

OMNIBUS LAW OF STATE AND REGIONAL-OWNED ASSET MANAGEMENT LICENSING

by Muhammad Ilham Arisaputra

Submission date: 17-Dec-2021 12:45PM (UTC+0700)

Submission ID: 1732589195

File name: Law_Of_State_And_Regional-_Owned_Asset_Management_Licensing.pdf (176.75K)

Word count: 2990

Character count: 16557

Omnibus Law Of State And Regional- Owned Asset Management Licensing

Kasman Abdullah¹, Abdul Razak², Zulkifli Aspan³, Ahsan Yunus⁴, Muhammad Ilham
Arisaputra⁵

^{1,2,3,4,5}Faculty of Law, Universitas Hasanuddin. Jl. Perintis Kemerdekaan KM 10
Makassar 90245, Indonesia.

E-mail: kasmas.abd@unhas.ac.id¹; abd.razak@unhas.ac.id²;
zulkifliaspan@gmail.com³; ahsanyunus@unhas.ac.id⁴; ilhamarisaputra@gmail.com⁵

Abstract

This article to analyze the concept of the Omnibus Law of State and Regional-Owned Asset Management Licensing. It is started by review the simplification of licensing regulations for the management of State or regional-owned assets. This study is a normative-legal research by using statute and conceptual approaches. Data were analyzed with descriptive qualitative analysis with content analysis. In this study, the authors used the qualitative research method, which (in general) generates words rather than numbers for analysis. The results show that Effort to simplify the concept of licensing through the omnibus law is need to be done in the management of State assets both State and regional assets, because in principle, a license is an instrument to guarantee legal certainty, certainty of rights and instruments of control. Licensing becomes as a requirement in granting rights on management or utilization of land controlled by the State, in other words, management rights on land controlled by the State existing due to the license. In a democratic rule of law, the license process must pay attention to the rights of citizens in democratic life. One of them is the application of the omnibus law for State and regional-owned asset management.

Keywords: License; Omnibus Law; State-Owned Asset Management; Regional-Owned Asset Management

1. INTRODUCTION

State property are all forms of biological and non-biological wealth, tangible and intangible, movable and immovable, it controlled and/or owned by the State. In economic terms, it is known as *State assets*. But, in theoretical concept, as stated by J. Prodhoun that State assets are assets that are within public domain, therefore the management and accountability are subject to the provisions of laws and regulations publicly.

The understanding of State assets in the State Assets Bill that “State property are all forms of biological and non-biological assets, tangible and intangible, movable and immovable and other forms of wealth which are controlled and owned and separated by the State”. This understanding is broader than the existing understanding so far, which includes all forms of biological and non-biological wealth in the form of tangible and intangible and movable and immovable and other forms of wealth which are controlled and owned and separated by the State. State assets are classified into 3

(three), namely State assets owned, State assets separated and State assets controlled (not separated).

In this study, we study the State assets controlled in the form of State and regional-owned assets. The management of State and regional-owned assets is exercised based on Government Regulation No. 27 of 2014 concerning Management of State and Regional-Owned Assets which is a substitute for Government Regulation No. 6 of 2006 concerning Management of State and Regional-Owned Assets. In this regulation, the government or regional government is allowed to cooperate with other parties (*private*) in the management of State and regional-owned assets. Certainly, it is intended that license instrument is needed in it for the private party as manages the State and regional-owned assets.

In terms of procedures, licensing is an internal process conducted by the government. In general, a license application must follow certain procedures determined by the government, as the licensor. In addition, the applicant must also fulfill the requirements determined unilaterally by the government or the licensor. The procedure and requirements of license vary depending on the type of license, the purpose of the license and the licensing agency.

Generally, the license is preceded by an application wherein the application is required to be submitted in writing in clear language. It is because the license is a government decision in the form of a State administration decision (*beschikking*) based on an application from a person or legal entity. As a decision from the authorized official and/or agency, the application is addressed to government agencies authorized to handle an issue license and attach the required documents.

The issue of license will be interesting to see if it is related with the current State structure, namely democratic rule of law. The implementation of a democratic rule of law must certainly be understood by all government officials in exercising their authority. Licensing which has been considered as the absolute authority of the government should be placed in the democratic rule of law dimension. Therefore, licensing certainly cannot be understood as long as the government apparatus wishes, but must pay attention to the rights of citizens in democratic life. The existence of a license is not a cause of social conflict, but it should be able to create harmony in the life of the nation and State.

Today, the types and procedures of license in Indonesia are still diverse, complicated and difficult to trace, so they are often obstacles to business activities. This phenomenon mainly occurs at the provincial and district/city levels. The products of legislation or regional regulations regarding the management of license in various government agencies are felt by the community to prioritize the culture of official power, overlapping regulations, bureaucratic, non-transparent and often extortion.

There are so many types of license in our country, including in the case of managing State or regional property (assets). On the other hand, the people who do not apply for license, but are related to the activities for which license are requested are also obstacles and become their own problems. For example, it concerns local residents in terms of license for land use rights transfer (IPPT – *Izin Peralihan Hak Pemanfaatan Tanah*) and location for housing complexes that provide public and social facilities.

The many types of license can cause confusion by the community, even it does not rule out the possibility that there are many licenses that eventually become overlapping, especially against overlapping or related regulations that do not regulate licenses. The trending of *omnibus law* in Indonesia since the end of 2019 certainly has an impact on existing regulations, including at the regional level. This condition then

gave birth to thinking about studying the simplification of regulations regarding licensing in Indonesia, in this case licenses related to the management of regional assets.

The focus of this paper is to analyze the concept of the *Omnibus Law* of State and Regional-Owned Asset Management Licensing. It is started by review the simplification of licensing regulations for the management of State or regional-owned assets.

2. METHOD

This study is a normative-legal research by using statute and conceptual approaches. Data were analyzed with descriptive qualitative analysis with content analysis. In this study, the authors used the qualitative research method, which (in general) generates words rather than numbers as data for analysis. The approach used is observation and interpretation, which makes these phenomena observable. This paper provides information on the latest trend in research.

Simplification of State and Regional-Owned Asset Management Licensing through the Omnibus Law Concept

Previous research related to the discussion of State or regional-owned asset management licensing has been written by several previous authors through their research. A research conducted by Anshori Ilyas, *et al.* with the title “*Sinergitas Perizinan Pengelolaan Sumberdaya Alam*”, a study that examined the arrangement of licensing regulations in natural resources management. It was clearly different from this study because Anshori Ilyas *et al.* discussing licenses in natural resource management, while this study examines licenses in the State or regional-owned asset management.

In his research, Anshori Ilyas *et al* raised the issue of research, namely the arrangement of licensing regulation of natural resource management and the synergy of licensing of natural resource management in South Sulawesi Province. In his study, Anshori Ilyas, *et al* explained that the licensing regulation on natural resource management in South Sulawesi province was outlined in the form of Governor’s regulations and decisions, namely Governor Regulation of South Sulawesi No. 12 of 2013 concerning the Implementation of One-Stop Licensing and Non-Licensing Services in the Regional Government of South Sulawesi Province and Governor Decree of South Sulawesi No. 2076 /X/2016 concerning Delegation of Authorization of Licensing and Non-Licensing Signing to the Head of the Regional Investment Coordinating Board of South Sulawesi Province. There are 120 types of licensing services from 12 sectors that are the authority of the Government of South Sulawesi Province. In terms of natural resource management, the Government of South Sulawesi has 77 types of licensing services from 6 sectors. All types of licensing services are exercised by the Division of Licensing Services for the Capital Investment and One Stop Integrated Services (DPMPTSP - *Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu*) of South Sulawesi Province.

Furthermore, it was explained that the licensing of natural resource management as conducted in South Sulawesi Province is a derivative of sector laws and regulations and based on the authority of the provincial government as stipulated in the attachment to Act No. 23 of 2014 concerning Regional Government. These types of licensing for natural resource management in principle are not contradictory and tend to stand alone. In issuing license for natural resource management, the document of environment impact analysis is required for the environmental license to be issued. After an

environmental license is issued, a license can be issued related to natural resource management activities. License instrument in the natural resources management is one of the concrete forms of State's right to control natural resources. License is an instrument of natural resource management as well as a mechanism of government control through the requirements of the specified license.

License is a government rule. As a rule, a license is a constitutive decision, namely giving birth to a legal relationship that is reflected in new rights and obligations. License is often called the decision to create. License creates certain rights for the parties to which it is wished, but does not give birth to authority. In other words, management rights on land controlled by the state existing due to the license. Therefore, right certainty in the management of land as controlled by the State needs attention.

Theoretically, the implementation of license regulations relating to management on State-controlled land is the result of a public policy relating to what the government chooses to do. According to Harold and D. Lesswell and Abraham Kaplan, policy is "a projected program of goal values and practices." When the government makes a policy on the use and management on State-controlled, certainly there are purposes and objectives to be achieved by upholding the values for the common good.

As well the license in State asset management, license is a requirement in granting rights on management or utilization of land controlled by the State. There are a number of land rights controlled by the State that require licenses, such as land use rights, building rights, use rights, and management rights. License for management and utilization of land as asset controlled become a control instrument in terms of the period of utilization and management. Control for management and use of land controlled by the State first is a requirement. To manage and use land that is controlled by the State must meet the requirements specified in the legislation.

Licenses that have been considered as the absolute authority of the government with the discretionary authority that they have must be placed in the democratic rule of law dimension. Therefore, license certainly cannot be understood as long as the government apparatus wants but must pay attention to the rights of citizens in democratic life. Certainly, a license must pay attention to what has been formulated in the 1945 Constitution of the Republic of Indonesia, that sovereignty is in the hands of the people and it is conducted according to the Constitution.

How to make the license concept in accordance with the spirit of a democratic rule of law are through license and license bureaucracy reforms. License bureaucracy is one problem that has become an obstacle for business development in Indonesia. The current condition of license services is still faced with a system that is not yet effective and efficient and is not in accordance with the demands of the community. This can be seen from the number of complaints from the community both directly and indirectly regarding the performance of the apparatus and the number of overlapping regulations, convoluted procedures, there is no certainty in the period of settlement, the high costs to be incurred, the many requirements that must be fulfilled, the attitude of officers who are less responsive, facilities that are less supportive and others, causing an unfavorable image of the government performance. To overcome this condition, it is necessary to make efforts to continuously improve the quality in order to realize excellent public services.

It is appropriate to improve the quality of license services through a series of policy regulations as a form of paradigm shift in government administration and bureaucratic reform of public services. The Government Administration Act is a

momentum for fundamental changes in the administration of the future. This law is expected to change the mind-set and cultural bureaucracy of license in serving the community.

The concept of licensing needs to be simplified but without ignoring the right of community participation, as in Act No. 39 of 1999 concerning the Human Rights, which guarantees the right to participation that everyone both alone and jointly has the right to submit opinions, requests, complaints and/or proposals to the government in the context of implementing a clean, effective and efficient government, both orally and in writing with the provisions of the legislation. Thus, the obligation on the State to respect, protect and fulfill it.

As described above, there is no reason for the government to deviate the rights of citizens for the sake of investment. The existence of the community in license oversight has 2 (two) forms of role, namely: the community is not only the recipient of the decision, which has a role as a mere object recipient of the policy from the top passively (*top-down*), but the community acts as the subject in a more active and dynamic. The activeness and dynamism of the community is reflected not only from the source of information but has a bargaining position to democratize decision-making.

Thus, all interests that refer to the rights of life should have adequate and fair space in all interaction networks including in decision-making. In addition, the concept of community participation is intended as part of a central effort to harmonize development interests.

The development of the concept of individual rights in licenses is this conception can be implemented in the form of the right to take part in the legal procedure of license administration. Therefore, in the context of developing the concept of rights and community participation in the license in the field of defense should implement the concept of participatory rights in forms administrative procedure. Apart from being intended to realize the principles of transparency and public participation, it is also to implement license management based on democratization. This will be realized if supported by administrative procedures that can open opportunities for openness and community participation in the permit decision-making process.

In the era of investment ease and simplification and acceleration of license procedures, both through the one-stop service licensing mechanism, as well as *Online Single Submission* (OSS) services, the community participation should not be ignored which leads to efforts to simplify licensing concepts.

3. CONCLUSION

Effort to simplify the concept of licensing through the *omnibus law* is need to be done in the management of State assets both State and regional assets, because in principle, a license is an instrument to guarantee legal certainty, certainty of rights and instruments of control. Licensing becomes as a requirement in granting rights on management or utilization of land controlled by the State, in other words, management rights on land controlled by the State existing due to the license. In a democratic rule of law, the license process must pay attention to the rights of citizens in democratic life. One of them is the application of the *omnibus law* for State and regional-owned asset management.

REFERENCES

- [1] Aspan, Z., & Yunus, A. (2019). The right to a good and healthy environment: Revitalizing green constitution. *IOP Conference Series: Earth and Environmental Science*, 343 (1): 012067.
- [2] Asshiddiqie, J. (2005). *Hukum Tata Negara dan Pilar-Pilar Demokrasi*, Jakarta: Konstitusi Press.
- [3] Haba, M. R., Yunus, A., & Risal, M. C. (2020). Environmental law enforcement through environmental judge certification in indonesia. *Journal of Critical Reviews*, 7(19), 874-878. doi: 10.31838/jcr.07.19.106
- [4] Keng, Shao-Hsun. (2017). *Handout Research Topic Development*, Collage of Management, National University of Kaohsiung, Taiwan.
- [5] Marzuki, P.M. (2010). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- [6] Patton, M.Q., and Cochran, M. (2007). *A Guide to Using Qualitative Research Methodology*, Medecins Sans Frontieres, UK.
- [7] Pudyatmoko, Y.S. (2009). *Hukum Izin, Problem dan Upaya Pembenahan*, Jakarta: PT Gramedia Widiasarana Indonesia.
- [8] Rhati & Pudyatmoko. (2016). Kebijakan Izin Lingkungan Hidup di Yogyakarta, *Jurnal Mimbar Hukum*, 28 (2).
- [9] Roth, Wolff-Michael. (2015). *Rigorous Data Analysis, Beyond "Anything Goes"*, Sense Publishers, Taipei.
- [10] Simatupang, D.P.N. (2010), *Laporan Akhir Tim Analisa dan Evaluasi Peraturan Perundang-Undangan Tentang Aset Negara (UU No. 51 Prp Tahun 1960)*, Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia.
- [11] Widodo, J. (2009), *Analisis Kebijakan Publik; Konsep dan Aplikasi Analisis Proses Kebijakan Publik*, Malang: Bayumedia Publishing.

OMNIBUS LAW OF STATE AND REGIONAL-OWNED ASSET MANAGEMENT LICENSING

ORIGINALITY REPORT

23%

SIMILARITY INDEX

4%

INTERNET SOURCES

2%

PUBLICATIONS

20%

STUDENT PAPERS

PRIMARY SOURCES

1

Submitted to Universitas Hasanuddin

Student Paper

19%

2

jcreview.com

Internet Source

4%

Exclude quotes

Exclude matches < 5 words

Exclude bibliography