article because there are still many BMN that are indicated to be vacant, neglected, and not used optimally, whereas this optimization of BMN is able to make a positive contribution to PNBP. This thing must be supported by strict and definite regulations about the management and utilization of BMN.

Methods of the Research: The research methodology used in this study is legal research with a normative juridical study using a statutory approach and this theoretical concept uses several legal materials to support the data and theory.

Results of the Research: The utilization of BMN in the form of land has not been optimal due to: the approval of the utilization of BMN by the Property Manager is not immediately followed up with a utilization agreement by a third party on the grounds that the utilization rate is still high; there is no regulation that regulates the objections of the fair value of BMN that will be utilized; the application of sanctions is not firm and there are articles on the management and utilization of BMN which are vague (vague normen).

1. INTRODUCTION

In the context of advancing the welfare of the Indonesian people as mandated in the Preamble of the 1945 Constitution of Republic Indonesia and Article 33 of the 1945 Constitution, it is necessary to optimize the management of state wealth, whether the management of the controlled state wealth, the owned state wealth, and the other separated state wealth in order to obtain benefits as much as possible for the prosperity of The Indonesian to create a prosperous state (welfare state).

One of the owned state wealth is State/Regional Owned Assets, hereinafter abbreviated as (BMN/D). State/Regional Owned Assets (BMN/D) are all items purchased or obtained from the expense of the State/Regional Revenue and Expenditure Budget or

¹ Iwan Victor Leonardo Sitindaon, Febrian, Ridwan, Iza Rumesten, "Reconstruction of Utilization Arrangements..."

other legitimate acquisitions. The provisions for BMN management refer to Law Number 1 of 2004 about the State Treasury and as the implementation of regulation, The Government Regulation Number 28 of 2020 about Amendments was published to replace The Government Regulation Number 27 of 2014 about State/Regional Owned Assets.

The General Principles of BMN Management are (a) the utilization of BMN by The Property Users and The Proxy of Property Users that is only limited to the implementation of the main tasks and functions of State Ministries/Institutions (K/L); (b) Land and/or buildings that are not used by the main tasks and functions of the Property User or the Proxy of the Property User must be submitted to the Property Manager; (c) All revenues from the utilization and transfer of BMN are Non-Tax State Revenue (PNBP) that must be deposited into the general state treasury account.

There are several problems regarding the management and the utilization of BMN in the form of non-compliance/vague norms (*vague normen*)¹ as well as discrepancies in the administration of BMN, violations of laws and regulations in the management and utilization of BMN, such as:

- 1) There are still lands that have not been certified and/or have been certified but not by the provisions.
- 2) Non-Tax State Revenue hereinafter referred to as PNBP from the utilization of state assets is not deposited into the state treasury.
- 3) Cooperation in the utilization of BMN in the form of land that is not by the laws and regulations.
- 4) Lack of awareness of BMN, there are official houses owned by parties who are not entitled (retirees families, and even grandchildren) and used for personal/business interests.
- 5) There is no sanction for property users if they don't report indications of Idle BMN to the Ministries/Institutions (K/L) they lead, while Article 35 PMK No. 71/PMK.06/2016 about Procedures for State-Owned Assets (BMN) that are not used to carry out the Duties and Functions of State Ministries/Institutions, clearly only regulates sanctions for property users who don't submit BMN whose status has been determined as Idle BMN to the property manager such as:² Freezing of BMN maintenance funds on land and/or buildings that have been designated as Idle BMN and postponement of BMN utilization proposals submitted by property users.
- 6) Tax revenues which are the mainstay of state revenue are not able to cover all state expenditures. Therefore, PNBP must be optimized to support state revenue. So far, PNBP has not been optimally explored by the State Ministries/Institutions (K/L) that have PNBP. Another PNBP realization from the BMN Management sector from 2015 until now is still far from the actual potential and target. Even though from the results of the 2017-2018 BMN Revaluation, the value of BMN's assets in 2020 rose to Six Thousand Trillion. And when it was compared between the fair value of BMN in the form of land and PNBP of the utilization of these assets, it is still small, only 0.02% of the total value of BMN came from BMN revaluation. The Realization of Other Non-Tax Revenues from State Property Management (in 2018 and 2019) such as:

¹ Slamet Suhartono, *Hukum Positif Problematik Penerapan dan Solusi Teoritiknya*, Journal of Legal Sciences Volume 15 Number 2, August 2019 – January 2020, p. 201, which states that the formulation of vague norms in this Regulation of the Minister of Finance is due to the limitations of the formulators in providing the meaning of the concepts used in the legal norms. So that these limitations force the formulators of legal norms to provide unclear or unclear formulations.

² PMK.No.71/PMK.06/2016. Article 35

Table 1.
Another PNBP from BMN Management in 2018-2019

Another PNBP That Comes From State Property management		
Description	2019 (Audited)	2018 (Audited)
Other Non-Tax Revenues		
Income from Transfer of BMN	341.531.328.482	250.827.244.737
Income from Utilization of BMN	522.960.362.436	1.575.471.215.636
Income from BMN Management and State Assets from Property Managers	626.866.552.049	573.611.868.078
Total	1.491.358.242.967	2.399.910.328.451

Source: LKPP in 2019 p.91

Based on the explanation above, it appears that the management and utilization of BMN are not yet fully order, transparent, and accountable. If this thing is just left, it will not only cause losses for state finances, but the state also fails to realize the welfare of the community because it has not been optimal in carrying out its obligations as mandated by law. Therefore, this research is very important with these aims: First, to analyze, and explain why the utilization of BMN land is not optimal; and Second, to analyze and explain how to regulate the use of BMN in the form of land to increase PNBP.

The purpose of this research is to identify, analyze, and explain the utilization of State Owned Assets (BMN) in the form of land that hasn't been optimal and to analyze the regulation of the utilization of State Owned Assets (BMN) in the form of land in order to increase Non-Tax State Revenue. The practical benefits of this research are as a reference for the Government in making the Draft Law on the State Wealth Assets, and so The Ministries/Institutions will be able to utilize unused land to carry out the duties and functions of Ministries/ Institutions (BMN Idle) and be able to manage BMN transparently, and accountable in order to increase Non-Tax State Revenue (PNBP).

2. METHOD

This research uses normative legal research. Normative legal research includes research on legal principles, legal systematics, levels of vertical and horizontal synchronization, legal comparisons, and the history of this research. Law Number 17 of 2003 about State Finances, Law Number 1 of 2004 about State Treasury, and Law Number 15 of 2004 about The Auditing and Accountability of State Finances as positive law covering studies on legal dogmatics, legal theory, and legal philosophy. The legal problem in this research will be solved by using several approaches which are the legal approach and the futuristic approach.

3. RESULTS AND DISCUSSION

3.1 The Utilization of BMN in the form of land hasn't been optimal

a. The Management of BMN

The management of BMN in the form of land is closely related to realize the welfare of the people in a country. In Paragraph IV of the Preamble of the 1945 Constitution of the

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Republic of Indonesia, it is stated that one of the goals of the state is to promote the general welfare and to realize general welfare. The 1945 Constitution of the Republic of Indonesia mandates the State to control all natural resources, which is clearly stated in Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that "Earth, water and natural resources contained therein are controlled by and used as much as possible for the prosperity of the country."

With the existence of three laws in the field of state finance³, BMN/D as part of the owned state wealth has a very important position. This means that the management of BMN/D is an important part of the state financial cycle. Regarding the management of BMN/D, several laws and regulations in the field of state finance can be put forward such as:

- 1) Law Number 17 of 2003 about State Finances Article 1 point 1 states that state finances include: a) the right of the State to collect taxes, issue and circulate money, and make credit; b) the obligation of the state to carry out the duties of the state's public services and to pay bills of third parties; c) State Revenue; d) State Expenditures; e) Regional Revenues; f) Regional Expenditures; g) state wealth/regional wealth managed by themselves or by other parties in the form of money, securities, activities, goods, and other rights that can be valued in money, including assets separated from state companies/regional companies; h) the wealth of other parties controlled by the government in the context of administering the government and/or in the public interest; i) the wealth of other parties obtained by using facilities provided by the government. Article 1 number 1 (g) Law Number 17 of 2003 stipulates that state assets/regional assets are managed alone or by other parties in the form of money, securities, goods, and other rights that can be valued in money, including assets that are separated from state companies/regional companies. Specifically, items are known as BMN/Regional or also known by other terms as owned state wealth, which are explicitly stated to be part of state finances.
- 2) Law Number 1 of 2004 concerning State Treasury Article 4 paragraph (1); Article 7 paragraph (1) in conjunction with paragraph (2) letter q; Article 42 ; Article 43; Article 44 ; Article 45 ; Article 46; Article 47 ; Article 48; and Article 49. Law Number 1 of 2004 about the State Treasury states that one of the elements of state/regional finance is state/regional wealth managed alone or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated from state companies/regional companies.

Specifically, these two laws stipulate that the legal subjects involved in the management of owned state wealth or BMN are the Minister of Finance as Property Manager, Head of Ministries/Agencies as Goods User for the State ministry/institution they lead.

Related to the state as a private legal subject where the state has a public legal entity, the state has civil rights and obligations in which there is a government institution. The legal action of the government agency is carried out by the government which has civil rights and obligations. The government is an organ in government that carries out the traffic of state legal relations as a public legal entity, one of them is managing state owned assets (BMN).

³ Law number 17 of 2003 concerning State Finances, Law Number 1 of 2004 concerning State Treasury, and Law Number 15 of 2005 concerning Audit of State Finance Management and Accountability

Based on this, the term BMN has illustrated that the state is a private legal subject that is able to have wealth as the state of Article 2 letter G of Law Number 17 of 2003 about State Finances, one of them is goods. However, if we look at the regulations mentioned above and the existing regulations, it doesn't state that the President as the Head of Government is the representative of the owner of the wealth owned by the State in terms of the state as a private legal subject. The position of the Minister of Finance as Property Manager is not as an owner in terms of civil law but as an asset manager. Meanwhile, the Property User is the party who controls the bezit rights.⁴

b. The Utilization of BMN

In accordance with Government Regulations Number 27 of 2014 article 3 paragraph 2 as amended to Government Regulations Number 28 of 2020, State/regional owned assets (BMN/D) Management includes: (a) Needs Planning and budgeting; (b). procurement; (c). Use; (d). Utilization; (e). security and maintenance; (f). Evaluation; (g). Transfer; (h). termination; (I). deletion; (j). Administration; and k). development, supervision and control.

Regulation of the Minister of Finance/PMK number 115/PMK.06/2020 about Procedures for Implementing BMN Utilization article 1 number 11 provides the definition of Utilization as the utilization of BMN which is not used for carrying out the duties and functions of Ministries/Agencies and/or optimizing BMN without changing ownership status, hereinafter known as the term BMN Idle.

There are several forms of utilization of BMN which are regulated in Government Regulation Number 28 of 2020 that replaced Government Regulation 27 of 2014 about Management of State/Regional Owned Assets and PMK 115/PMK.06/2020 which includes Lease, Borrowing, and Use Utilization Cooperation, Build Use Transfer/Build Transfer Use, Cooperation in Providing Infrastructure (KSPI), and Limited Cooperation for Infrastructure Financing, hereinafter referred to as KETUPI (Limited Concession Scheme/LCS)⁵.

In further developments, according to the Regulation of the Minister of Finance Number 115/PMK.06/2020 about The Utilization of BMN, the forms of utilization of BMN that can generate revenue are expanded into leases, Borrow-Use, The Utilization Cooperation (KSP), build-operate-transfer (BOT/BGS)/build-transfer-operate (BTO/BSG),

⁴ According to Subekti, bezit is a state of birth, where a person controls an object as if it were his own, which is protected by law, without questioning who actually has the property rights (Subekti, 1979: 52). According to the Civil Law, bezit is defined by the position which controls an object, either by oneself or through the intercession of others, and who maintains or enjoys it as a person who owns the object (Civil Law Article 529).

⁵ Limited Cooperation for Infrastructure Financing is carried out on State-Owned Goods that are in the Goods User, where the User submits State-Owned Goods to the Property Manager. This Limited Cooperation for Infrastructure Financing is carried out by a Public Service Agency formed by the Property Manager and is carried out in the form of Limited Management Rights of Infrastructure Assets regulated by a Presidential Regulation. (Article 41A Government Regulation Number 28 of 2020)

The Utilization of State-Owned Goods through Limited Cooperation for Infrastructure Financing is carried out with the following provisions: a. Revenue from Limited Cooperation for Infrastructure Financing is the revenue of the Public Service Agency. b. The Limited Cooperation Period for Infrastructure Financing is carried out by the provisions of the laws and regulations in the fields of each infrastructure sector. c. Limited Cooperation Partners for Infrastructure Financing that have been determined, during the period of Limited Cooperation for Infrastructure Financing; are prohibited from pledging, mortgaging, or transferring State-Owned Goods which are the object of Limited Cooperation for Infrastructure Financing; and must maintain the object of Limited Cooperation for Infrastructure Financing. (Article 41B Government Regulation Number 28 of 2020)

and Cooperation in Providing Infrastructure (KSPI). These are Characteristics of forms of use, such as⁶:

1) Lease

Lease is the use of BMN by other parties within a certain period and receiving cash imbalances. BMN leasing is carried out to optimize the utilization of BMN that has not been/not used in the implementation and functions of government administration, obtaining the necessary facilities to assist the duties and functions of the Property User agency, and preventing the legitimate use of BMN by other parties. The maximum period of BMN rental is 5 (five) years. The implementation of the lease can be carried out for part or all of the BMN object. Contribution to state revenue is in the form of rental value. Rent is carried out simultaneously in advance by depositing it into the State General Treasury account.

2) Borrow-Use

Borrow-Use is the utilization of BMN through the transfer of the use of BMN from the Central Government to the Regional Government or Village Government within a certain period without receiving compensation, when the period ends, it is handed back to the Property Manager/ User Properties. The implementation of Borrowing and Use is a description of the relationship between the Central Government and the Regional Government or Village Government in carrying out government duties and functions. In the context of the implementation of BMN management, the implementation of Borrow-Use is only carried out between the Central Government and the Regional Government or Village Government and is not carried out by Property Users with other Property Users. The main consideration for the implementation of Borrowing and Use is to optimize BMN which has not been or has not been used for the implementation of the duties and functions of the Property Manager/Property User and to support the implementation of regional government or village administration.

3) The Utilization Cooperation (KSP)

The Utilization Cooperation is the utilization of BMN by other parties within a certain period to increase non-tax state revenues and other sources of financing. KSP is implemented to optimize the usability and efficiency of BMN and increase state revenue. The implementation is carried out with the consideration that there are no available or insufficient funds available in the State Revenue and Expenditure Budget (APBN) to meet the operational, maintenance, and/or repair costs required for BMN. The results of the KSP are in the form of land and/or buildings, buildings, facilities, and other facilities built in the framework of implementing the KSP to become BMN after the end of the implementation of the cooperation. The maximum period of KSP is 30 (thirty) years and can be extended. Contributions to state revenues are in the form of fixed contributions and profit-sharing. Contributions are still calculated based on a certain percentage of the value of BMN which is the object of KSP. Meanwhile, profit sharing is calculated by taking into account the amount of BMN which is considered a government investment, the investment value of KSP partners, and the risk borne by KSP partners.

4) Build-Operate-Transfer (BOT/BGS)/Build-Transfer-Operate (BTO/BSG)

Build-Operate-Transfer, hereinafter known as BOT/BGS, is the utilization of BMN in the form of land by another party by constructing buildings and/or facilities along with

⁶ PMK 115/PMK.06/2020 about The Procedures for Implementing the Utilization of BMN

their facilities, then utilized by the other party within a certain agreed period, to subsequently hand over the land and buildings and/or the following facilities after the expiry of the term. Meanwhile, Build-Transfer-Operate (BTO)/BSG is the utilization of BMN in the form of land by other parties by constructing buildings and/or facilities and their facilities, and after the construction is completed, they are handed over to be utilized by the other party within a certain agreed period. This form of use, both BGS and BSG, is carried out with the consideration that the User requires buildings and facilities for the administration of the state for the public interest in carrying out tasks and functions and there are no available or insufficient funds available in the APBN for the provision of such buildings and facilities. Contributions to state revenues are in the form of annual contributions that must be deposited into the cash account every year. The amount of the annual contribution is determined based on the results of the calculation of the team formed by the official in charge. In addition to contributions in the form of receipts, some BGS/BSG objects can be used for the tasks and functions of determining the Property Manager/Property User.

5) Infrastructure Provision Cooperation (KSPI)

Infrastructure Provision Cooperation, hereinafter abbreviated as KSPI, is a collaboration between the government and business entities for infrastructure provision activities by the provisions of laws and regulations. KSPI is carried out with considerations in the context of public interest and/or infrastructure provision to support government duties and functions, not available or insufficient funds are available in the APBN for infrastructure provision and are included in the list of priority projects for infrastructure provision programs set by the government. The maximum period of KSPI is 50 (fifty) years. After the implementation of KSPI, KSPI objects and KSPI products are handed over to the government and become BMN since they were handed over. In addition to acquiring assets, the implementation of KSPI can also contribute to state revenues in the form of sharing excess profits. The amount of the excess profit is determined by The Property Manager (DJKN).

Application for approval of the use of BMN submitted to the Directorate General of State Assets Management (DGSAM/DJKN), with the requirements stipulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 115/PMK.06/2020 about the Utilization of BMN which contains: general provisions for the use of BMN; subject and object of BMN utilization; period of implementation of BMN; agreement; and the end of the BMN utilization agreement. Then the Property Manager conducts administrative research on the BMN that will be utilized. If based on the results of administrative research that has been carried out, the Property Manager decides that the plan for the utilization of BMN can be continued, the Property Manager assigns an Appraisal to conduct an assessment to determine the fair value of the utilization of the BMN concerned; analysis of the calculation of economic and/or social benefits as a consideration for the calculation, then the Appraiser submits the appraisal report and give analysis report to the Property Manager.

The property manager approves the application for the utilization of BMN submitted by the Property User by considering the results of the research and feasibility study of utilization. If the Property Manager does not approve the application, the Property Manager will notify the Property User along with the reasons. If the Property Manager approves the application, the Property Manager issues an approval for the utilization of the BMN.

If the value of the BMN utilization from the Property User is greater than the result of the calculation/assessment, then the utilization amount shall be included in the approval letter for the proposal to the Property User. BMN Lease approval letter from Property Manager will be canceled based on law if there is no signing of utilization agreement within 3 months from the date of stipulation. If based on the research carried out¹⁰ it can be approved, the Property Manager uses an independent Government Appraiser at the State Property and Auction Service Office, hereinafter abbreviated as KPKNL (an office determined in the region) to determine the Fair Value of Lease for the specified application. It will be submitted to the Property User for further execution in the form of a lease agreement between the goods user and a third party (the lessee) based on the fair value.¹

Based on existing data, the lease determination submitted to the user of the goods is not followed up with a lease agreement with a third party because the lease rate is still high. In the management of BMN and the assessment of BMN, there is still no regulation regarding the rate/value of the BMN to be leased. In Chapter VIII Article 98 of Regulation of the Minister of Finance (PMK) Number 115/PMK.06/2020 about the Utilization of BMN, it is stated that sanctions in the form of a warning letter are only for third parties who have made use of it but have not continued/continued the utilization agreement but have not made repairs and/or replacements as a result of not implementing the security and maintenance at the end of the utilization of BMN; and third parties who have completed the agreement but have not submitted the BMN object of utilization and/or the result of the utilization of BMN by the agreement. Sanctions and fines related to default by third parties as legal subjects for the use of BMN are not applied firmly and definitely.⁵

Legal certainty is a guarantee of law that contains justice. The Norms that propose justice must function as rules to be obeyed. Certainty is a definite (state) condition, provision, or stipulation. The law must essentially be certain and fair. It must be a code of conduct and fairness because the code of conduct must support an order that is considered reasonable. The law can carry out its functions only if it is fair and carried out with certainty. Legal certainty is a question that can only be answered normatively, not sociologically.⁷

3.2 Reconstruction of arrangements for the utilization of BMN in the form of land by third parties to increase PNB¹

State revenue generated from the management and utilization of BMN in the form of land is an experience from optimizing the utilization of BMN which is not used for the implementation of the duties and functions of Ministries/Institutions. This does not mean that the state is commercializing BMN, but optimizing the use of existing BMN that is not used in carrying out the duties and functions of Ministries/Agencies while simultaneously reducing the burden on the state in maintaining and securing BMN, because of spending and optimizing state revenues generated in the management of BMN. BMN is a reflection of the implementation of service functions and budget functions of BMN management.¹

The Utilization of Idle BMN as part of BMN management as regulated in Government Regulation Number 27 of 2014 that is replaced by Government Regulation Number 28 of 2020 about Management of State/Regional Property is the utilization of BMN that is not used by applicable regulations. Duties and functions of Ministries/Institutions, whether in the form of leasing, lending, utilization cooperation, building handover, and building-operate-transfer, infrastructure cooperation, and cooperation are limited to infrastructure

⁷ Doinikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*, Yogyakarta, Laksbang Pressindo, 2010, h.59

financing without changing ownership status. There are options for the government (Ministries/Institutions) as users of property to be able to increase the potential for state revenues through the use of BMN.

10 Article 3 paragraph (2) letters a and b of Regulation of the Minister of Finance of the Republic of Indonesia PMK No. 71/PMK. 06/2016 which provides leeway for K/L to not submit their Idle BMN to the Property Manager, with the aim that Ministries/Institutions as users of property/BMN can optimize the utilization of the Idle BMN because the result of such utilization will become Non-Tax State Revenue (PNBP). However, at this time, optimizing state revenues through the use of Idle BMN has not become a major concern for Ministries/Institutions, it cannot be separated from the desire of BMN administrators at the Ministry/Agency level to arrange Idle BMN through submission of approval for the use of Idle BMN in their area to the Minister of Finance, in this case, DJKN as the manager of the assets. Likewise, the determination of Idle BMN and its utilization is still not optimal, the reason is that Idle BMN must be submitted to the property manager for further management. However, not all Ministries/Agencies comply with this provision.

We often encounter in the field that there are BMN that are de facto idle, but the Ministries/Institutions claim that they are still needed for operational activities. As a result, of course, BMN, which is idle, is forced not to be utilized optimally by goods managers in any form. Even with the use of Idle BMN, it can cause problems for Ministries/Institutions that have used Idle BMN without the approval of DJKN as the property/assets manager, because it is considered not to provide maximum contribution to the state and there is no compliance with existing laws and regulations in the field of BMN management. The obstacle to using Idle BMN is the lack of cooperation between Ministries/Institutions in submitting BMN indicating Idle to the Directorate General of State Assets Management (DGSAM/DJKN) as the property manager. Ministries/Institutions as users of property/assets often try to hold these idle assets in their control so that the opportunity for utilization is small.

There is a vague norm/norms in Chapter X Article 35 of Regulation of the Minister of Finance of the Republic of Indonesia PMK No. 71/PMK. 06/2016 about Procedures for Unused BMN for Carrying out the Duties and Functions of Ministries/Institutions, which imposes sanctions on property users if they do not submit BMN that has been designated as Idle BMN. Whereas based on the facts on the ground that property users want to convey BMN that is indicated to be idle to the property manager, the user of the property does not function land and/or BMN building that is indicated to be empty and becomes an archive building warehouse. Based on field observations in several areas, the location of the BMN indicated Idle is very strategic and is in the city center. If the BMN that is indicated to be idle is handed over to the Property Manager, then the Idle BMN can be optimized in addition to transferring its usage status to Ministries/Institutions which needs it, it can also be utilized by third parties in the form of utilization as described previously to increase non-tax state revenues (PNBP). Article 35 PMK No. 71/PMK. 06/2016 supposed to state the form of sanctions imposed for property users if they do not report any BMN indicated Idle to the Ministry/Institution they lead. If legal norms are unclear or unclear (vague), this is a dilemma, if positive legal norms are formulated rigidly, it can cause decision-makers (Directorate General of State Assets Management/DJKN) to be unable to practice their discretion.

6 The formulation of vague norms in this Regulation of the Minister of Finance is due to the limitations of the formulators in providing the meaning of the concepts used in these

legal norms. So that these limitations force the formulators of legal norms to provide unclear formulations.⁸ The authority and responsibility are given to the Minister of Finance, apparently did not have a significant impact on the utilization of Idle BMN, because in the implementation of Idle BMN utilization in the form of land and buildings for Ministries/Institutions is only about 10% of the total Idle BMN and Idle BMN identified and has been submitted to the property/assets manager.

Sudikno Mertokusumo thinks that although the legal sanctions are the most certain. This certainty is because there is coercive power from the rulers of the State. However, in certain cases, there are legal norms that are not accompanied by legal sanctions. This legal norm without sanctions is called *lex imperfecta*. In this case, Sudikno illustrated the provisions of Article 298 of the Civil Code which stipulates that a child regardless of age must respect his parents. Therefore, he emphasized that it doesn't refer to sanctions, but legal certainty as a certainty of orientation. Orientation here is defined as "clarity in the formulation of norms so that it can be used as a guide for people affected by these regulations."⁹ Legal certainty is a guarantee of law that contains justice. Norms that promote justice must function as rules to be obeyed. Certainty is a definite (state) condition, provision, or stipulation. The law must essentially be certain and fair. It must be a code of conduct and fairness because the code of conduct must support an order that is considered reasonable. The law can carry out its functions only if it is fair and carried out with certainty. Legal certainty is a question that can only be answered normatively, not sociologically.¹⁰

4. CONCLUSION

Based on the result and the discussion of the research, it can be concluded that, the Utilization of BMN in the form of land hasn't been optimal because; the approval/determination of the utilization of BMN by the Property Manager (Directorate General of State Assets Management) which is conveyed to the Property User is not immediately followed up with a utilization agreement by a third party because the utilization rate is still considered quite high, there is no regulation regulating objections to the rate/fair value of BMN that will be utilized, the implementation of sanctions and fines related to default by third parties as legal subjects for the utilization of BMN is not applied firmly and definitely. Reconstruction of the regulation on the use of the state-owned property (government-owned land) is needed for several reasons, such as; Philosophically, the application of BMN in the form of ideal land is to optimize PNBPN for the welfare of the folks as regulated in Article 33 of the 1945 Constitution of Republic Indonesia, where the basic values of Pancasila (fundamental values) regarding morals, justice, human rights, and welfare have not fully become the basis for and the main objective in drafting regulations on the use of BMN to increase PNBPN. Sociologically, BMN has a social function, and therefore BMN management must be able to provide social benefits, which is can be utilized on the one hand at all levels of society, and the results of its management/utilization (effective, efficient, and optimal use can contribute to PNBPN). Considering that BMN is a means of production and a means of providing services to the folks, economically the management and utilization of BMN are carried out from planning to utilization in an

⁸ Slamet Suhartono, *Hukum Positif Problematik Penerapan dan Solusi Teoritiknya*, Jurnal Ilmu Hukum Volume 15 Number 2, August 2019 – January 2020, h.201

⁹ Sidharta, *Moralitas Profesi Hukum: Suatu Tawaran Kerangka Berpikir*, Refika Aditama, Bandung, 2006, h. 85

¹⁰ Doinikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*, Yogyakarta, Laksbang Pressindo, 2010, h.59

efficient, efficient, transparent, and accountable manner. From a formal juridical aspect, existing regulations that don't have binding legal force because they are not in the form of laws, and even existing regulations (PMK No. 71/PMK. 06/2016 about Idle BMN) there is a blurring of vague norms (vague normen).

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