THE ROLE OF NOTARIES IN PREVENTING MISAPPROPRIATION OF THE ESTABLISHMENT OF COOPERATION AGREEMENTS FOR THE UTILIZATION OF REGIONAL OWNED ASSETS

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Abstract

A notary is a public official who is given the authority for attribution by Law to compose an authentic deed. The authority of a Notary is regulated in Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, which contains all forms of actions, agreements, and provisions required by laws or those desired by the parties in the interest to be stipulated in an authentic deed. The intricacy is, what is the Notary's role in the cooperation agreement for the use of the regional asset to prevent misappropriation from the contract establishment process? The research method used is normative juridical, where the research emphasizes the use of legal norms in writing. The research results show that notaries play an important role in implementing the utilization of regional-owned assets, particularly within the scope of the Notary's authority, i.e., delivering the parties' wishes into a cooperation agreement deed appropriate to the form of utilization activities. Notaries can help create a government archiving system that is safe and structured. This form of support is in the form of a Notary Public, which will automatically become a party outside the government apparatus structure who participates in maintaining important local government documents; this is based on the mandate of Article 16 paragraph (1) letter (b) which states that Notaries must prepare deeds in the form of minuta deeds and store them as part of the Notary protocol. The conclusion is that the role of Notaries in utilizing a regional-owned asset requires Notaries to understand better and study the regulations governing the utilization agreement, as a Notary will face several problems in its implementation in formulating a cooperation agreement between local governments and the third parties. With the Notary's role in preventing misappropriation following the authority to establish contract deeds/authentic deeds, the Notaries can prevent legal problems in the deed establishment process.

Keywords: Notary, Corruption, Regional Assets

INTRODUCTION

Regional development is always met with budget problems; limited regional financial resources encourage local governments to seek alternative sources of Regional Original Income (PAD). On the one hand, local governments have assets that can be used as PAD sources. Regional assets are particularly important resources for local governments and can function as the main support for PAD. Regional assets that are not utilized need to be optimally utilized; therefore, they do not become a burden on the Regional Expenditure Budget (APBD) in maintaining them. The optimal use of regional assets will reduce the burden on the APBD and become a source of income; thus, it can help the regional Government's main tasks and functions. Optimization of regional assets can be accomplished by managing assets and optimizing assets to increase income in various forms, including the Utilization cooperation agreement (KSP).

Utilization cooperation agreement (KSP) is the utilization of State/Regional Asset by other parties within a certain period in the context of increasing non-tax state/regional revenue and other sources of financing.[1]

In the Permendagri Number 19 of 2016 concerning Guidelines for the Management of Regional Asset, there are regulations regarding utilization, where the intended use is the utilization of regional asset that is not used for performing the tasks and organizational functions of Regional Work Units (SKPD) or optimizing regional asset by still preserving ownership status.[2] Utilization of regional assets is implemented based on the approval of the Governor/Regent/Mayor. In contrast, the regional asset that is under the control of the Assets manager is done with the approval of the Assets manager, where the regional asset can be in the form of a portion of land or buildings that are still used by the user of the assets and other than land or buildings.

Utilizationcooperation agreement (KSP) is a form of utilization of regional assets by other parties within a predetermined period to increase regional revenue or other financing sources.[3] KSP of the regional asset with other parties is carried out to optimize the regional asset's effectiveness and yield or increase regional revenue.[4] KSP for the regional asset is carried out if there are no or insufficient funds available in the APBD, which will be used to meet the operational costs, maintenance, or repairs needed for the regional asset that is cooperated.[5]

In the implementation of the utilization of regional assets, it must be based on technical considerations by considering regional interests and public interests and can be performed on the ground that it does not interfere with the implementation of the duties and functions of regional government administration without requiring the approval of the Regional People's Representative Assembly (DPRD).[6]

There are five forms of utilization activities in its implementation, i.e[7]

1. Rent
2. Lease
3. Cooperation agreement (KSP)
4. Goods for Handover/Handover Goods (BGS/BSG)
5. Infrastructure Cooperation agreement (KSPI).

Based on the five forms of utilization activities, the implementation is carried out based on a decision or approval from the regional head, particularly the Governor/Regent/Mayor or the assets manager, which is outlined in an agreement for each utilization activity with different provisions according to their respective objectives of utilization activities. The difference referred to consists of the form of the activity, the method of determining the utilization partner, the period, the object used, and the conditions for forming the agreement.

KSP objects include regional assets in the form of land or buildings and other than land or buildings in the assets manager or assets user. KSP objects of regional assets in the form of land or buildings can consist of part or entirety.[8] The results of the KSP can be in the form of land, structures, buildings, and facilities provided by the KSP partners, while the facilities of the KSP results as referred to are:[9]

1) Equipment and machines;
2) Roads, irrigation, and networks;
3) Other fixed assets; and
4) Other assets.

KSP partners are determined through a tender. Except for regional assets that are specific, a direct appointment can be made and accomplished by the assets manager or the user of the assets to state/regional-owned enterprises with certain fields or working areas under the legislation's provisions.

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[1] The Republic of Indonesia, Government Regulation number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State/Regional Assets, Article 1 number 13.

[2] The Republic of Indonesia, Regulation of the Minister of Home Affairs Number 19 of 2016 concerning Guidelines for the Management of Regional assets, Article 1 number 32.

[3] *Ibid.,* Article 1, number 35.

[4] *Ibid.,* Article 169.

[5] *Ibid.,* Article 170.

[6] *Ibid.,* Article 78.

[7]., *Ibid.,* Article 81.

[8] *Ibid.,* Article 173.

[9] *Ibid.,* Article 174 paragraph (2).

Parties that can become partners for the KSP of regional owned assets include State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), or private companies, except for individuals.[10]

KSP is implemented in the form of a utilization agreement between the government and KSP partners. The agreement is divided into two forms, particularly in an agreement letter and a notary deed. Utilization activities in the form of an agreement letter or under-hand agreement are used for lease and borrow-use activity agreements. In contrast, agreements made in the form of notary deeds are agreements for Cooperation agreement activities, Goods for Handover / Handover Goods, and Infrastructure Cooperation agreement.[11]

In implementing the KSP agreement, KSP partners can make changes or additions to the KSP results utilizing the KSP agreement addendum. The KSP agreement addendum is intended to recalculate the amount of fixed contribution and profit-sharing, determined by the Team based on the calculation result. As suggested, the Team is appointed by the Governor/Regent/Mayor for regional assets in the form of land or buildings or assets managers, for regional assets other than land or buildings.[12]

The term of the KSP is no longer than 30 (thirty) years after the agreement is signed by the parties and can be extended anew. Suppose the KSP of regional owned assets is carried out for the provision of infrastructure. In that case, the KSP period is no longer than 50 (fifty) years after the KSP agreement is signed by the parties and can be extended anew.[13] Suppose the KSP partner is extending the period. In that case, the process is carried out by applying for approval for the extension of the KSP period, carried out no later than 2 (two) years before the agreement period ends.[14] The extension of the period is considered because it does not interfere with implementing the regional administration's duties and functions. During the implementation of the previous KSP agreement, the KSP partners comply with the KSP regulations and agreements.[15]

The obligations of KSP partners during the KSP period are:

1) KSP partners must pay a fixed contribution every year during a predetermined operating period and deposit the profit sharing of the KSP proceeds to the regional general cash account.[16]
2) KSP partners are prohibited from pledging or pawning regional assets, which is the object of KSP.[17]
3) Paying the KSP preparation costs that occur after the KSP partners are appointed, and the KSP partners bear the KSP implementation costs.[18]
4) Submitting the results of the KSP in the form of land, buildings, existing infrastructure, and facilities, and become regional assets.[19]
5) KSP partners must perform the KSP as stipulated in the KSP agreement.[20]

A notary[21] is a public official who has the authority by attribution based on laws and regulations in establishing an authentic deed. The authority of a Notary is regulated in Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, where the regulation contains all forms of actions, agreements, and regulations required by laws and regulations or desired by interested parties to be constricted in an authentic deed.

Article 1868 BW states that an authentic deed is a deed in the form prescribed by Law, drawn up by or in front of public officials who have the power to do so at the place where the deed is done. Notary Deed is an agreement between the parties that binds them; thus, an agreement's legal requirements must be fulfilled under Article 1320 BW.

In implementing the Cooperation agreement (KSP) of regional owned assets, notaries can perform a role in making agreements, especially related to the implementation of their duties and authority in establishing authentic deeds. This research is how the Notary's role in preventing

[10] *Ibid.,* Pasal 172 ayat (3).
[11] *Ibid.,* Pasal 179 ayat (4), Pasal 230 ayat (4) dan Pasal 279 ayat (2).
[12] *Ibid.,* Pasal 176.
[13] *Ibid.,* Article 177.
[14] *Ibid.,* Pasal 178.
[15] *Ibid.,* Article 179.
[16] *Ibid.,* Article 170, paragraph (5).
[17] *Ibid.,* Article 171, paragraph (1).
[18] *Ibid.,* Article 171, paragraph (2) and paragraph (3).
[19] *Ibid.,* Article 206, paragraph (2).
[20] *Ibid.,* Article 206, paragraph (1).
[21] Habib Adjie, *Hukum Notaris di Indonesia*, PT Refika Aditama, Bandung, 2014. p 3.

misappropriation in establishing the Utilization cooperation agreement (KSP) of regional owned assets.

Problem Formulation

Based on the above background, the problem is the role of the Notary in preventing misappropriation in establishing cooperation agreements for the utilization of regional owned assets?

METHOD

1. Research Form

This research is in the form of normative juridical research where the research uses written legal norms.[22] This study discusses the role of notaries in preventing corruption in the Cooperation agreement (KSP) of regional owned assets. This type of research is descriptive-analytical; it is related to descriptive. According to Singarimbu,[23] Descriptive research is research that seeks to describe a more complex social reality by applying theoretical concepts that have been proposed by scientists.

2. Types of Legal Materials (read the book of piter makmud marzuki)

a. Primary Legal Materials

That is the legal material that becomes the binding/legal basis, such as Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 19 of 2016 concerning Guidelines for the Management of Regional Owned Assets.

b. Secondary Legal Materials

Particularly materials that explain primary legal materials such as materials in the form of books, journals, scientific articles on the Cooperation Agreement (KSP) of assets belonging to regions or state institutions, daily newspapers/magazines, and other scientific papers.

c. Tertiary Legal Materials

Tertiary legal materials, specifically legal materials that provide instructions and explanations for secondary legal materials related to this research, include newspapers, the internet.

3. Legal Material Compilation Techniques

The data collection technique used is Library Research. In this literature study, what is performed is studying and reading books, magazines, print media that reviews laws regarding the role of notaries in cooperation agreements to utilize regional owned assets to prevent misappropriation in the contract-making process.

4. Legal Material Analysis

Qualitative methods are used to answer or solve the problems raised in this study, given that the data obtained is quality, not quantity. After data collection, analysis is performed; thus, conclusions can be drawn that can be scientifically justified.[24]

DISCUSSION

The role of notaries in cooperation agreements for the utilization of regional owned assets to prevent misappropriation in the process of contracts-making made by the Government is multi-aspect and has a distinctive character.[25] Even though the legal relationship that is formed between the Government and its partners is a contractual relationship, it contains not only private Law, but also

[22] Dian Puji Simatupang, *Modul Perkuliahan Metode Penelitian,* Master of Law Study Program, Unkris, Jakarta, 2010, p. 2.

[23] Masri Singarimbun, and Sofian Effendi, *Metode Penelitian Survey*, LP3ES, Jakarta, 1989, p. 34.

[24] *Ibid.*

[25] Charles Tiefer, et al., *Government Control Law*, Carolina Academic Press, Nort Carolina, 1999, p.ix. in Yohanes Sogar Simamora, *Hukum Kontrak Prinsip Hukum Kontrak Pengadaan Barang dan Jasa Oleh Pemerintah*, LaksBang PRESSindo, Surabaya, 2017, p. 5

public Law. The existence of a public color in this type of contract is a distinctive feature that distinguishes it from commercial contracts in general.[26]

A cooperation agreement is a type of agreement widely used in commercial activities, including by the Government. There are no specific provisions regarding the cooperation agreement. This type of agreement is born and developed in business practice. The legal basis mainly rests on the principle of freedom of contract. That is why there is no uniformity in utilizing this cooperation agreement format. This agreement's boundaries are still unclear; hence, the prevailing legal norms mainly rely on the parties' agreement.[27]

The existence of rules regarding the agreement in the form of a Notary deed in several agreements for the utilization of regional assets which are regulated in Permendagri No. 19 of 2016, is a good step in safeguarding regional assets that are used to the maximum extent possible to serve the community, given the importance of the existence of a Notary deed that can provide legal certainty for the parties agreeing. In general, the role of a notary is to provide legal certainty for the public with the deed one makes; however, this develops in line with the existence of regulations that regulate several things in the form of notary deeds, such as the rules contained in Permendagri No. 19 of 2016, regarding regulations that require certain utilization activities to be accomplished based on an agreement in the form of a Notary deed, without any other form of exception.

The presence of a Notary in the establishment of the agreement on the utilization of regional assets as mentioned above is in line with the definition of a Notary in Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public states that a Notary is a public official who is authorized to establish authentic deeds and have other powers as referred to in this Law or based on other Laws. The phrase "based on other laws" includes Permendagri No. 19 of 2016 in Article 179 paragraph (4), Article 230 paragraph (4), and Article 273 paragraph (2) states that the utilization cooperation agreement (KSP), Goods for Handover (BGS)/Handover Goods (BSG) and Infrastructure Utilization Cooperation (KSPI) is stated in the form of a Notary deed.

The presence of a Notary in the activities of utilizing regional property requires the Notary to understand better and study the regulations governing the utilization agreement since in its implementation; a Notary will face several problems in formulating a cooperation agreement between the local Government and the third party.

A notary plays a very important role in implementing the utilization of regional-owned assets, particularly within the scope of the Notary's authority, i.e., pouring the parties' wishes into the deed of the cooperation agreement to the form of utilization activities. Notaries can help create a government archiving system that is safe and structured. This form of support is in the form of a Notary that will automatically become a party outside the government apparatus structure who participates in maintaining important local government documents; this is based on the mandate of Article 16 paragraph (1) letter (b) which states that the Notary must establish deeds in the form of minuta deeds and store them as part of the Notary protocol. The Notary Protocol will be stored neatly and will be maintained as mandated in Article 1 paragraph (13) states that "Notary protocol is a collection of documents which are state archives which must be stored and maintained by a Notary under the provisions of laws and regulations.

The next benefit from the Notary's role in the use of regional assets is that the cooperation agreement deed made by the Notary can minimize differences in interpretation regarding the contents of the agreement or anticipate actions that lead to deviation or falsification of clauses in the utilization cooperation agreement of regional assets by irresponsible parties.

The notarial agreement deed[28] is written and authentic evidence, which at any time can be used as strong, even perfect evidence for the parties who entered into the agreement. The judge must regard it as perfect evidence that does not require additional evidence because it is not proven otherwise.[29]

Notaries are not parties to the agreement; therefore, the inclusion of the Notary's name on the Notary deed does not mean being a party in it or participating in or ordering or helping to perform certain legal actions by the parties, yet this is a formal aspect of the Notary deed under UUJN.[30]

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[26] *Ibid.*

[27] *Ibid,* Yohanes Sogar Simamora page. 229

[28] Mulyoto, *Perjanjian: Tehnik Cara Membuat Dan Hukum Perjanjian Yang Harus Dikuasai,* Cakrawala Media, Yogyakarta, 2012, page. 1

[29] *Ibid.*

[30] Habib Adjie, *Kebatalan dan Pembatalan Akta Notaris,* PT. Refika Aditama, Bandung, 2011, page. 4.

In establishing the notarial agreement deed, the Notary Public needs to establish the deed structure and prepare a Notary deed according to the anatomy of the deed; each Notary deed consists of[31]

a. Initial deed or head of a deed;
b. Deed bodies, and
c. End or closing of a deed.

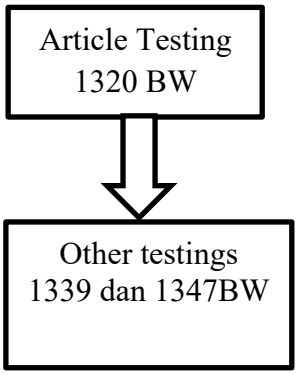
In establishing a notarial agreement deed, notaries must act trustworthy, honest, thorough, independent, impartial, and safeguard the parties' interests involved in legal actions.[32] There are prohibitions in establishing agreement deeds for Notaries, i.e[33]

a. Notaries are prohibited from establishing an agreement deed in favor of one of the parties.
b. Notaries are prohibited from establishing an agreement deed that is contrary to the deed previously made.
c. Notaries are prohibited from making a deed of withdrawal of the agreement to grant power unilaterally, where the deed of power of attorney has been signed by both parties (the authorizer and the authorized).
d. Notaries are prohibited from disclosing the contents (everything regarding the deed one has made) and all the information one has obtained to establish the deed.
e. Notaries are prohibited from reading the contents of the deed to the parties unless the parties have read it themselves, understand, and agree; this is as stated in the closing of the deed, and each page is signed by the parties, witnesses, and notaries, while the parties, witnesses and notaries sign the last page.
f. Notaries are prohibited from establishing agreement deeds that are against the laws and regulations, public order, or morality.
g. Notaries are prohibited from making simulation deeds (fraudulent), especially in cases contrary to statutory regulations.

In carrying out its duties and authority, the Notary can ensure that the agreement-making process is achieved accordingly; one method to minimize irregularities is to test the contract's validity.

The contract validity test is achieved in the following steps:

Figure 1



Article 1320 BW is the main instrument for testing the validity of contracts made by the parties. In Article 1320 BW, four conditions must be fulfilled for the validity of a contract, specifically:

1. Agree on those who bind themselves (de toestemming van degenen die zich verbinden);
2. The ability to make an engagement (de bekwaamheid om eene verbintenis aan pressure);
3. A certain thing (een bepaald onderwerp); and

[31] Article 38 paragraph (1) and (2) Law number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public.

[32] *Ibid*, Article 16 letter a.

[33]., Mulyoto, *Op. Cit*, page. 17.

4. A cause that is lawful or permissible (eene geoorloofde oorzaak).

Testing formula of article 1320 BW[34]

- If the Contract is Legitimate = S
- Subjective Elements = x
- Objective Elements = y

Then a contract is "legitimate," if

S = x = y	or	S = (1+2) + (3+4)

In identifying the contract validity test using 5W + 1H, i.e., What, Why, When, Where, Who, and How, such as what type of contract and where is it arranged?; Is the contract LEGITIMATE?; Do the parties have the ability/authority? Et cetera.

From this identification, the contract validity test of Article 1320 BW is performed covering the general standard of contract testing is to use the "1320 BW Test" this formula is an initial detection of whether the contract is legitimate, annulled, or can be annulled, the fulfillment of the conditions in Article 1320 BW then the test is continued at another test.

1st Requirement Test: Agreement.

Article 1320 BW requirement 1 requires an agreement as one of the conditions for a contract's legality. The agreement contains the implication that the parties mutually express their respective intentions to achieve an agreement or a statement from one party that is "suitable" or following the other party's statement. The statement of intention does not always have to be expressly stated. However, it can be arranged with behavior or other elements that reveal the statement of the parties' will. Meanwhile, the abuse of circumstances (misbruik van omstandigheden), which is a defect of will as contained in Article 1321-1328 BW, is called a classical will defect, given that it is always related to a defect in the formation of a will based on a statement of will.

In BW, three things can be used as reasons for contract annulment based on a defect of will, i.e.:

1. Error or dwaling (vide Article 1322 BW);
2. Coercion or dwang (vide Article 1323 -1327 BW)
3. Fraud or bedrog (vide Article 1328 BW)

At this stage, the Notary ensures that the parties have truly agreed without any coercion or error in the process. According to Subekti, coercion is a compulsion that is spiritual in nature or mental (psychic), that is not physical coercion. Mistakes will occur when parties make mistakes concerning the main things that were agreed upon or regarding the important properties of the agreement's object.[35]

Each party also understands and recognizes the contents of the agreement; the parties are given the freedom to determine the contents of the agreement, yet considering that the KSP agreement is an agreement between the Government and the partner, it is related to the contents of the KSP agreement in the form of a notary deed which at least contains:[36]

a. agreement basis;
b. the identity of the parties bound in the agreement;
c. KSP objects;
d. KSP results in the form of assets if any;
e. allotment of KSP;
f. the term of the KSP;
g. the amount of the fixed contribution and profit-sharing as well as the payment mechanism;
h. the rights and obligations of the parties bound in the agreement;
i. provisions regarding the termination of the KSP;
j. penalty; and

[34] Agus Yudha Hernoko, *Modul Perancangan Kontrak Bisnis: Prinsip-Prinsip & Analisa Perancangan Kontrak Bisnis,* Jimly school, Jakarta, t.t. Batch 18.

[35] Subekti, *Hukum Perjanjian*, Jakarta: PT. Intermasa, 1996 page. 23-24.

[36] the Republic of Indonesia, Regulation of the Minister of Home Affairs Number 19 of 2016 concerning Guidelines for the Management of Regional Property, Article 179 paragraph (3).

k. dispute resolution.

The Notary can ensure that the parties are not under pressure, resulting in defects for realizing the will. Consent is a statement of will that has been agreed upon by the parties. The statement of the party offering is called an offer (offerte), while the statement of the party accepting the offer is called an acceptance (acceptatie).[37]

2nd Requirement Test: Capacity

Capacity (bekwaamheid) is referred to in Article 1320 BW; the second requirement is the ability to take legal actions. The ability to take legal actions is defined as the possibility to take legal actions independently, which binds oneself without being contested. The ability to take legal actions is generally measured by the standard of maturity (meerderjarig); and rechispersoon (legal entity), measured from the aspect of authority (bevoegheid).

In this Capacity test, the Notary Public ensures that the contract signatories are authorized and competent to take legal action. Article 1329 of the Civil Code states, "Everyone is capable of making engagements, if by law they are not declared incompetent." It can be formulated that the parties are declared competent if:

a. Have reached maturity
b. Healthy mind
c. They are not prohibited or limited by Law in performing legal actions, both individuals and legal entities.
d. Even though they do not meet the maturity age requirements, they are already married.[38]

In Article 39 of Law Number 2 of 2014 concerning amendments to Law number 30 of 2004 paragraph (1), The person must meet the minimum requirements of 18 (eighteen) years of age or is married; and capable of doing legal actions.

Authority is one of the conditions determining the validity of a legal entity's contract, both private and public legal entities. Concerning government contracts, attention is paid to fulfilling authority requirements at the contract signing stage and the procurement process. Contract signing can only be achieved if the procurement process has been performed legally if all procurement implementation procedures have been fulfilled. The procurement contract has legal and binding legal force if the contract is signed by an official who can do so. Thus, the requirement for authority includes two aspects, particularly the authority in procuring it and the authority at the stage of signing the contract.[39]

At this stage, the Notary required to ensure that the parties have the authority marked by the existence of a letter of assignment for public legal entity officials, which contains the authority to be able to sign the contract and also needs to verify the authority of the party representing the partner in signing the contract, on the other hand, to ensure that the partner party is authorized as the party is by looking at the Minutes of Determination as a winner in the selection process.

3rd Requirement Test: Objects

A certain thing or certain object (een bepaald onderwerp) in Article 1320 BW requirement 3 is an achievement that the contract's principal concerned which is to ensure the nature and extent of the statements which are the obligations of the parties. Statements that cannot determine the nature and extent of the parties' obligations are non-binding (null and void). Further information regarding this particular matter or object can be referred to from the substance of Articles 1332, 1333, and 1334 BW, as follows:

a. Article 1332 BW states: Only assets that can be traded can be the agreement's subject.
b. Article 1333 BW states: An agreement must have a principal in the form of an item at least the type is determined. The number of items does not need to be certain, provided that the amount can then be determined or calculated.
c. Article 1334 BW states: Assets that will only exist in the future can become the subject of an agreement. However, it is not permissible to release an inheritance that has not been open, nor to ask for an agreement regarding the inheritance, even with the agreement that the person who will later leave the inheritance which is the subject of the agreement, without prejudice to the provisions of Articles 169, 176 and 178.

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[37] Herniwati, Penerapan Pasal 1320 KUHPerdata Terhadap Jual Beli Secara Online (*E-Commerce*), *Jurnal IPTEKS Terapan*, Research Of Applied Science and Education V8.i4 (175-182), page. 178.

[38] Achmad Busro, *Hukum Perikatan Berdasar Buku III KUH Perdata,* Pohon Cahaya, Yogyakarta, 2011, page. 89.

[39] Yohanes Sogar Simamora, *Op.Cit.,* page. 209.

At this stage, the Notary can ensure that the agreement has determined the object or thing be agreed upon. Agreement objects that can be categorized in Article 1332 to Article 1334:[40]

a. Objects that will exist, and can be determined types and can be calculated.
b. The object can be traded, except for assets to be used for the public interest; it cannot become the agreement's object.

Agreements whose objects are unclear because they cannot be determined, or cannot be traded, or which cannot be valued in money or are impossible to do, are null and void.

A certain thing is the object of the agreement, which is the obligation of the parties. Meanwhile, the achievement is an obligation and right of the parties where achievement according to article 1234 of the Civil Code consists of:[41]

a. giving something,
b. doing something, and
c. not doing anything

4th Requirement Test: Cause

What is indicated by the cause of an agreement is a common goal to be achieved by the parties. Agreements that have causes that are not lawful will result in the agreement being null and void. According to jurisprudence, what is interpreted as causa is the content or purpose of the agreement. Through the causa condition, it is an attempt to place the agreement under a judge's supervision in practice.[42]

Article 1335 BW states, "An agreement without cause, or which has been made due to false or forbidden causes, holds no power" further, Article 1337 BW states that a cause is prohibited, if prohibited by law, or if it is contrary to good decency or public order. Based on these two articles, an agreement understands that the parties want to reach based on good faith based on statutory regulations, morals, and public order.

At this stage of the test, the Notary ensures whether there are clauses in the agreement that are not following the laws and regulations, especially those related to the collective agreement on utilizing regional owned assets. The Notary can also ascertain whether an agreement does not have binding legal force (void), if:[43]

a. Have no cause
b. Fake cause
c. The cause is against the law
d. The cause is against decency
e. The cause is against public order.

Test Results of Article 1320 BW

The first two requirements are called subjective conditions regarding the parties to an agreement; if these conditions are not met, the agreement can be annulled (to annul the agreement, there must be at least an initiative from one of the parties who feels aggrieved to annul it). Meanwhile, the last two conditions are called objective conditions because regarding the agreement itself or the object of the agreement being made, if these conditions are not fulfilled, then the agreement is null and void (from the beginning, it is assumed that there has never been an agreement thus there is no need for annulment).

Notary in the assessment of article 1320 BW regarding the validity of the agreement, in order to have binding (legitimate) power, all requirements, be it related to the agreement, skill, certain matters, and causes that are allowed, these requirements must be met cumulatively, meaning that all these requirements must be fulfilled in order for the contract to be legitimate, with the consequence that one or more requirements are not fulfilled, it will cause the existence of the agreement can be contested (canceled/nietig or can be annulled/vernietigbaar).[44]

[40] Herniwati, *Op.Cit.,* page. 178.

[41] Salim H.S, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, Sinar Grafika, Jakarta, 2006, page. 60.

[42] Herniwati, *Op.Cit.,* page. 178.

[43] Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsional Dalam Kontrak Komersil*, fourth printing, Prenadamedia Grup, Jakarta, 2014, page.196

[44] *Ibid*, hal. 199.

Other Tests

Agus Yudha Hernoko[45] argues that article 1338 BW must also be linked with other articles in the contract law system framework. These articles, among others:

a. Article 1320 BW, regarding the validity of the agreement (contract).
b. Article 1335 BW, which prohibits contract-making without a cause or made based on a false or prohibited cause, with consequences of holding no power.
c. Article 1337 BW states that a cause is forbidden if prohibited by law or contrary to good morals or public order.
d. Article 1338 (3) BW stipulates that the contract must be executed in good faith.
e. Article 1339 BW refers to binding the agreement to character, appropriateness, customs, and laws. The customs referred to in article 1339 BW are not local customs, yet provisions in certain circles are always acknowledged.
f. Article 1347 BW regulates matters which according to custom are forever agreed to be secretly entered into a contract (bestandig gebruiklijk beding)

The provisions of the articles mentioned above, both those contained in Article 1320 BW and Articles 1335, 1337, 1339, and 1347 BW, essentially possess work power that complements each other proportionately, which means that the articles governing the validity of the contracts as mentioned above do not stand alone, yet are in a "check and balance" contract law system, which aims to provide a solid foundation for the contractual relationship of the parties.[46]

The agreement theory explains the principle of freedom of contract based on Article 1338 BW's provisions, which reads, "All agreements made legally apply as law for those who make them." The principle of freedom of contract is a principle that gives the parties the freedom to enter or not to enter into an agreement, enter into an agreement with anyone, determine the contents of the agreement, its implementation and requirements, and determine the form of the agreement, which is written or oral.[47]

Article 1338 paragraph (3) BW determines the application of the "principle of good faith" in executing the contract. The principle of good faith has the power to work when the contract has been executed, yet it has started to work when the contract is made; this means that a contract made based on bad faith, for example, based on fraud, is invalid. Thus, the good faith principle means that a party's freedom to agree cannot be realized at will, yet is limited by good faith.[48]

Article 1339 BW states, "contracts are not only binding for the things expressly stated in them, yet also for anything which, according to the nature of the contract, is required by propriety, custom, and law." These things are the limitations in freedom of contract. When faced with a compelling law (dwingen recht), then that freedom does not exist. The parties may not or are prohibited from regulating their legal relations to deviate from the clear legal rules.[49]

At this stage, the Notary Public needs to believe regarding the agreement clauses' content where the parties have explicitly agreed upon it following the parties' autonomy; however, they must comply with appropriateness, customs, and laws.

In addition to this, the Notary at the time of signing the agreement deed also needs to attend to Permendagri Number 19 of 2016 concerning Guidelines for Regional Property Management regarding the KSP agreement in Article 179 Paragraph (5), which states that the signing of the KSP agreement is carried out after the KSP partner submits proof of payment of the first permanent contribution to the Assets Manager/ Assets Users.

CONCLUSION

Based on the results of the above discussion, it can be concluded that the role of a Notary in the activities of utilizing regional owned assets requires the Notary to understand better and study the regulations governing the utilization agreement since in its implementation there are several problems that a Notary will face in formulating a cooperation agreement between the local Government and the third party. Notaries can play a role in preventing misappropriation in establishing cooperation

[45] *Ibid.,* hal. 117-118.

[46] *Ibid.*

[47] Mariam Badrulzaman, *KUH Perdata Buku III Hukum Perikatan dengan Penjelasan*, Alumni, Bandung, 2011, page.108.

[48] Abdul Rokhim, Daya Pembatas Asas Kebebasan Berkontrak Dalam Hukum Perjanjian, *Jurnal Negara dan Keadilan,* ISSN: 2302-7010, Vol. 5 Number 9/August 2016, p. 77-91

[49] J.H. Nieuwenhuis, *Pokok-pokok Hukum Perikatan*, Terjemahan Djasadin Saragih, t.p., Surabaya, 1985, page. 83.

agreements following their authority and playing a role in testing the legality of contracts, i.e., testing objects, causes, laws, appropriateness, habits, good faith, justice, decency, and public order.

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