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The Lease Grant Model as a Scheme for Utilizing Regional Property: an Alternative Approach to Implementing Proportionality between Regional Revenue Policies and Business Interests

Rusdianto Sesung[1], Syofyan Hadi[2]
[1]Universitas Narotama, Indonesia
[2]Universitas 17 Agustus 1945 Surabaya, Indonesia
*Corresponding Author: rusdianto@narotama.ac.id

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Abstract
The five schemes for utilizing Regional Property in Article 27 of GR No. 27 of 2014 did not provide proportional justice for the grantor when using the regional property with a lease scheme. The purpose of this study is to analyze and formulate the lease grant model as a new alternative in the utilization scheme of Regional Property. This research is normative legal research with a statutory and conceptual approach. Legal materials are analyzed normatively. The results of the study found that according to the provisions of Article 27 of GR No. 27 of 2014 in conjunction with Article 81 of RM of Home Affairs No. 19 of 2016, Regional Property can be utilized with five schemes, namely leasing, borrowing, utilization cooperation, build operate transfer/build transfer operate, and cooperation in providing infrastructure. The five schemes do not provide justice proportionally to the community or granting business actors who want to utilize Regional Property with a lease scheme. There is no specificity of arrangements in the utilization of Regional Property with a lease scheme by the grantor. For this reason, a Regional Property lease grant scheme with special characteristics is needed, namely (1) The parties are the Regional Government and the community or business actors as lease grantors; (2) The object is Regional Property originating from community grants or business actors; and (3) Special procedures are needed to implement the lease grant scheme as an effort to provide proportional justice including in determining the rent adjustment factor.

1. Introduction

Like legal subjects, autonomous regions as public legal entities are given the right to own assets/goods as one of the non-juridical instruments in governance.[1] In the context of Law Number 23 of 2014 concerning Regional Government (hereinafter referred to as Law No. 23 of 2014), it is known as Regional Property. Article 1 point 39 of Law No. 23 of 2014 determines "Regional Property is all goods purchased or obtained at the expense of the Regional Revenue and Expenditure Budget or derived from other legal acquisitions". In line with this, Article 1 point 2 of Government Regulation Number 27 of 2014 concerning Management of State/ Regional Property (hereinafter GR No. 27 of 2014) also determines "Regional Property is all goods purchased or obtained at the expense of the Regional Revenue and Expenditure Budget or derived from other legitimate acquisition". Based on these provisions, it can be seen that regional property is:

[1] Rusdianto Sesung dan Sofyan A. Djalil, *Hukum Administrasi Indonesia: Konsep Dasar, Perkembangan, Dinamika, Perbandingan, dan Reformulasi* (Bandung: Refika Aditama, 2025).

a. all goods purchased or obtained at the expense of the Regional Revenue and Expenditure Budget; or
b. all goods originating from other legal acquisitions. Such as grants from the community as a form of community participation in the implementation of development as stipulated in Government Regulation Number 45 of 2017 concerning Community Participation in the Implementation of Local Government (hereinafter referred to as GR No. 45 of 2017).

In organizing regional government, Regional Property has a strategic position. Regional Property functions as a support for the implementation of regional authority, especially services to the community.[2] On the other hand, if referring to the provisions of Article 285 paragraph (1) of Law No. 23 of 2014 in conjunction with Article 31 of Government Regulation Number 12 of 2019 concerning Regional Financial Management (hereinafter referred to as GR No. 12 of 2019), Regional Property is one of the important sources of Regional Original Revenue. Therefore, the management of Regional Property is an integral part of regional financial management. Furthermore, Regional Property can be used to strengthen the capital of Regional-Owned Enterprises through regional capital participation which can ultimately strengthen and improve the regional economy and public welfare.[3]

The strategic position of Regional Property must be supported by the principle of legality (*rechtmatigheid*). For this reason, the Government has stipulated various laws and regulations, including GR No. 27 of 2014 as amended by GR No. 28 of 2020, Regulation of the Minister of Home Affairs Number 19 of 2016 concerning Guidelines for the Management of Regional Property (hereinafter referred to as RM of Home Affairs No. 19 of 2016) as amended by RM of Home Affairs No. 7 of 2024, and other laws and regulations that must be used as guidelines by each Regional Government. In addition, the management of Regional Property must also be in accordance with and the principles of good asset governance.[4] For this reason, the management of Regional Property must be transparent, accountable, participatory, effective and efficient[5] as a form of implementing government functions, such as providing public services that result in justice, empowerment that results in independence, and development that creates prosperity.[6]

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[2] Donna Okthalia Setiabudhi, "Pengelolaan Aset Pemerintah Daerah Dalam Perspektif Good Governance," *The Studies of Social Sciences* 1, no. 1 (19 September 2019): 7, https://doi.org/10.35801/tsss.2019.1.1.25014; A.M. Yadisar, "Manajemen Pengelolaan Aset Daerah," *Fokus : Publikasi Ilmiah untuk Mahasiswa, Staf Pengajar dan Alumni Universitas Kapuas Sintang* 21, no. 1 (4 April 2023), https://doi.org/10.51826/fokus.v21i1.722.

[3] Yasin Yasin, Fadillah Putra, dan Oscar Radyan Danar, "Manajemen barang milik daerah berbasis kemitraan dalam meningkatkan sumber pendapatan daerah," *Publisia: Jurnal Ilmu Administrasi Publik* 6, no. 2 (30 Oktober 2021): 147–55, https://doi.org/10.26905/pjiap.v6i2.4914; Nunung Runiawati, "Pemanfaatan Barang Milik Daerah (Suatu pendekatan teoritis dan praktis dalam menentukan metode pemanfaatan aset)," *Jurnal Manajemen Pelayanan Publik* 1, no. 1 (28 Agustus 2017): 45, https://doi.org/10.24198/jmpp.v1i1.13553.

[4] Alfian Alfian, Harapan Tua RFS, dan Zaili Rusli, "Implementasi Prinsip Good Governance Aset Negara," *Jurnal Kebijakan Publik* 14, no. 2 (1 Juni 2023): 227, https://doi.org/10.31258/jkp.v14i2.8238.

[5] Sri Maulidiah, "Optimalisasi Pengelolaan Aset Sebagai Wujud Reformasi Birokrasi Di Daerah," *Jurnal Pemerintahan, Politik dan Birokrasi* 3, no. 1 (2020), https://journal.uir.ac.id/index.php/wedana/article/view/1811.

[6] Sesung dan Djalil, *Hukum Administrasi Indonesia: Konsep Dasar, Perkembangan, Dinamika, Perbandingan, dan Reformulasi*.

The concept of Regional Property management has normatively been determined in Article 1 point 28 of RM of Home Affairs No. 19 of 2016. In the article, it is determined that "Management of Regional Property is the overall activities that include planning needs and budgeting, procurement, use, utilization, security and maintenance, valuation, alienation, destruction, deletion, administration and guidance, supervision and control". Based on these provisions, one part of the management of Regional Property is utilization. Article 1 point 10 of GR No. 27 of 2014 determines "Utilization is the utilization of State/Regional Property that is not used for the implementation of the duties and functions of the Ministry/Institution/regional apparatus work unit and/or optimization of State / Regional Property by not changing the ownership status". In line with these provisions, Article 1 point 32 of RM of Home Affairs No. 19/2016 also determines "Utilization is the utilization of regional property that is not used for the implementation of the duties and functions of Regional Work Unit and / or optimization of regional property without changing ownership status". The objectives of utilization of Regional Property according to these provisions include (1) utilization of Regional Property that is not used by regional apparatus; and/or (2) optimization of Regional Property so that it can have a positive impact on increasing Regional Original Revenue or regional economic development.

The scheme of utilization of Regional Property has been determined limitatively in Article 27 of GR No. 27 of 2014 which determines "Forms of Utilization of State / Regional Property in the form of: a. Lease; b. Borrowing; c. Utilization Cooperation; d. Build Operate Transfer or Build Transfer Operate; or e. Cooperation in Providing Infrastructure". The same provision is also regulated in Article 81 of RM of Home Affairs No. 19/2016 which determines that there are five forms of Regional Property utilization schemes, namely "a. Lease; b. Borrowing; c. Utilization Cooperation; d. Build Operate Transfer or Build Transfer Operate; and e. Cooperation in Providing Infrastructure". When referring to the principle of legality and the principle of good asset governance, the utilization of Regional Property can only be carried out using one of the five schemes. If the utilization of Regional Property is carried out using a scheme outside of the five schemes, then the utilization is not in accordance with the law.

However, when viewed from the principle of proportionality, the five schemes for utilizing Regional Property are incomplete. Especially for the utilization of Regional Property sourced from community grants which is a form of community participation in the implementation of regional development as stipulated in Article 351 of Law No. 23 of 2014 and Article 3 of GR No. 45 of 2017.[7] The grant of goods is then recorded by the Regional Government as Regional Property. The issue of proportional justice arises when the grantor wants to utilize the goods that have been granted with a lease scheme. This is because if you refer to the scheme stipulated in the laws and regulations, there is no difference in treatment

[7] Delfina Gusman, "Model Partisipasi Masyarakat Dalam Pembentukan Peraturan Daerah Sebagai Perwujudan Demokrasi Substantif," *UNES Law Review* 5, no. 3 (2023), https://doi.org/10.31933/unesrev.v5i3.425; Ibnu Affan, "Urgensi Partisipasi Masyarakat Dalam Penyelenggaraan Pemerintahan Daerah," *DE LEGA LATA Jurnal Ilmu Hukum* 6 (2021), https://doi.org/https://doi.org/10.30596/dll.v6i1.5318; Paul Adryani Moento, Firman Firman, dan Andi Patta Yusuf, "Good Governance Dalam Pemerintahan," *Musamus Journal of Public Administration* 1, no. 2 (2019), https://doi.org/10.35724/mjpa.v1i2.1985.

between grantors and other communities. Including in the calculation of the rental value, so that the grantor will pay the same amount of rent as other people. Of course, when viewed from the principle of proportionality, does not provide justice for grantors and does not motivate the community to provide grants to the Regional Government.

Based on these arguments, the author proposes the addition of a scheme of utilization of Regional Property in this research, namely a Lease Grant Scheme as an effort to increase community participation in regional development and increase Regional Original Revenue, as well as ensure legal certainty for business actors in running a business. A similar study was conducted by Fitri Hardini and Ngadino entitled "Transfer of Land Rights Through Grants as Regional Assets".[8] This study examined the legal basis for land ownership by local governments as regional assets and sought to determine the procedures for transferring land rights through grants as regional assets. This study examined and analyzed the Grant Lease Model as a Scheme for Utilizing Regional Property. In addition, similar research has also been conducted by Nunung Runiawati entitled "Utilization of Regional Property (A theoretical and Practical Approach in Determining Asset Utilization Methods)".[9] This study examined the concept of asset utilization in increasing local revenue, asset utilization methods, contribution determination, and a case study of the selection of asset utilization methods in the development of the tourism area. This study comprehensively examines and analyzes the regulation of the utilization scheme for regionally owned assets and the utilization of regional property obtained from community grants. Finally, similar research was also conducted by Moh. Zaini S. entitled "Optimization of Regional Property Utilization in Increasing Regional Original Income in Pamekasan Regency".[10] This study examined the concept and legal framework of optimizing the utilization of regional assets in increasing local revenue and policies for optimizing the utilization of regional assets in increasing local revenue in Pamekasan Regency. This study explicitly reviewed and analyzed the utilization of regional property obtained from community grants. Based on the above description, it is evident that this research differs from previous studies and possesses a high degree of novelty. This research offers a new model for utilizing regional assets sourced from community grants. The proposed model is a lease grant model that has not been researched by previous researchers.

2. Methods

This research is a normative legal research with 2 (two) approaches, namely a statutory approach and a conceptual approach.[11] The legal materials used consist of primary legal materials in the form of legislation such as Law No. 23 of 2014, Law No. 30 of 2014, GR No. 27 of 2014, RM of Home Affairs No. 19 of 2016 and secondary legal materials. Primary legal materials were collected using inventory and categorization methods, while secondary legal

[8] Fitri Hardini, "Peralihan Hak Atas Tanah Dengan Hibah Sebagai Aset Daerah," *Notarius* 12, no. 2 (2019), https://doi.org/10.14710/nts.v12i2.29145.
[9] Runiawati, "Pemanfaatan Barang Milik Daerah (Suatu pendekatan teoritis dan praktis dalam menentukan metode pemanfaatan aset)."
[10] Moh. Zaini S., "Optimalisasi Pemanfaatan Barang Milik Daerah Dalam Meningkatkan Pendapatan Asli Daerah Di Kabupaten Pamekasan," *Perspektif* 26, no. 3 (2021): 186–97, https://doi.org/10.30742/perspektif.v26i3.818.
[11] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

materials were collected using literature studies. Both legal materials were analyzed using normative analysis with systematization, interpretation, and construction methods.

3. Results and Discussion

3.1. Regional Property Utilization Scheme Arrangement

In the context of organizing regional government, especially in providing public services to the community, each autonomous region is given the right to own goods. Regional Property is a regional asset that has a strategic function, because it can be a source of Regional Original Revenue and an instrument to improve the regional economy and community welfare.[12] Regarding the function as a source of Regional Original Revenue, Article 31 paragraph (4) letter b of GR No. 12/2019 determines that the utilization of Regional Property is one of the sources of Regional Original Revenue. Furthermore, Regional Property can be an instrument to strengthen the regional economy and community welfare through regional capital participation in Regional-Owned Enterprises, which can also ultimately increase Regional Original Revenue.

Given this strategic function, Regional Property needs to be optimized for management through the application of the principles of legality and the principles of good asset governance. The principle of legality means that the management of Regional Property must be in accordance with the law, both in the form of laws and regulations and general principles of good governance, as specified in Article 8 paragraph (2) of Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as Law No. 30 of 2014). Based on the principle of legality, the validity of the management of Regional Property must fulfil three elements, namely carried out by authorized officials, carried out in accordance with procedures, and in accordance with substance.[13] This is normatively determined in Article 52 paragraph (1) of Law No. 30 of 2014. Failure to fulfil one and/or all three elements results in the management of Regional Property being invalid and can be canceled (*vernietigbaar*) and has the potential to cause legal problems in the form of state financial losses that lead to criminal cases.[14]

Meanwhile, the principle of good asset governance means that the management of Regional Property must be carried out in a transparent, accountable, participatory, effective and efficient manner.[15] Transparency means that the management of Regional Property by the

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[12] Dean Salomo Kumenaung dan Arvan Carlo Djohansjah, "Optimalisasi Pemanfaatan BMD Sebagai Sumber Penerimaan Daerah," *Jurnal Pembangunan Ekonomi Dan Keuangan Daerah* 24, no. 3 (2023), https://doi.org/10.35794/jpekd.50001.24.3.2023; Jefri Mardan dan Juliana Nasution, "ANALISIS Pengelolaan Dan Pemanfaatan Barang Milik Daerah Pada Bpkad Kabupaten Labuhanbatu," *Jurnal Akuntansi AKTIVA* 3, no. 1 (2022), https://doi.org/10.24127/akuntansi.v3i1.2041.

[13] Syofyan Hadi dan Tomy Michael, "Principles of Defense (Rechtmatigheid) In Decision Standing of State Administration," *JURNAL CITA HUKUM* 5, no. 2 (26 November 2017), https://doi.org/10.15408/jch.v5i2.8727.

[14] Syahrul Syahrul, Sudi Fahmi, dan Ardiansah Ardiansah, "Tinjauan Yuridis Tentang Tanggung Jawab Pemeliharaan Barang Milik Daerah Berdasarkan Peraturan Pemerintah Nomor 27 Tahun 2014 Tentang Pengelolaan Barang Milik Negara Dan Daerah," *Eksekusi* 3, no. 2 (2021), https://doi.org/10.24014/je.v3i2.13359.

[15] Yasir Susanto Machmud et al., "The Implementation of Good Governance Principles in the Asset Management of Regional-Owned Enterprises of South Sulawesi Province," *KnE Social Sciences*, 2023, https://doi.org/10.18502/kss.v8i17.14182; Maria Fransiska Owa da Santo, Ernestha Uba Wohon, dan Emiliana Martuti Lawalu, "Upaya Pemerintah Daerah dalam Mewujudkan Prinsip Tata Kelola

Regional Government must be carried out openly, so that the public has the widest possible access and information. This transparency is closely related to the right of citizens to obtain public information. Accountable means that the management of Regional Property by the Regional Government must be accountable to the public. Participatory means that the management of Regional Property by the Regional Government must involve the community at large. While effective and efficient means that the management of Regional Property by the Regional Government must have positive outputs and outcomes, especially in increasing Regional Original Revenue, regional economy, and community welfare. Normatively, the principle of good asset governance can be seen in Article 3 paragraph (1) of GR No. 27 of 2014 which determines "Management of State/Regional Property is carried out based on functional principles, legal certainty, transparency, efficiency, accountability, and certainty of value".

The management of Regional Property is a management action consisting of various forms of interrelated activities (business) carried out by the Regional Government as the owner of the goods. Normatively, Article 1 number 28 RM of Home Affairs No. 19 of 2016 determines:

> "Management of Regional Property is an overall activity that includes planning needs and budgeting, procurement, use, utilization, security and maintenance, valuation, alienation, destruction, elimination, administration and guidance, supervision and control".

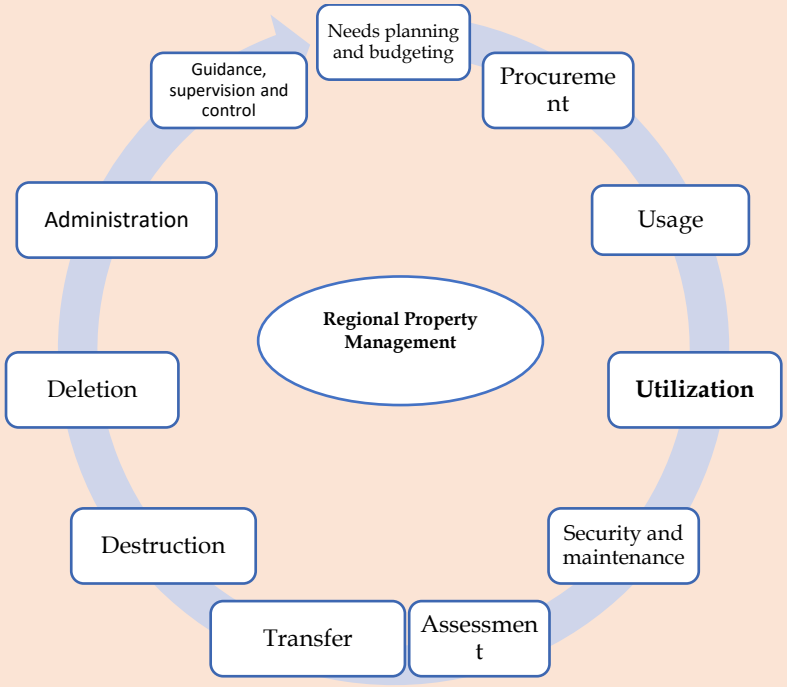
Referring to this definition, Article 3 paragraph (2) of GR No. 27 of 2014 also determines the form of management of Regional Property as follows:

a. Needs planning and budgeting;
b. Procurement;
c. Use;
d. Utilization;
e. Safeguarding and maintenance;
f. Valuation;
g. Transfer;
h. Destruction;
i. Deletion;
j. Administration; and
k. Guidance, supervision and control.

The cycle of Regional Property management activities can be seen in the figure below:

Perusahaan Daerah yang Baik," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 4, no. 2 (2022), https://doi.org/10.37680/almanhaj.v4i2.1919.

Fugure 1. The cycle of Regional Property management activities



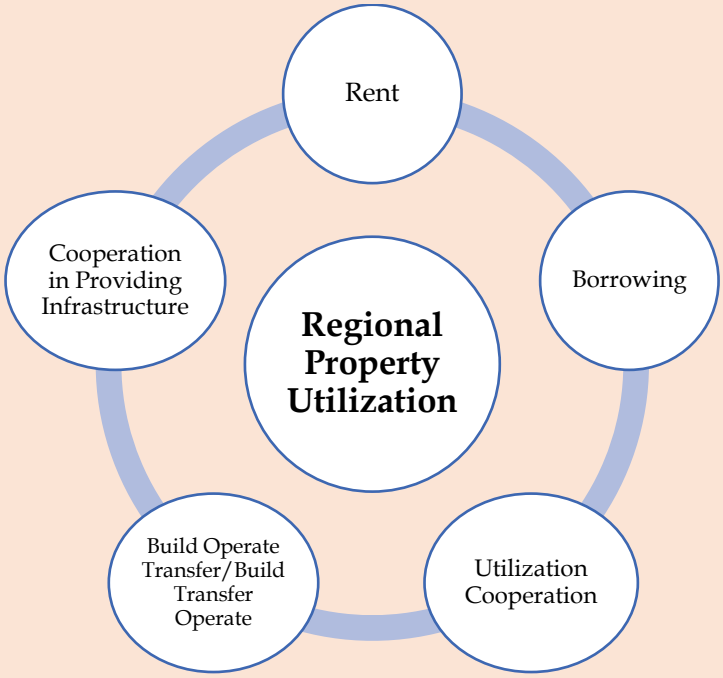
Source: GR No. 27 of 2014 & RM of Home Affairs No. 19 of 2016 (edited)

One form of management of Regional Property is utilization. Article 1 point 10 of GR No. 27 of 2014 determines "Utilization is the utilization of State/Regional Property that is not used for the implementation of the duties and functions of the Ministry/Institution/regional apparatus work unit and/or optimization of State/Regional Property by not changing the ownership status". In line with these provisions, Article 1 point 32 RM of Home Affairs No. 19 of 2016 also determines "Utilization is the utilization of regional property that is not used for the implementation of the duties and functions of Regional Work Unit and/or optimization of regional property by not changing the status of ownership". Based on these provisions, the utilization of Regional Property is (1) the utilization of Regional Property that is not used for the implementation of the duties and functions of regional apparatus, and (2) the optimization of Regional Property so that its utilization can have a positive impact on regional development and community welfare. Utilization of Regional Property by other parties does not change the ownership status of Regional Property.

GR No. 27 of 2014 and RM of Home Affairs No. 19 of 2016 have regulated the scheme and mechanism for the utilization of Regional Property. The provisions regarding the scheme and mechanism are binding and must be guided by the Regional Government. The goal is that the action of utilizing Regional Property is in accordance with the law (*rechtmatigheid*), especially from the aspect of fulfilling the procedures as specified in Article 52 paragraph (1) letter b of Law No. 30 of 2014. In addition, it also aims not to cause legal problems, whether civil, administrative, or criminal.

The scheme of utilization of Regional Property has been determined limitatively in Article 27 of GR No. 27 of 2014 in conjunction with Article 81 RM of Home Affairs No. 19 of 2016. In these provisions, there are five schemes for utilizing Regional Property which can be seen in the figure below:

Pigure 2. Schemes for utilizing Regional Property



Source: GR No. 27 of 2014 & RM of Home Affairs No. 19 of 2016 (edited)

The five forms of Regional Property utilization schemes can be described as follows:

a. Rent
   Article 1 point 11 of GR No. 27 of 2014 determines "Lease is the utilization of State/Regional Property by other parties within a certain period of time and receiving cash rewards". In line with this, Article 1 point 33 of RM of Home Affairs No. 19 of 2016 also determines "Lease is the utilization of regional property by other parties within a certain period of time and receiving cash compensation".
b. Borrowing
   Article 1 point 12 of GR No. 27 of 2014 stipulates "Borrowing is the transfer of the use of goods between the Central Government and the Regional Government or between Regional Governments within a certain period of time without receiving compensation and after the period ends it is handed back to the Goods Manager". In line with these provisions, Article 1 point 34 of P RM of Home Affairs No. 19 of 2016 determines "Borrowing is the transfer of the use of Goods between the central government and local governments or between local governments within a certain period of time without receiving compensation and after the period ends it is handed back to the Governor/Regent/Mayor".
c. Usage Cooperation
   Article 1 point 13 of GR No. 27 of 2014 stipulates "Utilization Cooperation is the utilization of State/Regional Property by other parties for a certain period of time in the context of increasing non-tax state revenue/regional revenue and other sources of financing". In line with these provisions, Article 1 point 35 of RM of Home Affairs No. 19 of 2016 determines "Utilization Cooperation is the utilization of regional property by other parties for a certain period of time in the context of increasing regional income or other sources of financing".
d. Build Operate Transfer or Build Transfer Operate

Article 1 number 14 of GR No. 27 of 2014 stipulates that "Build Operate Transfer is the Utilization of State/Regional Property in the form of land by another party by constructing buildings and/or facilities including their facilities, then utilized by the other party within a certain agreed period, to then be handed back the land along with the buildings and/or facilities including their facilities after the end of the period". In line with this provision, Article 1 number 36 of RM of Home Affairs No. 19 of 2016 stipulates that "Build Operate Transfer is the utilization of regional property in the form of land by another party by constructing buildings and/or facilities including their facilities, then utilized by the other party within a certain agreed period, to then be handed back the land along with the buildings and/or facilities including their facilities after the end of the period". The definition of Build Transfer Operate is regulated in Article 1 number 15 of GR No. 27 of 2014 which stipulates "Build Transfer Operate is the Utilization of State/Regional Property in the form of land by another party by means of constructing buildings and/or facilities including their facilities, and after completion of construction, it is handed over to be utilized by the other party within a certain agreed period of time." In line with these provisions, Article 1 number 37 of RM of Home Affairs No. 19 of 2016 stipulates "Build Transfer Operate is the utilization of regional property in the form of land by another party by means of constructing buildings and/or facilities including their facilities, and after completion of construction, it is handed over to be utilized by the other party within a certain agreed period of time."

e. Cooperation in Providing Infrastructure

Article 1 point 16 of GR No. 27 of 2014 stipulates "Cooperation in Providing Infrastructure is cooperation between the Government and Business Entities for infrastructure provision activities in accordance with the provisions of laws and regulations". In line with these provisions, Article 1 point 38 of RM of Home Affairs No. 19 of 2016 stipulates "Cooperation in Providing Infrastructure is cooperation between the government and business entities for infrastructure provision activities in accordance with the provisions of laws and regulations".

The differences between the five schemes for utilizing Regional Property can be seen in the table below:

Table 1. The differences between schemes for utilizing Regional Property

Indicator / Scheme	Object	Parties	Basic	Time Period	Rewards
Rent	Regional Property	Local Government with Other Parties	Lease Agreement	5 Years or more and can be extended	Regions receive cash compensation at the rental rate
Borrowing	Regional Property	Local Government with Provincial Government/Central Government	Borrowing Agreement	5 Years and can be extended 1 time	Regions receive no compensation

Utilization Cooperation	Regional Property	Local Government with Other Parties	Utilization Cooperation Agreement	30 years & Utilization Cooperation for infrastructure provision for 50 years and can be extended	Regions receive fixed contributions and profit sharing
Build Operate Transfer/Build Transfer Operate	Regional Property	Local Government with Other Parties	Build Operate Transfer/Build Transfer Operate Agreement	30 years and cannot be extended	Regions receive an annual contribution
Cooperation in Delivering Infrastructure	Regional Property	Local Government with Business Entity	Cooperation in Delivering Infrastructure Agreement	50 years and renewable	Regions get a share of excess profits

Source: GR No. 27 of 2014 & RM of Home Affairs No. 19 of 2016 (edited)

The five schemes of utilization of Regional Property have different characteristics. However, in general, when viewed from an Administrative Law perspective, the utilization scheme (except for borrowing) is included in the category of private legal action of government (*private rechtshandelingen*), but not purely because government legal action always has aspects of public law (mixed law). For this reason, the scheme of utilization of Regional Property on the one hand is subject to Public Law, especially GR No. 27 of 2014 and RM of Home Affairs No. 19 of 2016, but on the other hand is subject to the provisions of Civil Law, especially with regard to agreements regulated in Book III of the Civil Code. Meanwhile, for the borrowing scheme, because the subject is the Regional Government with the Provincial Government/Central Government, it is included in the category of public legal acts of the government *(publiek rechthandelingen*) of two or more parties.

Based on the description above, the utilization of Regional Assets must comply with the law as stipulated in Article 8 and Article 52 of Law Number 30 of 2024, in addition to having to fulfill the provisions of Book III of the Civil Code. Utilization of Regional Assets can only be carried out by Government Officials who are given authority according to GR No. 27 of 2014 and RM of Home Affairs Regulation No. 19 of 2016, namely the Regional Head, Asset Management Officer, and Asset User Officer. Utilization of Regional Assets must also be carried out in accordance with predetermined procedures and must be in accordance with the general principles of good governance. In addition to having to fulfill these three requirements, utilization of Regional Assets must also comply with the provisions of Book III of the Civil Code, especially Article 1320, Article 1338 and other related articles. If these requirements are not met, then the utilization of Regional Assets is not in accordance with the law, has the potential to be canceled by the court, and can result in state financial losses.

3.2. Utilization of Regional Property Acquired from Community Grants

In the perspective of good governance, community participation is the main pillar of democratic local governance.[16] Community participation is one of the core elements of

[16] Syofyan Hadi et al., "Implementation of Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations (Study in Bedahlawak Village, Jombang

administrative law which aims to provide every member of society with the right to participate in the administration of government and to provide legal protection against potential actions by government officials that are not in accordance with the law. Therefore, referring to Article 7 paragraph (2) letter g and Article 10 paragraph (1) letter f of Law No. 30 of 2014, public participation is one form of the realization of the principle of openness as one of the general principles of good governance. Through participatory governance, the community is given as much space as possible to play a role in determining policies, implementing regional development, and monitoring. For this reason, based on Article 354 paragraph (1) of Law No. 23 of 2014, it is determined that "In the administration of Local Government, the Local Government encourages community participation". In this provision, the Regional Government is given the task of encouraging community participation through the delivery of public information and other activities.

Nowadays, community participation should not be seen only as a formal right of the community in the administration of local government.[17] Community participation must be implemented through meaningful participation, so that the community is truly and substantively involved in the administration of local government.[18] Meaningful participation consists of at least 3 (three) main pillars, namely the right to be heard, the right to be considered, and the right to be explained.[19] Right to be heard means that the community has the right to be heard by local government organizers through the holding of public hearings, public consultations and other forms. After the first right is exercised, the community has the right to be considered which means that the community has the right to be considered for participation by government organizers in making policies. If the local government organizer has made a policy or decision, the community has the right to be explained, which means that the community has the right to obtain an explanation from the government organizer of the policy or decision that has been taken. The cycle of meaningful participation can be seen in the figure below:

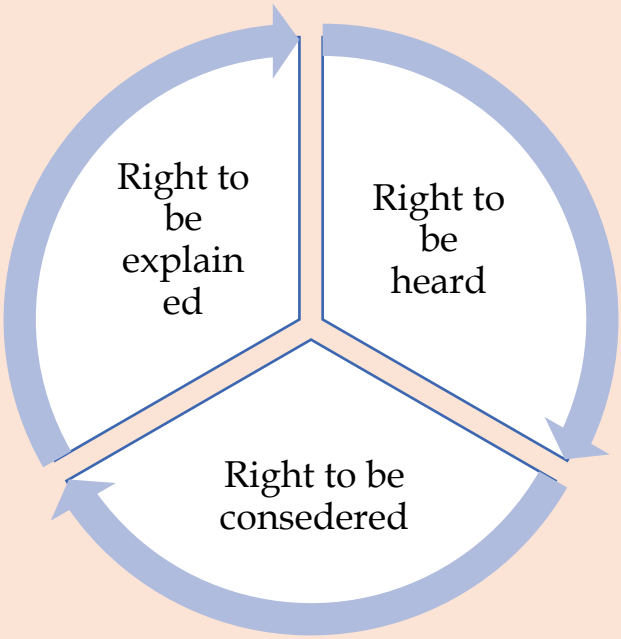
Regency)," *DiH: Jurnal Ilmu Hukum* 20, no. 1 (2024), https://doi.org/https://doi.org/10.30996/dih.v20i1.9589.

[17] Syofyan Hadi et al., "Partisipasi Masyarakat dalam Penyusunan Produk Hukum di Desa Bedahlawak Kabupaten Jombang," *Prosiding Seminar Nasional & Call for Paper "Penguatan Kapasitas Sumber Daya Manusia Menuju Indonesia Emas 2024* 10, no. 1 (2023); Syofyan Hadi et al., *Teknis Penyusunan Peraturan di Desa* (Yogyakarta: Jejak Pustaka, 2023).

[18] Ali Imran Nasution dan Rahmat Bijak Setiawan Sapii, "Aktualisasi Konsep Meaningful Participation Dalam Pembentukan Peraturan Perundang-Undangan," *Jurnal Surya Kencana Dua : Dinamika Masalah Hukum dan Keadilan* 9, no. 2 (2022), https://doi.org/10.32493/skd.v9i2.y2022.26207; Angga Prastyo, "Limitation Of Meaningful Participation Requirements In The Indonesian Law-Making Process," *Jurnal Hukum dan Peradilan* 11, no. 3 (2022), https://doi.org/10.25216/jhp.11.3.2022.405-436.

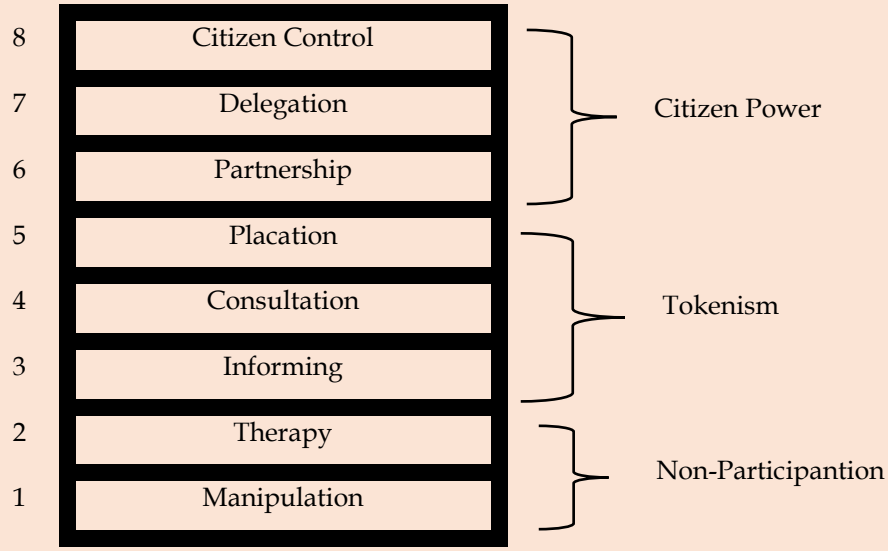
[19] Henny Andriani, "Partisipasi Bermakna Sebagai Wujud Asas Keterbukaan Dalam Pembentukan Undang-Undang," *UNES Journal of Swara Justisia* 7, no. 1 (2023), https://doi.org/10.31933/ujsj.v7i1.337; Alda Rifada Rizqi, "Meaningful Participation in Local Regulation Making in Indonesia: A Study of Legislative Law," *Rechtsidee* 10, no. 2 (2022), https://doi.org/10.21070/jihr.v11i0.801; Entol Zaenal Muttaqin dan Sahrul Hikam, "Konsep Meaningful Participation dalam Proses Legislasi di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 91/PUU XVIII/2020," *Amnesti: Jurnal Hukum* 6, no. 1 (2024), https://doi.org/10.37729/amnesti.v6i1.4091.

Figure 3. The cycle of meaningful participation



In the Ladder of Participation theory proposed by Sherry R. Arnstein, meaningful participation can occur if the community participation to citizen power. For more details, the Ladder Participation theory can be seen in the picture below:[20]

Figure 4. Ladder participation theory



When referring to this theory, the regulation of community participation in Law No. 23 of 2014 has led to participation giving power to the community (citizen power), so that it can be categorized as meaningful participation. This can be seen in the provisions of Article 354 paragraph (4) of Law No. 23 of 2014, which stipulates:

Public participation as referred to in paragraph (3) is carried out in the form of:

a. public consultation;

[20] Sherry R. Arnstein, "A Ladder of Citizen Participation," *American Institute of Planners* 35, no. 3 (1969).

b. deliberation;
c. partnership;
d. delivery of aspirations;
e. supervision; and/or
f. other involvement in accordance with the provisions of laws and regulations.

One of the concrete forms of community participation in local government administration is the provision of grants to the community. Article 13 of GR No. 45 of 2017 stipulates:

(1) In implementing regional development, the Regional Government encourages Community Participation in the form of partnerships.
(2) Community Participation as referred to in paragraph (1) can be carried out in the form of grants from the Community to the Regional Government in the form of money, goods, and/or services in accordance with the provisions of laws and regulations.

Grants from the community are a form of community participation. If the form of grant is goods, then the goods will be recorded as Regional Property. This is in accordance with the provisions of Article 1 number 39 of Law No. 23 of 2014 in conjunction with Article 1 number 2 of GR No. 27 of 2014 which determines that one form of Regional Property is goods originating from other legal acquisitions. One form is Regional Property obtained from grants. Article 2 paragraph (2) of GR No. 27 of 2014 determines:

(1) State/Regional Property includes:
    a. goods purchased or obtained at the expense of the State/Regional Budget; and
    b. goods originating from other legal acquisitions.
(2) Goods as referred to in paragraph (1) letter b include:
    a. goods obtained from grants/donations or the like;
    b. goods obtained as the implementation of an agreement/contract;
    c. goods obtained in accordance with the provisions of laws and regulations; or
    d. goods obtained based on a court decision that has permanent legal force.

In the perspective of Civil Law, grant is one type of named agreement which is regulated in Book III of the Civil Code, namely Article 1666 to Article 1693. According to Article 1666 of the Civil Code, "A grant is an agreement by which the grantor during his lifetime, freely and irrevocably, surrenders an object for the needs of the grantee who accepts the surrender". Based on these provisions, the elements of a grant include:

a. A unilateral agreement made freely so that there is no counterparty from the grantee.
b. Irrevocable except for the non-fulfilment of Article 1688 of the Civil Code.
c. The grantor surrenders his/her property for the benefit of the grantee.
d. Made with a notarial deed.

According to Article 1 point 10 of Government Regulation Number 2 of 2012 concerning Regional Grants, "Regional Grants are gifts by transferring rights to something from the Government or other parties to the Regional Government or vice versa, which have specifically determined the allocation and are carried out through an agreement". Based on these provisions, grants are:

a. The action of the grantor in the form of a grant by transferring rights to an item of his/her property.
b. The designation of the donated goods has been specifically determined.
c. The grant is made with a grant agreement.

Goods donated by the public to the Local Government will be recorded as Regional Property. The result is:

a. Once the property is delivered and accepted, ownership rights transfer absolutely to the Regional Government based on Article 1666 of the Indonesian Civil Code.
b. The Grant giver no longer holds any preferential rights or control over the use of the donated property
c. Regional Property originating from grants managed by Regional Government in accordance with the principle of legality, namely it must be accordance with the authority, procedures and substance as regulated in GR No. 27 of 2014 and RM of Home Affairs No. 19 of 2016 and in relevant regulation.

Schemes and procedures for the utilization of Regional Property originating from grants must be implemented using the schemes stipulated in GR No. 27 of 2014 and RM of Home Affairs No. 19 of 2016. Thus, the community or business actors who provide grants are treated the same as other communities when utilizing the Regional Property.

3.3. Utilization of Regional Property Acquired from Community Grants

The granting community or business actor can submit an application to the Regional Government to utilize the Regional Property. One example is that the community or business actors can apply for a lease of Regional Property to the Regional Government. When referring to the principle of legality, the implementation of leases of Regional Property by the community or granting business actors must be carried out in accordance with the provisions stipulated in GR No. 27 of 2014 and RM of Home Affairs No. 19 of 2016. This means that the community or granting business actors who want to lease the Regional Property are treated the same as other communities.

According to the author, such arrangements do not provide proportional justice to the community or granting business actors. For this reason, the scheme for utilizing Regional Property needs to be added to the GR No. 27 of 2014 and RM of Home Affairs No. 19 of 2016 with the Lease Grant scheme. The addition of the lease grant scheme has urgency for the following reasons:

a. To provide proportional justice to the community or business actors who give grants. Proportional justice is based on the principle of *similia similibus*, so that arrangements regarding the utilization of Regional Property originating from community grants or business actors should be different for grantors. In the perspective of *similia similibus*, the same treatment of grantors in the utilization of Regional Property with other communities is a form of injustice. Thus, grantors who want to utilize Regional Property originating from grants should be treated differently from other communities.
b. To increase the participation of the community or business actors in the implementation of regional development with the existence of a rental grant scheme that provides different treatment to grantors who want to utilize Regional Property, it can be a motivation for the community or business actors to provide goods grants to the Regional Government. In

other words, the lease grant scheme can be a non-fiscal incentive to the community or business actors in the implementation of regional development.

c. To optimize the utilization of Regional Property The lease grant scheme can be used as an instrument to optimize Regional Property originating from grants. With the lease grant scheme, it can directly have a positive impact on Regional Original Revenue and the regional economy.

Conceptually, the lease grant scheme in the utilization of Regional Property has similarities with the concept of lease as stipulated in Article 29 and Article 30 of GR No. 27 of 2014 in conjunction with RM of Home Affairs No. 19 of 2016. However, the lease grant scheme has distinctive characteristics, namely:

a. The parties are the Local Government and the community or business actor as the grantee of the lease. The lease partner in the lease grant scheme must be the community or business that provides the grant. This means that the community or business that provides the grant must be prioritized over other communities.
b. The object is Regional Property originating from community grants or business actors.

In addition, special procedures are needed to implement the lease grant scheme as an effort to provide proportional justice. For example, in determining the rental rate, the rental adjustment factor should be specially regulated or different in calculation from others. This needs to be done because it is unfair if the application of the rent adjustment factor to grantors who rent the donated Regional Property is the same as other communities. For this reason, the provisions of Article 128A of RM of Home Affairs No. 7 of 2024 need to be reviewed or if it will be implemented before there is a change in legislation in the field of Regional Property management, the Regional Head can use the government discretionary procedure as stipulated in Article 22 to Article 32 of Law No. 30 of 2014.

4. Conclusions

One form of Regional Property is goods originating from grants from the community or business actors. Grants from community or business actors constitute community participation in the implementation of regional development, as stipulated in Article 354 of Law No. 23 of 2014 in conjunction with Article 13 of GR No. 45 of 2017. The donated goods are then recorded as Regional Property. To optimize, Regional Property according to the provisions of Article 27 of GR No. 27 of 2014 in conjunction with Article 81 of RM of Home Affairs No. 19 of 2016 can be utilized with five schemes, namely rent, borrowing, utilization cooperation, build operate transfer/build transfer operate, and infrastructure in providing infrastructure. The community or business actors who provide grants can utilize Regional Property originating from grants. One of them is with a rental scheme. However, the utilization of Regional Property with a rental scheme by the grantor is regulated the same as other communities so it must still go through the provisions, procedures and rental mechanisms as stipulated in GR No. 27 of 2014 in conjunction with RM of Home Affairs No. 19 of 2016. To provide proportional justice to grantors, to increase community participation in the implementation of regional development, and to optimize the utilization of Regional Assets, it is necessary to add a lease grant model as one of the schemes or forms of utilization of Regional Assets. The rental grant scheme in the utilization of Regional Assets has similarities with the rental concept as regulated in Article 29 and Article 30 of GR No. 27 of

2014 in conjunction with RM of Home Affairs No. 19 of 2016. However, the rental grant scheme has unique characteristics, namely (1) The parties are the Regional Government and the community or business actors as the lessors; (2) The object is Regional Assets originating from community or business actor grants; and (3) special procedures are needed to implement the rental grant scheme as an effort to provide proportional justice including in determining the rental adjustment factor.

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