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RESEARCH ARTICLE

FORMULATION OF ARRANGEMENT ON THE REGIONAL GOVERNMENT-PRIVATE PARTNERSHIP PATTERN

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ABSTRACT

Arrangement on the regional government-private partnership pattern is indispensable. In line with that, the ways to overcome the norms that arise in regulating such partnership pattern are also needed. This article aims to analyze the arrangement on the regional government-private partnership pattern and to find ways to overcome the problem of norms that arise in the arrangement of such partnership pattern. This is a normative legal research that employs statute and conceptual approaches. The results show that regional government can carry out partnership with private party (third party) in terms of, among others, utilization of region-owned property which is not used to carry out the duties and functions of the Regional Work Unit (Satuan Kerja Perangkat Daerah) and/or optimization of region-owned property by not changing the ownership status in a number of forms already regulated in the statutory provisions.

INTRODUCTION

Indonesia is a country whose territory is divided into Provinces. Each Provinces is then divided into Regency and City. There is a system of regional government that is governed by Law within each of these regions. Regional administration means the running of state affairs by the regional government and Regional Legislative Council (DPRD) based on the principle of autonomy and *medebewind* with wide ranging autonomy within the frame of Unitary Republic of Indonesia as meant in the 1945 Constitution of the Republic of Indonesia (Indonesian Law Number 23 of 2014 on Regional Administration). Referring to such definition of regional administration; therefore, what is meant by the regional administration in this case is the implementation of autonomous region by regional government and the DPRD according to the decentralization principle and the regional government organizers elements, which in this case are the Governor, Regent or Mayor and regional apparatus. Regional administration affairs have become the authority of regional governments. In its implementation, government affairs are divided based on the criterias of externality, accountability and efficiency by taking into account the harmonious relationship between government structures. It is also further divided by paying attention to these criteria, namely compulsory affairs and optional affairs.

Compulsory affairs which become the authority of regional administration in Regency or City are affairs with regency or city scale that cover 16 affairs. As for optional affairs of the regional administration in Regency or City include administration affairs that actually exist and have the potential to improve the society welfare in accordance with the condition, uniqueness and superior potential of the region in concern. In carrying out these governmental affairs, the regional government uses wide ranging autonomy to regulate and manage its own government affairs based on the principle of autonomy and *medebewind*. The regional government has relationship with the central government and with other regional governments in carrying out administration affairs. The relationship includes the relationship on the authority, finance, public services, utilization of natural resources and other resources. Financial, public services, utilization of natural resources, and other resources relations are carried out fairly and in harmony. The relationship on authority, finance, public services, utilization of natural resources and other resources gives rise to administrative and territorial relations between government structures. Development has many aspects and dimensions, such as political, economic, social, legal, cultural, defense and security. As a developing country, Indonesia has a strong desire to carry out economic development. Therefore, Indonesia needs to develop its infrastructure for public interest. Such infrastructure procurement development requires a very large fund. It feels

heavy if it is only charged to the State Revenues and Expenditures Budget (APBN) and Regional Revenues and Expenditures Budget (APBD). The participation of private party in such infrastructure procurement project is certainly something new in Indonesia. Patterns such as issuance of regional bonds, BOT (Build Operate Transfer), BOO (Build Operate Own), BROT (Build Rent Operate Transfer), KSO (Joint Operation), joint ventures, and *ruislag* are new phenomena. Over time, it is necessary to establish a partnership agreement between the government and the private party, namely a BOT agreement. BOT is a concept where the project is built at the full cost of a private company, several private companies, or partnership with a State-Owned Enterprise (BUMN). Once the development is completed, it is then operated by the contractor. Furthermore, after the operation stage as stated in the BOT agreement is completed, then the project is transferred to the government as the project owner. For those who make the partnership, whether it is the regional government, investor or financier, the chosen BOT partnership mechanism is very in line and ideal because there are so many potential strategic areas that have not been optimally empowered that can be developed in the form of investment partnership. Of course the benefits between the private party and the government as well as the comparison of benefits between the two have been made. A sensitivity analysis is also carried out to obtain the right investment period where the private and government benefits are considered to be commensurate (the difference in profit is not too different). (Sari, K., & Utomo, C., 2012).

Based on the government's assessment, partnership through BOT is the most appropriate solution to get a mutually beneficial agreement. It is because the investor, as capital owner, does not own land in strategic areas which is one of the important factors in developing its business. Therefore, one alternative that is often used is the BOT agreement. BOT agreement binds the parties to carry out partnership that gives rise to legal relations. BOT agreement also contains agreed performance, whereby one party is entitled to the performance and the other party is obliged to fulfill the performance. From the Presidential Decree No.7 of 1998 and the Presidential Decree No. 81 of 2001, it can be concluded that the partnership agreement between the government and private business entities is followed up with certain agreement in accordance with the needs and its character. It is also noted that contract implementation constitutes as fundamental part of a partnership. The partnership involves the public interest, which in this case involves the government as the state organizer and the private party as investor, in providing services especially infrastructure development that is built based on a partnership agreement that employs BOT pattern. Based on the above situation, it is very necessary to conduct research on the arrangement on partnership pattern between the regional government and the private party and to find ways to overcome the problem of norms that arise in the arrangement of such partnership pattern.

Legal Issues

There are two legal issues raised in this article, namely: (1) arrangement on the regional government-private partnership pattern and (2) ways to overcome the problem of norms that arise in the arrangement on the regional government-private partnership pattern.

RESULT AND DISCUSSION

Arrangement on the Regional Government-Private Partnership Pattern: Since the regional autonomy came into force in 1999, the number of regions in Indonesia has now increased to 34 Provinces and 508 Regencies/Cities (Andi MustariPide, 1999). Such increase is a result of the spirit of regional autonomy that aims to provide opportunities for regions to develop their regions in the context of improving the people's welfare (Nuraini, A., 2011). This can be realized if regional governments apply local policies wisely by maximizing public services. The provision of infrastructure for the society is one of the examples (Ali and Andi, 2012). Based on Presidential Regulation Number 67 of 2005 that was later replaced by Presidential Regulation Number 38 of 2015, the provision of infrastructure for the society includes economic and social infrastructure. This includes transportation, road, water and irrigation resources, drinking water, local wastewater management system, waste management system, telecommunication and information technology, energy conservation, urban facility, educational facility, sport and artistic facility, health facility, area, tourism, penitentiary and public housing. However, not all of these infrastructure developments can be carried out by regional government especially new autonomous region that has not been equipped with adequate human resources and financial capacity. Therefore, it can be said that the provision of infrastructure in the region is not optimal even very minimal. For example, children who live in remote areas find it difficult to go to school because of the unavailability of access to go to schools due to incomplete education facilities. As consequence, they have to go to school by crossing unsecured suspension bridges. Real example of this case occurred in the Lebak- Banten, Indonesia. It is noted that after 10 years, such area finally had a permanent bridge whose construction was assisted by IKANAS in collaboration with alumni of ITB and PT. SMI at a cost of IDR 260 million (news.detik.com article, on August 27 2016).

As for DKI Jakarta, a region that can already be said to have sufficient financial and human resources, it is noted that it still unables to improve the existing infrastructure. Hence, up to date, it still has to face complex problems such as flooding, air and noise pollution, provision of settlements, waste management and others. These various problems certainly need to be taken seriously by the central and regional government (Regency/City). Furthermore, the question is how the government, especially local government, will improve people's welfare with these various problems. There are several ways that can be done to organize and develop regency or city, namely through capacity building, community participation and public private partnership. It discusses the partnership between government and private party in infrastructure development to improve people's welfare. In general there are three partnership patterns in relation to the procurement of facility and infrastructure between the regional government and the private party for regional development (where the area has asset in the form of land but does not have a budget for development). The partnership patterns are as follow:

1. BOT. BOT is where the private party builds the facility and infrastructure at its own expense and then operates it within a certain time to obtain its investment costs. Once the investment cost is

obtained, then such facility and infrastructure will be handed back to the regional government;

2. BTO (Build Transfer Operate). BTO is where the private party builds the facility and infrastructure at its own expense and once the facility and infrastructure are built, it will transfer it to the regional government. After such transfer, the regional government then operates such facility and infrastructure where the results of the operation by the regional government are then used to return the private party's investment;
3. BT (Build Transfer). BT is where the private party builds the facility and infrastructure at its own expense and once the facility and infrastructure are built, those will be submitted to the regional government. The return on investment to the private party uses other payment schemes (from the *APBD*, Regional Government-Owned Enterprise (*BUMD*), etc.).

Other than the above partnership patterns, there are also so-called partnership principles between the government and the private party, namely:

Operations, Maintenance and Service Contract Principle:

The government gives authority to the private party in the operations, maintenance and service contracts on infrastructure provided by the government. The private party must perform a service at an agreed price and must be in accordance with performance standards set by the government. Examples of this service contract can be found in the clean water (the operation of WTP (water treatment plant), water distribution, water meter reading, collection of bills, as well as pipeline operations and maintenance). As another example, it can also be found in waste sector (waste collection, production and distribution of waste containers, road cleaning services, vehicle maintenance (trucks) and the implementation of landfills or the implementation of transfers between waste collection posts).

BOT Principle: BOT is used to involve private investment in the construction of new infrastructure. Under the BOT principle, private party funding will be used to build and operate infrastructure or facility system based on performance standards set by the government. Government provides the private party with sufficient time, which is around 10 to 20 years, long enough for such private party to recover the costs incurred to build such construction along with the benefits to be gained. In this case the government retains ownership of such infrastructure and facility. In this event, the government has two roles, namely as user and regulator of the infrastructure services. BOT is a good way for new infrastructure development with limited government funds. The government uses this BOT system for more specific infrastructure facilities such as large water supply reservoir, drinking water, WTP, temporary and final disposal site and waste treatment facility. Under the BOT, the private party has a role to provide capital to build new facility. The government will agree to issue a minimum level of production to ensure private operator can cover their costs during operation. BOT is an effective way to attract private capital in the construction of new infrastructure facilities; thus, it can be said that this is the benefit of having BOT. The BOT agreement will be able to reduce the market and the risks are small for the private party. It is because the government is the sole user. Meanwhile reducing risk is related to if there are problems with

insufficient demand and ability to pay. The private party will reject the BOT mechanism if the government does not guarantee that private party will regain its investment. Overall, many developing countries have used this BOT model to build new power plants.

Concession Principle: In the concession, the Government gives full responsibility and management to private contractor (concessionaire) to provide infrastructure services in a particular area, including in terms of operation, maintenance, collection and management. The concessionaire is responsible for the majority of investments used to build, increase capacity or expand the network system, where the concessionaire gets funding for the investment incurred from tariffs paid by consumers. While the government is responsible for providing performance standards and providing guarantee to the concessionaire. In essence, the role of government has shifted from what was once a service provider to a regulator of the prices charged and the amount that must be provided. Infrastructure assets are entrusted to the concessionaire for a certain contract period. However, after the contract runs out, the infrastructure assets will become government's property. The concession period is usually more than 25 years. Such period depends on the contract agreement and the time required by the private concessionaire to cover the costs incurred. In the waste sector, the government gives a concession to build a recycling site and its operation or to build a facility that can change waste to energy. In the water sector, the concession has a full role in water services in a certain area. The concession method has been widely used both at the city and national level. From the financing structure, it is noted that the private party is responsible for all capital and operating costs including construction of infrastructure, energy, material and refinement during the period of the contract. Private party can be authorized to take the tariff directly from users. The applicable rate has been pre-determined in the concession contract agreement. However, it is also possible for this rate to be changed at certain times. In some cases, the government can also help the funding to cover expenses of the concessionaire. This action taken by the government constitutes as one of forms of guarantees explained above; however, this should be avoided for good.

Joint Venture Principle: Joint venture is a partnership between the government and the private party where responsibility and ownership are jointly borne in the provision of infrastructure services. In this partnership, each party has a balanced position in the company. This partnership aims to integrate the advantages of the private party such as capital, technology and management capability with government excellence namely public authority and trust. It is important to pay attention to the majority and minority shareholders because this relates to the power to run the company and to determine the company's policy. It is because under this principle, one share is for one vote. Under a joint venture, the government and the private party can form a new company or use an existing infrastructure provider (for example, a government company sells a portion of its capital to the private party). Furthermore, it is important to note that this company has function that is independent of the government. Joint ventures can be used in combination with several types of public and private partnerships. For example, the government opens joint capital, especially in terms of services, BOT or concession for infrastructure provision. Joint venture partnership is an alternative that can be said to be a "truly"

form of public-private partnership between government, private, non-governmental institution and other institution that can contribute their resources. Hence, they can share the settlement of local infrastructure problems. In this form of partnership, besides having a role as a regulator, the government also acts as an active shareholder in running a joint company. Under the joint venture, the government and the private party must work together from the initial stage, the formation of institution to the construction of the project. In the context of financing structure, the government and the private party must contribute to financing the infrastructure development from the start (from financing project feasibility study to preparing investment in new company when it is formed). This PPP joint capital requires prior agreement to bear the risk and share the profits together. In other words, each must have a contribution through the development project and its implementation. Optimally, the company should finance independently. However, it does not rule out the possibility of the government to provide subsidy to company or its use – although it can be done if it is very urgent, this should be avoided for good.

Community-Based Provision (CBP) Principle: CBP can consist of individuals, families or small companies. CBP has major role in organizing poor people into joint activities and their interests will be represented and negotiated with NGO and the government. The NGO here has role to provide management process, mediate the negotiations between CBO and other larger institutions in terms of partnership, information or policy networks. Many poor or lower middle class settlements have solid waste arrangement by the local community. That is done by collecting door-to-door, on roads and roadside trash bins; by selecting and recycling for resale. This happens in many developing countries (the example can be seen through Bagus Rangin Community in Bandung where they collect garbage by using this CBP). In the clean water sector, CBP buys large quantities of water and sells it to their communities in the form of buckets. CBP has special characteristic related to its financing structure. It requires low costs and these costs can be said to be the “capital” that has been provided by local providers and their material. Organizing and material costs are usually provided by/through NGOs, donation, development assistant assistants, the government or by the community. Maintenance costs should be derived from user fees or revenue. The above explained partnership patterns can be found, among others, in the Indonesian Presidential Regulation Number 38 of 2015 on the Government- Business Entity Partnership in the Provision of Infrastructure (Presidential Regulation Number 38 of 2015); the Minister of Home Affairs of Indonesia Regulation Number 74 of 2012 on Guidelines for Regional Government-Private Institution Partnership (Minister of Home Affairs Regulation Number 74 of 2012); the Minister of Home Affairs of Indonesia Regulation No.22 of 2009 on Technical Guidelines for Regional Partnership Procedure (Minister of Home Affairs Regulation Number 22 of 2009); the Government of Indonesia Regulation Number 50 of 2007 on Procedures for Implementing Regional Partnership (Government Regulation Number 50 of 2007); and in the Government of Indonesia Regulation Number 28 of 2018 on Regional Partnership (Government Regulation Number 28 of 2018).

Formulation of Arrangement on the Regional Government-Private Partnership to Overcome the Norm Problems: In order to improve people’s welfare in its area,

regional government can hold partnership based on consideration of the efficiency, effectiveness of public services and mutual benefit. Such partnership can be carried out by a region with other region, third party, and/or institution or regional government abroad in accordance with statutory provisions. This has been regulated in Part One of Chapter XVII on Regional Partnership and Disputes in Indonesian Law Number 23 of 2014 on Regional Administration (Law Number 23 of 2014). In addition to partnership, the law also stipulates that regional government also encourages society participation in the government administration. The regional government encourages society groups and organizations to play active role in the administration of regional government through the support of society capacity building. Society participation includes, among others, managing regional assets and/or natural resources and organizing public services. Law Number 23 of 2014 has been amended several times. The latest amendment is by Indonesian Law Number 9 of 2015 on the Second Amendment to Law Number 23 of 2014 on Regional Administration (Law Number 9 of 2015). The procedure for the implementation of partnership by the regional government has previously been regulated in Government Regulation Number 50 of 2007. Such Government Regulation was stipulated based on the mandate of Indonesian Law Number 32 of 2004 on Regional Government (Law Number 32 of 2004), but it still applies as long as new regulations have not been determined as a replacement and as long as it does not conflict with Law Number 23 of 2014. The partnership between regional government and private parties also related to Indonesian Government Regulation Number 27 of 2014 on Management of State/Regional Property (Government Regulation Number 27 of 2014) and Minister of Home Affairs of Indonesia Regulation Number 19 of 2016 on Guidelines for Management of Regional-Owned Property (Minister of Home Affairs Regulation Number 19 of 2016). Based on the description above, a normative juridical study has been conducted regarding the partnership between the regional government and the private party based on statutory provisions.

There are several definitions related to region provided in the Law Number 23 of 2014 as follow:

- Regional Administration means the running of state affairs by the regional government and Regional Legislative Council (DPRD) based on the principle of autonomy and medebewind with wide ranging autonomy within the frame of Unitary Republic of Indonesia as meant in the 1945 Constitution of the Republic of Indonesia (Article 1(2))
- Local Government is the head of the official elements of the Regional Administration whose led the implementation of government affairs under the authority of the autonomous region (Article 1(3))
- Autonomous Region hereinafter referred to as Region is the unity of the legal community who have boundaries authorized to regulate and administer Government Affair and public interest at its own initiative based on the aspirations of the people in the system of the Unitary Republic of Indonesia (Article 1(12)).

Furthermore the norm on regional partnership in general can be found in Article 363 (1) and (2) of Law Number 23 of 2014 as follow:

1. In order to improve the people's welfare, Region can hold a regional partnership based on consideration of efficiency and effectiveness of public services as well as mutually beneficial.
2. The partnership referred to in paragraph (1) may be carried out by the Region with:
 - other Region;
 - third party; and or
 - agency or local government abroad in accordance with the statutory provisions.

The elucidation of Article 363 (2)(b) provides explanations on who is considered as third party. Third party in this case is the private party, society organization and other non-governmental organization.

In relation to the partnership with third parties, Law Number 23 of 2014 regulates such matter under Article 366 as follow:

1. Regional partnership with third party referred to in Article 363 paragraph (2) b includes:
 - a Partnership in the provision of public services;
 - b Partnership in asset management to increase the added value that provides income for the region;
 - c Investment partnership; and
 - d Other partnership that does not conflict with the statutory provisions.
2. Regional partnership with third party stipulated in the partnership contract at least set out the following points:
 - a the rights and obligations of the parties;
 - b period of partnership;
 - c settlement of disputes; and
 - d sanctions for those who do not fulfill the agreement.
3. Regional partnership with third party referred to in paragraph (1) must be preceded by a feasibility study conducted by the parties who perform the partnership.

The law also regulates the general principle of the monitoring and evaluation level of partnership through Article 368 of Law Number 23 of 2014 as follow:

1. The Governor as representative of the Central Government shall perform monitoring and evaluation of the partnership conducted by the Regency/City in a Provincial Region.
2. The Minister shall perform monitoring and evaluation of inter-provincial Region partnership, between the provincial Region and Regency/City Region in its territory, as well as between the provincial Region and Regency/City Region outside its territory.

Further provisions regarding partnership are regulated by government regulation (Article 369 Law Number 23 of 2014). In the event that there are problems in implementing the partnership, the following general principles of dispute resolution can be used by the parties (as stipulated in Article 370 of Law Number 23 of 2014):

1. In the event of a dispute in the administration of Government Affairs of inter-regency/city Region in one provincial Region, the Governor as the representative of the Central Government shall resolve the said dispute.

2. In the event of a dispute in the administration of Government Affairs of inter-provincial Region, between the provincial Region and Regency/City Region in its territory, as well as between the provincial Region and Regency/City Region outside its territory, the Minister shall resolve the said dispute.
3. In the event that the Governor as a representative of the Central Government cannot resolve the dispute as meant in paragraph (1), the settlement shall be carried out by the Minister.
4. The Ministerial Decree relating to the settlement of disputes as referred to in paragraph (2) and the settlement of dispute as referred to in paragraph (3) is final.
5. Further provisions regarding the procedure for resolving disputes inter-Regions in the administration of Government Affairs shall be regulated by Ministerial Regulation.

The elucidations of Articles 366, 368, 369 and 370 of Law Number 23 of 2014 are quite clear. In general, the provision of Article 370 only governs the procedure for resolving inter-regions dispute. Whereas dispute in partnership between regional government and private party is regulated in agreement or partnership contract between the parties as provided for in Article 366 paragraph (2) letter c of Law Number 23 of 2014. Based on the description above, it is noted that in accordance with the provision of Article 366 of Law Number 23 of 2014 along with amendments partnership between the regional government and third party (including the private party) includes, among others: the provision of public services, asset management to improve added value that provides income for the region and investment. In order to carry out partnership, government has stipulated Government Regulation Number 50 of 2007. The term "partnership" and those who are referred to as "third parties" have been defined in such Government Regulation through the following articles:

- **Article 1 number 2:** Regional partnership is an agreement between the governor and the governor or governor with the regent/mayor or between the regent/mayor and other regent/mayor, and or the governor, regent/mayor and a third party, which is made in writing and giving rise to rights and obligations.
- **Article 1 number 3:** Third parties are Departments/Non-Departmental Government Agencies or other terms, private companies with legal entity status, State-Owned Enterprises, Regional-Owned Enterprises, Cooperatives, Foundations and other domestic institutions that have legal entity status.

In general, the corpus of Government Regulation Number 50 of 2007 regulates matters on general provisions, principles, subjects, objects, forms, procedures, DPRD's approval, results of partnership, dispute resolution, amendments, termination of partnership, guidance and supervision, partnership bodies, transitional provisions and closing provisions (Murhani, 2008). The principles, objects and forms of partnership are regulated in the Government Regulation Number 50 of 2007 under the following articles:

- **Article 2:** Regional partnership is carried out with the principles of: (a) efficiency; (b) effectiveness; (c) synergy; (d) mutual benefit; (e) mutual agreement; (f) good faith; (g) prioritizing national interest and the territorial integrity of the Unitary State of the Republic of Indonesia; (h) equality of position; (i) transparency; (j) justice; and (k) legal certainty.
- **Article 4:** The object of regional partnership is all governmental affairs that have become the authority of the autonomous region and can be in the form of provision of public service.
- **Article 5:** Regional partnership is stated in the partnership agreement.
- **Article 6:** Partnership agreement between regional and third party must consider the partnership principle and object as stated in Articles 2 and 4.

The philosophical background of the need for regional partnership is stated in the general elucidation of Government Regulation Number 50 of 2007. It is noted that regional partnership is a means to further strengthen the relations of one region with other regions within the framework of the Unitary State of the Republic of Indonesia, harmonize regional development, synergize potential of the inter-regions and/or with third parties and increase the exchange of knowledge, technology and fiscal capacity. Regional partnership is expected to reduce regional disparities in the provision of public services, especially those in remote areas, borders between regions and disadvantaged areas. Regional partnership is intended to improve the welfare and sources of original regional income. Therefore, regional partnership that burdens the *APBN* and the society must obtain approval from the *DPRD*. Although there are currently no government regulations governing regional partnership, Government Regulation Number 50 of 2007 can still be used as a valid criterion as long as it does not conflict with Law Number 23 of 2014 and its amendment. As explained in the law, one form of partnership between the regional government and the private party is the management of assets to increase added value that provides income for the region. Therefore, partnership in asset management will also be related to Government Regulation Number 27 of 2014 Minister of Home Affairs Regulation Number 19 of 2016. Both of these regulations govern the use of regional-owned property, which can be done through partnership between the regional government and the private party.

Related to partnership in asset management, Article 1 number 10 of Government Regulation Number 27 of 2014 regulates that utilization is the utilization of State/Regional-Owned Property which is not used to carry out the duties and functions of Ministries/Institutions/regional work units and/or optimisation of State/Regional-Owned Property without changing the ownership status. In line with this definition, Article 1 number 32 of the Minister of Home Affairs Regulation No. 19 of 2016 regulates that utilization is the utilization of regional-owned property which is not used to carry out the duties and functions of the regional work units and/or optimization of regional-owned property without changing the ownership status. The Government Regulation Number 50 of 2007 governs that the regional government that may carry out partnership is the regional head (governor, regent and mayor). Meanwhile Government Regulation Number 27 of 2014 regulates officials who can carry out the utilization of state/regional-owned property. Article 26

paragraph (1) Government Regulation Number 27 of 2014 regulates that the utilization of State/Regional-Owned Property is carried out by: (a) Property Manager, for State-Owned Property which is under his control; (b) Property Manager with the approval of the Governor/Regent/Mayor, for Regional-Owned Property which is in the possession of the Property Manager; (c) Property User with the approval of the Property Manager, for State-Owned Property which is in the possession of the Property User; or (d) Property User with the approval of the Property Manager, for Regional-Owned Property in the form of a portion of land and/or buildings that are still used by the Property User, and other than land and/or buildings. As for the form of utilization of the State/Regional-Owned Property, it has been regulated in Article 27 of the Government Regulation Number 27 of 2014 as follows: (a) rent; (b) lease; (c) utilization partnership; (d) Build Use Transfer or Build Transfer Use; or (e) partnership on the provision of infrastructure. In the level of regional government, the utilization of regional-owned property is carried out by: (a) Property Manager with the approval of the Governor/Regent/Mayor, for regional-owned property which is under the Property Manager's control; and (b) Property User with the approval of the Property Manager, for regional-owned property in the form of a portion of land and/or buildings that are still used by the Property User, and other than land and/or building (Article 78(1) of Minister of Home Affairs Regulation Number 19 of 2016). Furthermore, Article 1 number 7 of of Minister of Home Affairs Regulation Number 19 of 2016 defines that Regional Secretary is the manager of regional-owned property.

Forms of utilization of regional-owned property can be found in Article 27 of Government Regulation Number 27 of 2014 and further described in the Minister of Home Affairs Regulation Number 19 of 2016. As for the form of utilization of the Regional-Owned Property, the Minister of Home Affairs Regulation Number 19 of 2016 governs it under Article 81 as follow: (a) rent; (b) lease; (c) utilization partnership; (d) Build Use Transfer or Build Transfer Use; or (e) partnership on the provision of infrastructure. The understanding of the forms of utilization of the regional-owned has been regulated in Article 1 of the the Minister of Home Affairs Regulation Number 19 of 2016. Rent is the use of regional-owned property by another party with incertain period of time and by receiving cash as the compensation. Lease is the transfer of use of the Property between the central government and regional government or between regional governments within a certain period of time without receiving compensation and after that period ends such property is handed back to the Governor/Regent/Mayor. Utilization Partnership is the utilization of regional-owned property by other parties within a certain period in the context of increasing regional income or other sources of financing. Build Use Transfer is the utilization of regional-owned property in the form of land by another party by constructing building and/or facility, which is after construction these are used by other parties within the agreed period of time to subsequently be handed back (the land along with the building and/or facility) after the end of the period. Build Transfer Use is the utilization of regional-owned building in the form of land by other party by constructing building and/or facility and after the completion of the construction it is then handed over to be utilized by the other party within the agreed period of time. Meanwhile Partnership on the provision of infrastructure is a partnership between the government and business entity for infrastructure provision activity in accordance with statutory

provisions. Furthermore, related to the use of such regional-owned property, the term "utilization partner" is known. Minister of Home Affairs Regulation Number 19 of 2016 has specifically regulated matters relating to Utilization Partner in the provisions of the following articles:

- **Article 82:** Utilization Partner includes: (a) tenant, for the use of regional-owned property in the form of rent; (b) lessee, for the utilization of regional-owned property in the form of lease; (c) utilization partnership partner, for the use of regional-owned property in the form of utilization partnership; (d) Build Use Transfer or Build Transfer Use, for the utilization of regional-owned property in the forms of Build Use Transfer or Build Transfer Use; (e) partnership on the provision of infrastructure partner, for the utilization of regional-owned property in the form of partnership on the provision of infrastructure.
- **Article 83:** The Utilization Partner as referred to in Article 82 has the responsibility to: (a) make payment for the use of regional-owned property in line with the form of utilization; (b) submit the results of the utilization implementation in accordance with the theform of utilization; (c) carry out security and maintenance upon regional-owned property that is utilized and results of the implementation of the use of regional-owned property; (d) return regional-owned property after the end of the performance; and (e) fulfill other obligations specified in the agreement on the utilization of regional-owned property.

The selection of partner is based on the principles of transparency, at least followed by 3 (three) participants, obtain optimal benefits for the region, carried out by an election committee that has integrity, is reliable and competent, good administration, and orderly reporting.

Conclusion

Based on the description above, it is noted that regional government can carry out partnership with private party (third party) in terms of, among others, utilization of region-owned property which is not used to carry out the duties and functions of the Regional Work Unit (*Satuan Kerja Perangkat Daerah*) and/or optimization of region-owned property by not changing the ownership status in a number of forms already regulated in the statutory provisions.

REFERENCES

Books

Ali, Faried, dan Andi Syamsu Alam, 2012, *Studi Kebijakan Pemerintah*, Refika Aditama, Bandung

Andi Mustari Pide, 1999, *Otonomi Daerah dan Kepala Daerah Memasuki Abad XXI*, Gaya Media Pratama, Jakarta

Murhani, Suriansyah, 2008, *Aspek Hukum Pengawasan Pemerintah Daerah*, Laksbang Mediatama.

Journal

Sari, K., & Utomo, C. 2012. Analisa pembiayaan kerjasama pemerintah dan swasta pada proyek Sidoarjo Town Square. *Jurnal Teknik ITS*, 1(1), D12-D15

Laws and Regulations

1945 Constitution of the Republic of Indonesia

Government of Indonesia Regulation Number 50 of 2007 on Procedures for Implementing Regional Partnership

Government of Indonesia Regulation Number 28 of 2018 on Regional Partnership

Indonesian Law Number 32 of 2004 on Regional Government Administration

Indonesian Law Number 23 of 2014 on Regional Administration

Indonesian Law Number 9 of 2015 on the Second Amendment to Law Number 23 of 2014 on Regional Administration

Indonesian Government Regulation Number 27 of 2014 on Management of State/Regional Property

Indonesian Presidential Regulation Number 38 of 2015 on the Government-Business Entity Partnership in the Provision of Infrastructure

Minister of Home Affairs of Indonesia Regulation No.22 of 2009 on Technical Guidelines for Regional Partnership Procedure

Minister of Home Affairs of Indonesia Regulation Number 74 of 2012 on Guidelines for Regional Government-Private Institution Partnership

Minister of Home Affairs of Indonesia Regulation Number 19 of 2016 on Guidelines for Management of Regional-Owned Property

Others

news.detik.com on 27 August 2016

Nuraini, A. 2011. Otonomi Daerah dan Laju Pembangunan di Kabupaten Batang. (Online), <http://ayangga.wordpress.com/2011/03/10/otonomi-daerah-dan-laju-pembangunan-di-kabupaten-batang/> accessed on 27 March 2013)
