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LEGAL PROTECTION FOR PARTIES IN JOINT VENTURE AGREEMENTS FOR THE ESTABLISHMENT OF FOREIGN INVESTMENT LIMITED LIABILITY COMPANIES (PT. PMA) IN INDONESIA

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Abstract

Based on various descriptions of several cases of the establishment of Foreign Investment Limited Liability Companies (PT. PMA) in Indonesia, it shows that in the establishment of PT. PMA in Indonesia there is no guarantee of legal protection for the parties in the cooperation agreement for the establishment of PT. PMA. This study is intended to answer several legal issues, namely: What is the philosophical basis for the application of the principle of nationality in the Basic Agrarian Law; How is the guarantee of legal certainty in the Cooperation agreement for the establishment by Foreign Citizens (WNA) in Indonesia; and how is the Cooperation scheme in the establishment of PT. PMA that can guarantee legal protection for the parties, both Indonesian Citizens (WNI) and WNA. This study uses the method of statute approach, conceptual approach and case approach. The results of the study show: 1). The philosophical basis for land ownership only for Indonesian citizens, which is regulated in the Basic Agrarian Law (UUPA) No. 5 of 1960, is related to the principle of state sovereignty and national interests. State sovereignty views land as an integral part of the territory and national wealth, so that land ownership must be regulated by the state to guarantee common interests. The principle of state sovereignty states that land is a national asset controlled by the state. 3). That in order to avoid losses for the parties in the establishment of PT. PMA in Indonesia, one solution that can be offered to ensure the existence of a cooperation agreement for the establishment of PT. PMA that reflects the principle of justice, one of which is to adopt the concept of utilizing state/regional assets as regulated in Government Regulation Number 27 of 2014 concerning the management of state property, which stipulates in the land utilization cooperation agreement contract that there is a fixed contribution payment and profit sharing to the land owner by the investor. So that when the contract expires, the land ownership rights return to the Land Rights Owner (WNI).

Keywords: Legal Protection, Establishment of PT. PMA.

INTRODUCTION

The growth rate of foreign investment has experienced rapid development in Indonesia. Data from the World Bank study shows that in 1994 there were more than 700 PIB (BIT) signed. Then at the end of the millennium it reached more than 200 agreements. Until 2005 the number of PIB increased to 2500 agreements. Indonesia first with the United States in 1967. Then followed by other countries in Western Europe, namely Germany in 1968, Belgium-Luxembourg in 1970, France 1973, Switzerland 1974 and England 1976. Until now Indonesia has signed PIB with 67 countries. (Kusnowibowo, 2013). The above data shows that foreign investment in Indonesia in various economic sectors is no longer a “foreign” activity for

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Indonesian citizens, in fact the state has established various legal regulations to guarantee and protect the movement of foreign investment in Indonesia. In the property/asset investment sector, the State of Indonesia has established Basic Agrarian Regulation No. 5 of 1960 (commonly referred to as UUPA), the Civil Code, Law No. 25 of 2007 concerning Foreign Investment, Law No. 4 of 1996 concerning Mortgage Rights (UUHT) and so on.

Based on the above opinion, if implemented professionally, foreign investment will certainly provide benefits to all parties, not only for investors, but also for the economy of the country where the capital is invested (host country) and for the country of origin of the investors (home country). This fact makes foreign investment something that is increasingly important, because foreign investment in a country will automatically be followed by the transfer of technology, know-how and management skills. This makes the existence of foreign investors seem impossible to avoid.

Realizing the importance of foreign investment, the Indonesian government has made an effort to create an investment climate that can attract foreign investors to enter Indonesia. One of these efforts is by enacting the latest investment law, namely Law No. 25 of 2007 concerning Investment. Where in this law, "the principle of equal application and no distinction of country of origin" is applied, as stated in the provisions of Article 6 paragraph (1), which with the implementation of this principle, it will certainly open up more opportunities for foreign investors to invest their capital in strategic sectors.

Investment as referred to in the description above has also penetrated the property business, especially in this case "Land." Foreign investors have begun to like making land as an investment object. The very high interest of foreign investors to make land as an investment object is more focused on land locations that are close to tourism areas. Coastal and forest areas are very strategic places to build tourism businesses. Bali, Florest, Sumba, Sumbawa, even Lombok are some small examples of areas that are very popular with tourists both domestic and foreign.

Foreigners' desire for land in Indonesia for investment purposes is very high, but to realize this is not done without limits. Because land regulations based on Law No. 5 of 1960 concerning Agrarian Principles, limit land rights for foreigners. Based on existing regulations, foreigners and/or foreign companies investing in Indonesia can only be given land rights in the form of Usage Rights, Cultivation Rights (HGU), Building Use Rights (HGB) in a manner that is in accordance with applicable regulations. As for Ownership Rights, foreigners, both individually and in the form of companies, are not entitled to obtain them (either directly or indirectly), this is in accordance with the principles of land law, namely the principle of nationality, which basically states that only Indonesian citizens can have ownership rights to land, so that land ownership rights cannot be owned by foreigners and including the transfer of ownership rights to foreigners, either directly or indirectly, is prohibited, in accordance with the provisions of Law No. 5 of 1960 concerning Agrarian Principles.

Even though it has been regulated firmly and clearly in the Basic Agrarian Law, the current complex problem is that there are still many foreign parties under the pretext of investing, but

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behind all that, in fact, by using various motives and reasons, they intend to absolutely own land in Indonesia, namely by means of legal deception/smuggling or by other means which in principle are contrary to existing regulations.

Related to investment in the land sector by foreign parties in Indonesia as described above, there is one mechanism that is currently starting to become popular and is often used by foreign parties to invest, which is done by foreign parties by "Borrowing Names" to Indonesian citizens in purchasing land. In this practice, the foreign national as the party acting behind the scenes is the party providing funds (capital), while the party acting as the material party, namely the one who actually purchases the land is the Indonesian citizen whose name was borrowed by the foreign national, even furthermore as the party in the certificate of ownership of the land in question is the Indonesian citizen. However, the inclusion of the name of the Indonesian citizen in the certificate certainly does not stand alone, but is accompanied by several other agreements made in writing, even with a notarial deed, which in principle is done to control the land in question absolutely and to close legal loopholes for Indonesian citizens to make transfers in any form to the land object. However, in its implementation, models and methods like this have the potential to cause losses for foreign parties as owners of funds for land purchases.

The practice of borrowing a name as described above is certainly not without a "cause", because if it is not done like that, then the intention of foreign nationals to invest by controlling the land first as a company asset (through the establishment of PT.PMA) is difficult to realize because it clashes with the principle of nationality (nationality) in the ownership of Land Rights in Indonesia. However, in reality, this name borrowing scheme ultimately causes losses for foreign nationals, because by borrowing this name, it allows the Indonesian citizen whose name is listed on the certificate to secretly transfer the land (either by pawning or buying and selling) to another party. And to protect their civil rights that have been transferred, they can file a civil lawsuit for unlawful acts against the Indonesian citizen (the party whose name is listed on the certificate).

This is what happens, for example, in several cases of cooperation agreements in the establishment of a Limited Liability Company in the form of Foreign Investment, where it turns out that several assets that have been purchased by Foreign Citizens have been sold and transferred to other parties before the Limited Liability Company in question was formed without the consent of the capital owner, namely:

1. Cooperation Agreement in the establishment of PT.PMA between a foreign national from Berlangga and an Indonesian citizen from East Lombok whose sale and purchase process of land rights as a temporary Company asset uses the name of the Indonesian citizen to ensure legal certainty for the sale and purchase process accompanied by the making of a deed of statement made by a notary explaining that all land rights assets were purchased using money from the foreign national and if the PT.PMA permit is issued, the land rights must be transferred to the Company in the form of SHGB. However, when the PT.PMA permit had been issued and was requested to be transferred, the Indonesian citizen refused on the grounds that the land was purchased by the Indonesian citizen using his name. For this reason, the foreign national reported the Indonesian citizen to the police on charges of

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committing fraud and/or embezzlement (Articles 372 and 378 of the Criminal Code). Based on Court Decision Number: 89/PID.B/2019/PN.Sel dated August 6, 2019, the Indonesian citizen was proven to have committed fraud and/or embezzlement and was sentenced to 2 years in prison and a fine of Rp. 200,000,000. Furthermore, based on the PN's decision, the foreigner sued the Indonesian citizen in the District Court with a lawsuit for Unlawful Acts.

2. Cooperation Agreement for the management of the Stanley Villa between a foreign national (German) and an Indonesian citizen. The foreign national handed over funds to the Indonesian citizen to purchase land for the establishment of a PT. PMA which was then built on top of a hotel (Villa). Although the land rights use the name of the Indonesian citizen, a notary deed was made explaining that the land was financed using money from the foreign national. However, after the hotel was built and operating, the Indonesian citizen had evil intentions who felt that the land was purchased through his hard work for several years. Then, to protect his civil interests that were harmed, the foreign national filed a lawsuit through the Mataram District Court that the Indonesian citizen had violated Article 1365 of the Civil Code. After going through the trial process, it was decided that the land rights belonged to the Indonesian citizen while the building was in the name of the foreign national.
3. Cooperation Agreement of MR. Kerry Peter Black (WNA) with WNI for the purchase of assets of PT. PMA in 2001-2002. Before establishing PT. HOTPLANET INDONESIA, the WNA personally (individually) had purchased the disputed land through Notary Fanniyah.

Because based on the provisions of UUPA Article 21 Law Number 5 of 1960 concerning Basic Agrarian Provisions, only Indonesian citizens have the right to own land rights in Indonesia, so to facilitate the process of transferring land ownership rights temporarily (until the PTPMA establishment permit is issued) all transfer documents use the name of an Indonesian citizen, namely Taufiq Hizbul Haq (permanent certificate in the name of the seller-SAHIRIP and in the name of AMAK SURIANI in 2002.

Based on various descriptions of several cases of the establishment of PT. PMA in Indonesia above, it shows that in the establishment of PT. PMA in Indonesia there is no guarantee of legal protection for the parties in the cooperation agreement for the establishment of PT. PMA, especially if in the preliminary process it requires cooperation with Indonesian citizens related to the fulfillment of the requirements for ownership of the assets of the Company to be established. While on the other hand, in accordance with the provisions of Law No. 25 of 2007 concerning Investment, one of the principles in investment is the principle of legal certainty, namely the principle in a state of law that places laws and provisions of laws and regulations as the basis for every policy and action in the field of investment. Therefore, this study will examine the philosophical basis for the application of the principle of nationality in the UUPA, how is the guarantee of legal certainty in the Cooperation agreement for the establishment of a Limited Liability Company PMA by Foreign Citizens (PT. PMA) in Indonesia, and how is the Cooperation scheme in the establishment of PT. PMA that can guarantee legal protection for the parties (both Indonesian citizens and foreign nationals).

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RESEARCH METHODS

In this study, the researcher used a normative legal research type, namely the law is conceptualized as written in laws and regulations (law in books) or the law is conceptualized as a rule or norm that is a reference for human behavior that is considered appropriate. (Amiruddin & Asikin, 2004) In order to answer the problems in this study, the approaches used include the Statute Approach, the Conceptual Approach, and the Case Approach (Muhaimin, 2020) The types and sources of legal materials used in this study are Primary Legal Materials, Secondary Legal Materials and Tertiary Legal Materials. The technique for collecting legal materials in this study was obtained through Library Research. Legal materials obtained based on document studies are then processed and analyzed using the method of interpreting legal norms using deductive thinking. After the legal materials are collected, they are then qualified and analyzed descriptively to get answers to the research problems.

DISCUSSION

1. The Philosophical Foundation of the Nationality Principle in the Basic Agrarian Law (UUPA) of Indonesia

The right to control land by the state is derived from the power inherent in the state, as reflected in the provisions of Article 33 of the 1945 Constitution which states that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Furthermore, in its explanation it is stated that the earth and water and the natural resources contained in the earth are the mainstay of the people's prosperity, therefore they must be controlled by the state and used for the greatest prosperity of the people. This statement explains two things, namely that constitutionally the state has strong legitimacy to control land as part of the earth, but such control must be within the framework of the people's prosperity.

Therefore, in order to optimize the function of land for the greatest prosperity of the people, the government in the UUPA, especially Article 6, states that all rights to land have a social function, so every person, legal entity, or agency that has a legal relationship with land is obliged to use their land by maintaining the land, increasing fertility, preventing damage so that it is more efficient and effective and beneficial for the welfare of the community.

The application of the principle that land has a social function contains an intention, that the Government morally has an obligation to maintain a balance between two antinomic interests, namely between individual interests on the one hand, and community interests on the other. (Sarjita, 2002)

Notonagoro in M. Mahfud MD. uses the term that in order to align the two interests that exist in society, the principle of social function of land ownership rights according to UUPA is "dual". (M. Mahfud MD, 1998) Meanwhile, Maria SW Sumardjono emphasizes that the relationship or relation between individuals and society in relation to land is of a dual nature that cannot be separated. Meanwhile, to provide content and measurement of social function, according to Sunarjati Hartono, in the implementation of land ownership rights, four principles

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must be considered, namely: 1) the principle of benefit; 2) the principle of joint effort and family; 3) the principle of democracy; and 4) the principle of fairness and equality. (Sumardjono, 2001)

Land rights are the right to control land by the state which is given to an individual, a group of individuals, or a legal entity, whether an Indonesian citizen or a foreign national. Land rights holders are given the authority to use the land or take advantage of the land they own. The state has the authority to determine land rights that can be owned by and/or given to individuals and legal entities that meet the specified requirements. This authority is regulated in Article 4 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA) which states that:

"On the basis of the State's right to control as referred to in Article 2, it is determined that there are various kinds of rights to the surface of the earth, called land, which can be given to and owned by people either individually or together with other people and legal entities."

Land rights that can be owned by Indonesian citizens or Indonesian legal entities, as well as foreign citizens or foreign legal entities, to be used as a place of residence or to open a business are rights of use, this has been regulated in Article 42 of the UUPA which states that:

“Those who can have the right to use are:

1. Indonesian citizens;
2. Foreigners domiciled in Indonesia;
3. Legal entity established under Indonesian law and domiciled in Indonesia;
4. Foreign legal entities that have representatives in Indonesia.”

Apart from use rights, foreign citizens or foreign legal entities domiciled in Indonesia can obtain rights to land with leasehold status, if they have the right to use land owned by another person for building purposes, by paying the owner a certain amount of money as rent.

Foreign nationals who have residence permits in Indonesia, foreign legal entities that have representatives in Indonesia or representatives of foreign countries and international institutions in Indonesia can own a condominium unit and can also be given ownership rights to a condominium unit if they have a permit in accordance with the provisions of laws and regulations. This is regulated in Article 144 paragraph (1) of Law Number 11 of 2020 concerning Job Creation. Based on this regulation, ownership rights to a condominium unit can be granted to foreign nationals or foreign legal entities that have a permit in accordance with the provisions of laws and regulations. The permit in question has been regulated in Article 69 paragraph (1) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration.

Based on the explanation above, it can be concluded that the status of land and building ownership that can be obtained by foreign nationals or foreign legal entities in Indonesia is limited to land use rights for a certain period, building lease rights, ownership rights for apartment units and residential or residential houses. Foreign nationals or foreign legal entities

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are not allowed to control land with ownership rights, HGU and HGB. If a foreign national or foreign legal entity obtains these three rights, they are required to release them no later than within a period of one year or these rights will be revoked by law and returned to the control of the state. In addition, there are limitations on the ownership of apartment units by foreign nationals or foreign legal entities as regulated in the Regulation of the Minister of ATR KBPN No. 18/2021.

2. Guarantee of Legal Certainty in Cooperation Agreement for Establishment of Limited Liability Company PMA by Foreign Citizens (PT.PMA)

Investments that have the aim of forming capital accumulation can basically be classified into two. First, direct investment which in legislation is commonly referred to as capital investment. Direct investment in this context is an investment that is realized in the form of real assets. Second, financial investment or commonly known as portfolio investment, namely investment that in practice is applied to the money market and capital market.

According to the World Bank, investment climate is a collection of location-specific factors that form opportunities and incentives for companies to invest productively, create jobs and develop themselves. The policies and behavior of a country's government have a major influence on costs, risks and restrictions on competition. (The World Bank, 2005) Chronologically, in Indonesia since the Dutch East Indies era, direct investment has been known. The Dutch government has realized that in order for direct investment to be implemented properly, a good investment climate is also needed. To create a good investment climate, legal instruments and legal certainty are needed that clearly regulate the rights and obligations of investors.

To create a good investment climate, the Dutch government provided various incentives to foreign private investors from Europe and the Netherlands itself to attract investment in Indonesia. These incentives include ease in obtaining investment permits, ease in obtaining plantation land, granting concessions and offers of cheap labor wages. The good investment climate resulting from regulations implemented by the Dutch government in Indonesia began to deteriorate after Indonesia declared independence on August 17, 1945. Although the government of the Republic of Indonesia has tried to carry out economic development since the beginning of independence, the direct investment climate has not improved. This is due to the lack of stability in politics, economics and domestic security. The change of cabinet and government system that occurred at that time worsened the direct investment climate in Indonesia. This continued until the end of the Old Order government in 1966.

The improvement of the direct investment climate in Indonesia reached its peak during the New Order era with the issuance of Government Regulation (PP) No. 20 of 1994 concerning Share Ownership in Companies Established in the Framework of Foreign Investment. In the PP, there was no longer a requirement for foreign investors to hand over part of their company ownership to Indonesia. In various fields, foreign investors could own one hundred percent of their capital from the start when investing in Indonesia. During and after the reformation in mid-1998, the investment climate in Indonesia was very bad. The flow of direct investment to

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Indonesia decreased. This was evident from the very small amount of direct investment and the investment deficit that continued until 2003. Although the direct investment approved by the government was quite large, very little was realized.

The problems in creating an investment climate in Indonesia are considered quite complex and interrelated with each other. If we use the Doing Business 2007 indicator as a comparison in seeing the ease of investing in a country, especially against indicators of business climate, legal certainty, taxation, labor, financial services, then the position of the investment climate in Indonesia still does not show anything encouraging. Of the 11 Doing Business indicators (Ease of Doing Business, Starting Business, Employing Workers, Registrting Property, Paying Taxes, Enforcing Contract, Dealing with License, Getting Credit, Protecting Investors, Trading Across Borders and Closing Business), Indonesia's position compared to 5 ASEAN countries (Malaysia, Philippines, Singapore, Thailand and Vietnam) is still the lowest for the first 6 indicators. With these results, it shows that there are still many problems that must be fixed in order to attract investors to invest in Indonesia. (The World Bank, 2007)

Investment climate improvements that include institutional improvements, including improvements to regulatory mechanisms, acceleration of the company establishment process and business permits, increased exports and investment, and improvements to information systems. These various steps are aimed at resolving investment distortions felt by investors, especially regarding the ease of investing which is felt to be less competitive than other ASEAN countries. In addition to institutional improvements, the government also sees the need for synchronization of central government regulations and regional regulations regarding investment and the real sector. This synchronization is very necessary so that investors can more easily meet the requirements and avoid a high-cost economy. The alignment between central and regional policies will increase the effectiveness and acceleration of policy implementation at the technical level. Currently, there are more than 100 regulations at the regional level that lead to a high-cost economy, thus reducing competitiveness in attracting investors.

The development of regional autonomy in Indonesia is an opportunity for capital owners, economic actors and regional governments to develop investment in the regions. Regional autonomy also provides flexibility for regional governments to realize their visions and missions as well as regional development plans by mobilizing the presence of leading industries, production and trade activities by small and medium enterprises, and household businesses by various groups in society.

The results can be concluded that in the early stages of regional development, the portion of local government investment tends to dominate the overall investment that occurs in the region. Only after the industrialization stage has passed will the portion of local government investment decrease and be replaced by an increase in private investment. In the stages of regional development that have progressed, the role of community investment gradually dominates the majority of investment realization in a region.

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3. Cooperation Scheme in Establishing PT.PMA Which Guarantees Legal Protection for the Parties

In relation to cooperation agreements in business practices, there is one cooperation scheme that can be adopted in the cooperation agreement for the establishment of a Foreign Investment Limited Liability Company, namely Build Operate Transfer as regulated in Government Regulation Number 27 of 2014 as amended by Government Regulation Number 28 of 2020 concerning Management of Regional Property.

In simple terms, there are 2 business models for land utilization cooperation for commercial/business purposes through a build-operate-transfer (BOT) scheme and other similar schemes. First, the concept of joint venture. In this concept, the landowner (landlord) is treated as one of the investors who invests land into a business entity that will operate the land. The land owned is considered as capital or investment value of the landowner. The relationship between the landowner and the business entity that will operate the land is a direct ownership relationship. Second, the concept of leasing. Unlike the concept of joint venture, in the concept of leasing, the landowner is not part of the business entity that will operate the land. The relationship between the landowner and the business entity is not direct. The landowner only deals with the owner of the business entity in his position as the party leasing the land (lessor) and the tenant (lessee).

The application of both concepts in the asset utilization cooperation scheme has different implications. First, by being calculated as an investment, the application of the capital pooling concept causes a change in land ownership. The ownership relationship between the land owner and the land owned is no longer direct. In accordance with the principle of separation of ownership and control, the land no longer belongs to the "land owner" but to the business entity owned. Ownership of assets in the form of equity ownership. Second, with the change in land ownership in the capital pooling concept, at the end of the cooperation period, what is handed over by the cooperation partner is not the asset used and held in the framework of implementing the cooperation but rather partial ownership of the cooperation business entity in the form of equity value owned. Third, as a result of the ownership relationship, although limited, the obligations arising/owned by the business entity to other parties in the framework of implementing business activities are partly the responsibility of the "land owner" according to the proportion of ownership.

Changes in ownership do not occur in the lease concept. The land ownership rights are entirely with the landowner. The business entity only has the right to utilize and obtain benefits from the land for a certain period of time as agreed. After the period ends, the land used is returned to the landowner and all assets built/held in the framework of implementing the cooperation are handed over to the landowner. Furthermore, in the absence of a direct relationship between the landowner and the business entity of the cooperation, all obligations owned or arising from the implementation of operational business activities carried out by the business entity to other parties become the responsibility of the business entity and its owner. Responsibility for these obligations does not even change after the cooperation period ends. Unlike the concept of joint capital, the transfer of assets from the business entity to the landowner in the lease concept

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does not include the transfer of the business entity's obligations. The landowner's obligations are limited to obligations to the business entity as agreed.

With an understanding of its implications, the BOT scheme generally uses the concept of leasing. Landowners are not directly related to or part of the business entity of the cooperation partner. However, in practice, the determination of the amount of royalty fees to landowners is often not based on the land value or land rent value but rather based on a certain percentage of the income obtained from land use (revenue sharing). The use of the lease concept is clearly seen in the Build Operate Transfer/Build Transfer Operate (BGS/BSG) scheme as referred to in the Regulation of the Minister of Finance (PMK) Number 78/PMK.06/2014. In this policy, the imposition of royalty fees, referred to as annual contributions, is determined based on a certain percentage of the land value.

This is different from the Utilization Cooperation scheme which does not clearly adhere to one of the two concepts. The Utilization Cooperation Scheme (KSP) as regulated in PMK Number 78/PMK.06/2014 seems to adhere to both concepts at once. The provision stipulates that the value of land that is the object of the KSP is calculated as the amount of the Government's investment value. This shows the use of the concept of joint capital. The use of this joint capital concept is then strengthened by the application of a profit sharing scheme in determining the amount of compensation to the Government. However, in addition to compensation based on the profit sharing scheme, KSP partners are also charged a royalty fee in the form of a fixed contribution that must be paid to the Government during the period of cooperation. The fixed contribution is calculated based on a certain percentage of the land value. The imposition of a royalty fee based on the land value is a form of application of the lease concept. The use of the lease concept is strengthened by the provision stating that the results of the KSP submitted by the partner to the Government at the end of the cooperation in the form of land, buildings, facilities, and facilities held by the partner are not ownership of the cooperation business entity.

The ambiguity of the application of the concept in the KSP scheme at least raises two inconsistency problems. The first problem is related to asset ownership. By calculating the value of the KSP object as the government's investment value, it should result in the transfer of asset ownership to equity ownership. However, this transfer of ownership is not possible because it is contrary to the basic principles of utilizing State Property. The second problem is related to the sharing of business risks (risk sharing). By treating itself as part of the investor, the Government should have to bear the same business risks as other investors. This business risk is reflected in the profit sharing scheme used in determining the amount of compensation given to the Government. However, the problem is that the Government also sets a fixed contribution with an amount that has been determined at the beginning. The amount of this fixed contribution does not depend on the financial performance of the business entity because it is calculated based on the value of the land. The imposition of this fixed contribution shows that the Government as the land owner does not want to bear the same business risks as other investors.

This problem is likely the cause of the implementation of the Cooperation on the Utilization of State Property (BMN) not running optimally so far. The imposition of double tariffs (profit

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sharing and fixed contributions) as compensation given to the Government makes the KSP business unattractive to investors financially because it is considered burdensome. As a result, the potential for state revenue cannot be realized optimally. In fact, from the beginning, KSP BMN is a form of utilization of BMN which is predicted to be the mainstay of state revenue sources from BMN management. Therefore, it is necessary to re-examine the KSP BMN scheme that is currently in effect. The first thing that must be done is to eliminate the ambiguity of the concept applied by adjusting it to existing best practices. For example, by implementing the concept of leasing in the KSP scheme. With this concept, the Government will only charge royalty payments to cooperation partners. The royalty payments can be based on the land value or income obtained from the use of the land. The calculation of royalties based on land value (land value based) is carried out if the Government is not sure about the business prospects that will be run by the partner. This is done in order to manage risk. On the other hand, the use of revenue based is done in cases where the business prospects of the partner are considered quite promising. This is done in order to optimize the revenue received by the Government.

The second thing that must be done is to redefine the KSP scheme as a form of BMN utilization. Basically, utilization in the form of KSP is no different from BGS/BSG. Both forms of utilization are included in the BOT scheme which is commonly carried out in asset utilization cooperation and infrastructure provision. The difference between the two lies only in the objectives, procedures, types of contributions, and objects of utilization. Utilization in the form of KSP focuses more on the revenue that will be obtained (revenue generating), while BGS/BSG focuses more on assets that will be used/obtained for government operational activities (asset acquisition). BGS/BSG is only carried out on assets in the form of vacant land (greenfield), while KSP can be carried out on vacant land, land that has buildings built on it (brownfield), or other assets. The absence of substantial differences should not result in different treatments between the two. What should be done is to provide more detailed regulations regarding utilization in the form of operational cooperation (operating agreement). KSP can be used as a general term used to refer to all forms of long-term asset utilization that involve cooperation with other parties. Such forms of cooperation include, among others, BOT and its derivatives, operational cooperation (operating contracts), leases/aftermaths, concession agreements, and joint ventures and partial divestitures.

CONCLUSIONS AND SUGGESTIONS

1. Conclusions

a. The philosophical basis of land ownership only for Indonesian citizens, which is regulated in the Basic Agrarian Law (UUPA) No. 5 of 1960, is related to the principle of state sovereignty and national interests. State sovereignty views land as an integral part of the territory and national wealth, so that land ownership must be regulated by the state to guarantee common interests. The principle of state sovereignty states that land is a national asset controlled by the state. Thus, the state has the right to regulate who can own and use land for the national interest. Meanwhile, from the aspect of national interests, land ownership by Indonesian citizens is considered important to guarantee national interests,

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such as Economic Development: Land is an important resource for economic development, and ownership by Indonesian citizens can help encourage investment and economic growth. National Security: Land ownership by Indonesian citizens can help maintain national stability and prevent potential conflict or interference from foreign parties.

b. That because in the deed of cooperation agreement document made by a notary, it is generally stated that the land assets owned by Indonesian citizens as partners will become assets of the Company (PT.PMA, then this concept tends to be detrimental to Indonesian citizens as partners in the cooperation agreement for the establishment of the PT. so that when the Company is dissolved (PP.PMA), the rights to the land will be distributed to the shareholders, especially when the Company's assets are settled. So that it will be detrimental to the civil rights of Indonesian citizens.

c. That in order to avoid losses for the parties in the establishment of PT. PMA in Indonesia, one solution that can be offered to ensure the existence of a cooperation agreement for the establishment of PT. PMA that reflects the principle of justice, one of which is to adopt the concept of utilizing state/regional assets as regulated in PP 27 of 2014 concerning the management of state property, which stipulates in the land utilization cooperation agreement contract that there is a fixed contribution payment and profit sharing to the land owner by the investor. So that when the contract expires, the land ownership rights return to the Land Rights Owner (WNI).

2. Suggestions

It is expected that the cooperation agreement for the establishment of PT. PMA must explicitly include a clause that protects the status of land ownership rights owned by Indonesian citizens, so that it does not automatically become part of the Company's assets that can be divided when dissolution occurs. The government, through the relevant ministries, needs to issue technical regulations or guidelines to prevent the practice of indirect transfer of land rights owned by Indonesian citizens to PT PMA in the context of cooperation agreements. In addition, the Investment Coordinating Board (BKPM) needs to tighten supervision of deeds of cooperation for the establishment of PT PMA involving land assets owned by Indonesian citizens to prevent the practice of smuggling laws related to foreign ownership of land.

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