

Analysis of Laws and Regulations Regarding the Right to Control Official Housing on State Land

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Abstract

This research aims to analyze the regulations regarding the right to control official houses on state land based on positive law in Indonesia. The research method used is descriptive-analytic, with thorough data disclosure and explanation as the basis for discussion. The law is reviewed using relevant legal theories and regulations, with descriptive-analytic research as the writing approach. The results of the analysis explain that state or regional property required for the implementation of government duties cannot be transferred without permission from the Indonesian Regional Representative Council or the Provincial Regional Representative Council. The conclusion is that the transfer of state or regional property can be done through sale, exchange, donation, or addition as government capital, but it is prohibited to give state or regional property to pay off debts with national or regional authorities. In addition, it is not allowed to grant pledges or utilize state or regional property as collateral for loans. Government regulations set technical and administrative standards for the management of state and local property.

Keywords: juridical analysis, office house, tenure right

INTRODUCTION

The state is an institution with a purpose. The Preamble of the 1945 Constitution of the Republic of Indonesia, which describes the State of Indonesia as a state of the law intending to achieve general welfare, states the purpose of the state in the fourth paragraph. As a general rule for the state, government, and social action, every activity must be based on relevant laws in addition to being orientated towards the goals to be achieved [1].

The State Revenue and Expenditure Budget or other legitimate purchases are managed or under the supervision of state ministries/agencies, non-ministerial government agencies, and units in their environment both at home and abroad. The vast and abundant state assets must be managed/executed by adhering to the principles of functionality, legal certainty, transparency (openness), efficiency public accountability, and certainty of value as stipulated in Presidential Regulation Number 6 of 2006 concerning Management of State/Local Property (BMN/D) (BMN/D) [2].

Only those who work for the government or officials are given housing. Government Regulation Number 40/1994 was replaced by Government Regulation Number 31/2005 on State Residences, which also regulates the status of residence classes.

There is no justification for government officials to own or control official houses as long as they are classified as class I or class II. Houses that have been given a class III designation cannot be traded or relocated. Class III official houses are official houses whose designation has been ratified by the minister of finance who doubles as the manager of state property. Official houses occupied by local government or government employees must be managed and maintained properly because they belong to the region because they are obtained through The State Revenue and Expenditure Budget or other legal purchases [3].

Article 3 of Presidential Regulation Number 11/2008 on Procedures for Procurement, Status Determination, Status Transfer, and Transfer of Rights on State Houses regulates the mechanism related to state houses. outlined below:

“Procurement of State Houses can be carried out using development, purchase, exchange, build exchange or grants. Mechanisms for procurement, status determination, transfer of status and rights to state houses”.

State officials or employees must first fulfill the requirements, including obtaining a

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residence permit granted by the representative of the agency concerned, to be able to live in a state house. Unless they are on duty and reside in different places, husband and wife who are civil servants may only occupy one state house each. The rural house must be occupied by the residence permit holder no later than sixty days after obtaining it [4].

The occupant of a country house is obliged to move in within a maximum of sixty days from the receipt of the occupation permit, pay rent following applicable regulations, maintain and use the goods by their functions, and pay taxes, levies, and other charges related to the occupancy of the country house, as well as payment of fees for the use of electricity, telephone, water and/or gas, emptying garbage, and other related fees.

Occupants of country houses are prohibited from making any structural changes to the house without the written consent of the agency, renting out parts of the house to outsiders, using the house for purposes other than those outlined in the contract, and maintaining the country house in the same town or neighborhood for each husband and wife with the same status of the civil servant [5].

Guidelines for the use of official houses that are straightforward are known and understood by every employee or employee who uses: until the person concerned is transferred due to a change in position and must be handed over to his successor, or due to dismissal, both as a civil servant and as a civil servant, either as a result of early retirement or leaving the military.

The following theoretical framework will be used as an analytical tool in the making of this law:

“The theory of the rule of law is divided into (1) Civil law, also known as the continental European legal system, the definition of civil law is law based on legal codification by the legislature which is made in writing; (2) Common Law, also known as the Anglo-Saxon legal system, the definition of common law is law made based on customs/traditions prevailing in society and judicial decisions”.

To avoid conflict, preventive legal protection allows citizens to express their views or suggestions before government decisions are taken. The simple guidelines for the use of official residences are known and understood by every officer or employee using them: they may only be used by their occupants until they are transferred due to a change of position and must be handed over to their successors, or until their employment is terminated, either as a result of early retirement or leaving the military.

MATERIAL AND METHOD

This research is descriptive-analytic in nature, where a comprehensive presentation and explanation of data is used to conduct the discussion. The law is reviewed using legal theories and relevant regulations based on Law Number 1 Year 2004 on State Treasury, with descriptive-analytic research as the writing approach. This research method involves applying strong legal rules or concepts, and using limited empirical techniques, such as interviews, to explore the use of administrative sanctions. The researchers in this study applied four different methodologies: namely statutory, legal history, conceptual, and analytical methodologies.

Data was collected through a literature review using statutory, namely Law No. 1/2004 on State Treasury, legal history, and conceptual approaches. In addition, interviews were used to obtain empirical data related to the use of administrative sanctions.

RESULT AND DISCUSSION

Land management encompasses diverse characteristics and rights that play pivotal roles in shaping the utilization and governance of territories. From an economic perspective, it involves the strategic use of land for activities such as agriculture, plantations, industries, and developmental projects. The ecological dimension emphasizes the importance of sustainable practices, including biodiversity conservation, soil health, and waste management, to ensure environmental harmony. On the social front, land management significantly impacts communities, touching on issues like land rights, settlements, and the empowerment of local economies. Regarding rights, individuals or entities may hold ownership rights, granting them exclusive privileges to possess, use, and transfer land. Land cultivation rights (HGU) permit the management of specific areas for agricultural or plantation purposes, while building rights (HGB) allow for construction on designated land. Lease rights offer permission for land use with corresponding rent payments, and customary rights acknowledge traditional land governance by indigenous communities, respecting local wisdom and traditions. Achieving a balanced and sustainable approach to land management involves navigating this intricate web of economic, ecological, and social considerations.

The word “legal action” is well-known in the world of legal education. According to R.J.H.M. Huisman, this term refers to actions that by their nature have the potential to cause certain legal consequences, as well as actions carried out to enforce rights and obligations. The term legal action can be traced back to civil law doctrine (the Dutch

phrase “het woord rechtshandeling is ontleend aan de dogmatiek van het burgerlijk recht”), and was later adopted for use in administrative law, leading to the development of the Dutch phrase “administratieve rechtshandeling”, which literally translates to “administrative legal action”. An administrative-legal act is a statement of will emanating from an administrative organ in exceptional circumstances and is intended to have legal consequences in the field of administrative law, as stated by H. J. Romeijn's definition of an administrative-legal act. Legal actions can be carried out by the government in several ways, such as through the making of laws and regulations (regeling), making state administrative decisions (beschikking), and filing civil lawsuits (materiale daad). Every legal action must follow the applicable law in a country based on the law (rechtmatigheid). The problem must be resolved through the court system to fulfill the requirements of the rule of law when a legal activity deviates and harms other parties or when the rights of other legal subjects are violated [6].

Many sanctions under administrative law can be applied in these circumstances. In administrative law, two types of sanctions serve different purposes: the first is reparatory sanctions, which are applied in response to rule violations and seek to restore the status quo; the second is legal situation sanctions, which seek to conform circumstances to the law. In other words, reparatory penalties, such as fines issued by the government, try to make things right.

There is a third category of sanctions besides these two, known as regressive sanctions, namely J. B. J. M. Ten Berge. These are penalties that are imposed when the rules set out in the judgment that has been made are broken.

Two types of accumulation that may occur are internal accumulation and external accumulation, according to Philipus M. Hadjon. The simultaneous imposition of punishment under administrative law and other laws and regulations is part of both types of accumulation. An illustration of external accumulation is the use of administrative sanctions in addition to other types of sanctions, such as criminal or civil sanctions. In the event of civil sanctions, the government can use them to defend its civil rights as a legal entity. Imposing criminal and administrative sanctions simultaneously violates the principle of “ne bis in idem” which states that a case cannot be tried twice for the same criminal offense. As a result, the maxim “ne bis in idem” does not apply. Administrative law cases involving criminal penalties are fundamentally different in nature and purpose. penalties of various types

under administrative law, including The Dutch word “bestuursdwang”, which translates as “to move, vacate, obstruct, or restore something to its original state”, is the origin of the term “government compulsion”. It means an action taken by a government organ or on behalf of the government to remove something when it has been done or done in a way that is not following the obligations outlined in the laws and regulations.

Withdrawal of favorable administrative action. The term “favorable provision” comes from the Dutch phrase “begunstigende bechikking”, which means “favorable consideration”. A favorable consideration is a provision that grants a right, allows the opportunity to obtain something through a provision, or provides relief from present or possible liability. A favorable administrative decision ((State Administrative Decision (KTUN)) can be revoked by the state by issuing a new decision whose purpose is to revoke and/or declare the previous provision no longer valid. This is how it is done. Regressive penalties are penalties that allow the situation to return to the way it was before the decision was made. Sanctions that go backward in time are also referred to as retroactive sanctions. Sanctions are enforced by the revocation of favorable administrative decisions in the event of a violation of the regulations or guidelines relating to the written decision that has been made. In addition, there can be a breach of regulations and laws relating to the license held by the offender. This is known as the principle of *presumptio justea causa* or *het vermoeden van rechtmatigheid* in administrative law. According to this principle, every decision made by a state administrative body or official is theoretically considered valid. It is this premise that makes the removal of this clause problematic for the law. As a result, a granted State Administrative Decision (KTUN) cannot be revoked, at least until a judge in court determines that it is not (6).

Forcing a person to make a payment; also known as *dwangsom*. T. E. Algra has some opinions on money tax. According to him, forced payment should be considered a penalty or fine, and the amount should be determined following the terms of the contract. Money to be paid for non-payment, non-performance, or non-compliance with the stipulated time is referred to as forced payment. Forced money is different from compensation costs in the case of damages, losses, and interest charges. A person or citizen who disobeys or violates the rules set by the government may be subject to the imposition of forced money, following administrative law, as an alternative to the use of government coercion. The government may assign something to be done.

Fines imposed by administrative bodies. P. de

Haan reportedly claims that there are variations in the application of administrative fines. In particular, administrative fines are simply a response to norm violations, intended to be added to a specific punishment, as opposed to the imposition of forced money, intended to get real-world conditions in line with the norm. In other words, the purpose of imposing forced money is to harmonize real-world circumstances with standards.

Official housing is state property included in state property that is freely owned by the state and can be occupied by those who meet certain requirements. The formal residence qualification requirements include these.

The state party has the right to demand back what should belong to it if a party violates the rules for having official residence but still takes what is not or is no longer its right. The party violates the rules to be granted formal residence, that's why.

Based on Article 44 of Law Number 1 the Year 2004 on the state treasury, it also confirms that: "The Goods User and/or the Power of Goods User shall manage and administer the state/regional property under their control properly". State or regional property that is needed to carry out government duties cannot be transferred. After obtaining permission from the Regional Representative Council of Indonesia/Provincial Legislative Council, the transfer of state or regional property is carried out by selling, exchanging, donating, or including it as government capital.

It is prohibited to provide state or regional property to settle debts with national or regional authorities. In addition, it is not allowed to mortgage or utilize state or regional property as collateral for loans. Government regulations govern technical and administrative standards for the management of state and regional property.

Based on Article 59 of Law Number 1 the Year 2004 on State Treasury, the settlement of state/regional losses is: "(1) Any state/regional losses caused by unlawful acts or negligence of a person shall be settled immediately by the provisions of the applicable legislation; (2) Treasurers, non-treasurer civil servants, or other officials who due to unlawful acts or negligence of obligations imposed on them directly harm the state finances, shall be obliged to compensate for such losses; (3) Any head of a state ministry/agency/head of a regional work unit may immediately claim compensation, upon learning that in the state ministry/agency/ regional work unit concerned, there is a loss due to the actions of any party".

Withdrawal of state property is also allowed if the recipient of a state house or official residence

facility violates applicable laws as a condition for having an official residence or is no longer entitled to the official residence. This is because having the right to an official residence is a necessity.

Regarding defense issues, the provisions of Article 6 of the UUPA, which states that individual land rights have a social function, can be interpreted as upholding human values, harmony, and balance. The provisions of Article 6 of the Basic Agrarian Law can also be seen as promoting human values, harmony, and balance. This means that both individual interests and community interests are recognized, respected, preserved, and used in proportion to their respective weights. Individual rights must be highly considered in harmony, balance, and equilibrium.

The extensive passage covers various aspects of land management, legal actions, and administrative sanctions within the Indonesian legal framework. Let's break down the key points and provide a structured discussion:

1. Land Management:

Nature and Rights: Land management involves economic, ecological, and social dimensions. Economic activities include agriculture, plantations, and industries. Ecological aspects focus on sustainability, biodiversity conservation, and waste management. Social impacts encompass community issues, land rights, settlements, and local economic empowerment. Various rights, such as ownership, cultivation, building, lease, and customary rights, play essential roles in governing land use.

2. Legal Actions and Administrative Sanctions:

- a. Legal Actions Overview: The term "legal action" encompasses actions with potential legal consequences and actions to enforce rights and obligations.
- b. Types of Sanctions: Reparatory sanctions aim to restore the status quo, while legal situation sanctions aim to conform circumstances to the law. Regressive sanctions, introduced by J. B. J. M. Ten Berge, impose penalties when judgment rules are broken.
- c. Accumulation Types: Internal and external accumulation, explained by Philipus M. Hadjon, involve simultaneous sanctions under administrative and other laws. External accumulation includes administrative sanctions along with criminal or civil sanctions.

3. Administrative Sanctions:

- a. Withdrawal of Favorable Administrative Action: The withdrawal of favorable administrative decisions, regulated by the principle of *presumptio iustae causae*, involves retroactive sanctions to maintain the validity

of state administrative decisions.

- b. Forced Payment: Also known as *dwangsom*, it acts as an alternative to government coercion, imposing monetary penalties for non-compliance.
- c. Administrative Fines: P. de Haan's perspective distinguishes administrative fines as responses to norm violations, aiming to harmonize real-world circumstances with standards.

4. State Property Management:

Official Housing and State Property: State property, including official housing, is owned by the state and subject to specific conditions. The state can demand the return of misappropriated property if rules are violated.

5. Settlement of State/Regional Losses:

Legal Framework: Articles 44 and 59 of Law Number 1 the Year 2004 on the state treasury establish guidelines for managing state/regional property and settling losses caused by unlawful acts or negligence.

6. Defense Issues and Individual Land Rights:

UUPA Article 6: Emphasizes the social function of individual land rights, promoting human values, harmony, and balance. This aligns with the principles of the Basic Agrarian Law, recognizing both individual and community interests.

The analysis provides a comprehensive understanding of land management, legal actions, and administrative sanctions in Indonesia. It highlights the importance of legal frameworks in ensuring equitable land use, protecting state property, and addressing violations through a nuanced system of sanctions. The interplay of economic, ecological, and social factors in land management underscores the need for a balanced and sustainable approach within the legal landscape.

From the above writings, information related to the form and implementation of agreements and their utilization in relation to land management, land rights, and law enforcement can be found in several contexts:

1. Form and Implementation of Agreements:

- a. Rights to Land: The text mentions various land rights such as ownership, land cultivation rights (HGU), building rights (HGB), and lease rights. The implementation of agreements related to these rights involves processes of obtaining permits, granting rights, and specifying terms and conditions of use.
- b. Administrative Legal Action: The administrative legal action section discusses actions taken by the government, such as

legislation, administrative decisions, and civil lawsuits. The implementation of these agreements involves legal processes in accordance with applicable regulations.

- c. Administrative Sanctions: The discussion on administrative sanctions involves various forms of penalties such as fines and forced payments. The implementation of agreements here involves legal processes to enforce rules and impose sanctions for violations.

2. Land Utilization:

- a. Land Management: Land management includes economic, ecological, and social aspects. The utilization of land for activities like agriculture, plantations, and industries, as well as sustainable practices and environmental balance, is an integral part of implementing land rights.
- b. Law Enforcement: The section on legal actions and administrative sanctions reflects the utilization of legal mechanisms to enforce rules related to land management. Legal processes, including sanctions and law enforcement, are intended to ensure compliance with regulations.

3. Settlement of State/Regional Losses:

Legal Provisions: The articles discussing the settlement of state/regional losses indicate legal provisions governing how losses due to unlawful acts or negligence are resolved. The process involves determining compensation and the obligations of those responsible.

4. Enforcement of the Rights of Owners or Recipients of Official Housing:

Official Housing Regulations: In the section on official housing, it is explained that recipients of official housing must adhere to relevant rules and regulations. Holders of rights or recipients of official housing who violate regulations may face sanctions, including the revocation of such rights.

From the entire text, it can be concluded that the form and implementation of agreements related to land management involve adherence to various regulations and land rights. Their utilization encompasses economic, ecological, and social aspects, with legal enforcement and administrative sanctions as mechanisms to ensure compliance with rules and applicable rights.

CONCLUSION

Based on the results and discussion, it can be concluded that the regulations governing the transfer and management of state or regional property are based on existing laws and regulations. The specific legal basis for these conclusions can be

traced to Law Number 1 the Year 2004 on the state treasury, particularly Article 44, which stipulates the proper management and administration of state/regional property under the control of the Goods User and/or the Power of Goods User. Additionally, Article 59 of the same law outlines the procedures for settling state/regional losses caused by unlawful acts or negligence. The conclusion also draws from the legal provisions that specify the authorized methods for transferring state or regional property. These methods, such as selling, exchanging, donating, or including it as government capital, are subject to approval from the Regional Representative Council of Indonesia or the Provincial Legislative Council, aligning with legal requirements. Furthermore, the prohibitions on giving state or regional property to settle debts, mortgaging, or utilizing it as collateral for loans are also grounded in the legal framework established by the aforementioned law. The technical and administrative standards for the management of state and local property are emphasized as being governed by government regulations, ensuring a lawful and regulated approach to property administration.

REFERENCES

- [1]. Siallagan H. Penerapan Prinsip Negara Hukum Di Indonesia. *Sosiohumaniora*. 2016;18(2): 131–7.
- [2]. Lembaran Negara Republik Indonesia. Peraturan Pemerintah Republik Indonesia Nomor 27 Tahun 2014 Tentang Pengelolaan Barang Milik Negara/Daerah. Lembaran Negara Republik Indones Nomor 5533. 2014;1–113.
- [3]. Leks EM. Analisis dan evaluasi peraturan perundang-undangan tentang perumahan rakyat. 2013;1–269.
- [4]. Amir L. Pengawasan Pemerintah Daerah Terhadap Pembangunan Rumah Dinas di Daerah Provinsi Jambi. *J Penelit Univ Jambi*. 2012;14.
- [5]. Miladiyanto S, Ambarsari R, Bidasari A. Perlindungan Hukum Bangunan Cagar Budaya Di Kota Malang Sebagai Warisan Budaya Bangsa. *J Anal Huk*. 2020;1(2):310.
- [6]. Indriani EA, Santoso B, Irawati. Penyalahgunaan Rumah Dinas Berdasarkan Undang-Undang Nomor 1 Tahun 2004 Tentang Perbendaharaan Negara. *Notarius*. 2019; 12(2):866–82.