

Strengthening Regional Autonomy: The Idea of Reorganizing Regional Property Regulations

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Article	Abstract
<p>Keywords: Regional Autonomy, Regulation, Regional Property</p> <p>Article History Received: Mar 03, 2025; Reviewed: Jun 01, 2025; Accepted: Jun 05, 2025; Published: 16 Jun, 2025.</p>	<p>The administration of regional property via usage programs constitutes a source of regional financial Revenue. The administration of regional property is governed by Government Regulation Number 1 of 2014 about the Management of State/Regional Property, subsequently supplemented by Regulation of the Minister of Home Affairs Number 19 of 2016 on the Management of Regional Property. Nonetheless, the regulation of the regional property (<i>Barang Milik Daerah/BMD</i>) sector encounters numerous challenges, particularly regarding the coordination required between the Minister of Home Affairs and the Minister of Finance in developing general and technical policies on regional property, which remains suboptimal. Consequently, the Minister of Home Affairs Regulation Number 19/2016 remains inadequate as a regional reference for formulating Regional Regulations/Regulations of Regional Heads, leading many to directly consult the Minister of Finance, which governs State Property. According to the description above, the subsequent challenges are articulated: Issues in regulating the regional property sector at both central and regional levels. Format for the Reorganization of the Central Regulation of the Regional Public Property Sector. Normative (legal) research methodologies, including statutory, conceptual, and case approaches, are employed to analyze the problem formulation. Findings</p>

from this research: Regulatory issues arise from a lack of alignment among ministries in coordinating efforts. The Minister of Home Affairs reports to the Coordinating Minister for Political, Legal, and Security Affairs, whereas the Coordinating Minister for the Economy oversees the Minister of Finance. The organization of rules involves distinguishing between Government rules for state property and regional property, necessitating cross-sectoral harmonization throughout their formulation. This must be accomplished due to the control of regional property under many laws, necessitating harmonization in formulating technical regulations at the governmental level, along with heightened care. Recent legislation must be modified to align overarching policies and their technical execution.



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Introduction

Regional autonomy facilitates the delegation of welfare obligations from the national government to local authorities.¹ Local governments must exhibit creativity and innovation in generating Revenue to enhance the welfare of their constituents effectively. This is a novel paradigm inside the 1945 Constitution of the Republic of Indonesia,² which transforms the structure of centralized authority (centralization) into a framework of distributed authority (decentralization).³

¹ Borrowing a framework from Brian C Smith, the distribution of responsibility and power is actually one of the strategies to create good quality in democracy at the national level. Brian explained how the influence of local and national democracy is both 'supportive' and 'influencing' each other. See in Brian C. Smith, "Local government and the transition to democracy: a review article," *Public Administration and Development* 18, Issue 1, (1998): 85-92, [https://doi.org/10.1002/\(SICI\)1099-162X\(199802\)18:1%3C85::AID-PAD979%3E3.0.CO;2-7](https://doi.org/10.1002/(SICI)1099-162X(199802)18:1%3C85::AID-PAD979%3E3.0.CO;2-7)

² Garry F. Bell, "Indonesia: The New Regional Autonomy Laws, Two Years Later" *Southeast Asian Affairs*, :117-131. <https://muse.jhu.edu/article/400080>.

³ Decentralization itself emerged as a discourse of good governance along with the idea of democracy during the French Revolution (1789-1799). It was then that radical social change and political upheaval in France ended the absolute monarchy that had ruled France for centuries within 3 years. The old ideas associated with the traditions and hierarchies of the monarchy, the aristocracy, and the Catholic Church were abruptly overthrown and replaced by the new principles of Liberalism, namely *liberte, egalite, and fraternite* (freedom, equality, and fraternity). This radical process of social change marked the emergence of new

Article 18, paragraph (1) of the 1945 Constitution stipulates that "The Unitary State of the Republic of Indonesia is partitioned into provinces, which are further subdivided into districts and cities, each possessing a regional government, as governed by law." Article 18, paragraph (2) of the 1945 Constitution, as the foundational rule of local governance, explicitly asserts: "Provincial governments, regencies, and cities shall regulate and manage their governmental affairs following the principles of autonomy and delegated responsibilities." The execution of Regional Government is conducted following the principle of autonomy to the greatest extent practicable, excluding governmental matters designated by law as the responsibilities of the Central Government.⁴

As stipulated by the 1945 Constitution,⁵ "Regional Governments are empowered to govern and administer their affairs based on the principles of autonomy and delegated responsibilities." The provision of extensive autonomy to the regions aims to expedite the achievement of community welfare by enhancing services, empowerment, and community engagement.⁶ Furthermore, with maximal independence, the regions are anticipated to improve competitiveness by adhering to the principles of democracy, equity, justice, privilege, and specificity, alongside recognizing the potential

ideas about democracy and decentralization that paid more attention to the freedom of individuals (society) vs the state. The discourse of decentralization in France has created the first democratic structure at the local level, but the decentralization in this French tradition, or known as the Perfectoral system, is still centralistic. This means that even though there have been people's government councils (*conseil municipal* and *conceil general*) that are directly elected by the community, the authority of the local government is still limited and the local government is a representative of the central government which still has strong control over its local government. In fact, 90% of staff in the public sector work for the central government. In this tradition, local government is often very dependent on the central government and regional heads are more busy serving the affairs of the central government than serving their people. See in Jun, J.S & Wright, D.S. (eds.), *Globalization and Decentralization: Institutional Context, Policy Issues, and Intergovernmental Relations in Japan and United States*, (Washington DC: Georgetown University Press. 1996), 162.

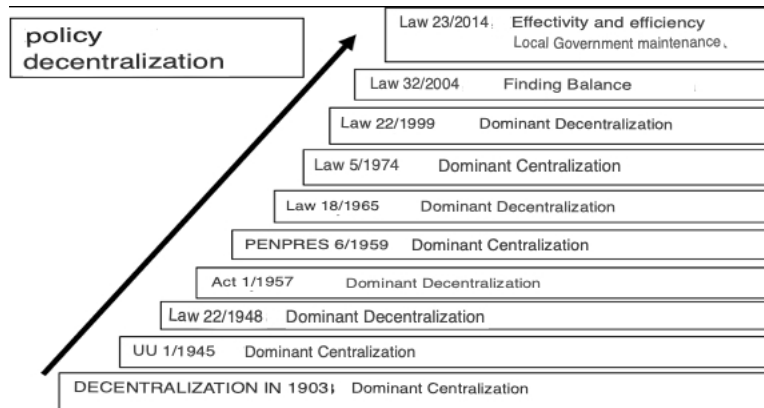
⁴ Benjamin Smith, "The Origins of Regional Autonomy in Indonesia: Experts and The Marketing of Political Interest" *Journal of East Asian Studies* 8, No. 2, (2008): 221-234, <https://doi.org/10.1017/S1598240800005300>.

⁵ Ira Fadilla Rohmadanti, et.al., "Disharmony of Domestic Refining Provisions for Mineral and Coal in Indonesian Laws and Regulations", *Pandecta: Reseach Law Jurnal* 17, no. 1 (2022): 1-17, <https://doi.org/10.15294/pandecta.v17i1.31236>.

⁶ Robert Dahl, *"Dilemmas of Pluralist Democracy: Autonomy Vs Control (Yale Studies In Political Science)"*, (Yale University Press, New Heaven: 1983): 22.

and diversity of regions within the Unitary State system of the Republic of Indonesia.⁷ Following the reform of the 1945 Constitution, the legal framework for decentralization has undergone fluctuations,⁸ Until recently, the regulations governing local government were stipulated in Law Number 23 of 2014 concerning Regional Government.

Figure 1. Dynamics of Decentralization/Centralization Policy⁹



Political Sociologist Larry Diamond asserted that regional autonomy with independent governance fosters the advancement of democracy across various dimensions, particularly in the economic sector, which he refers to as the enhancement of the economic community and is attuned to the needs of its citizens.¹⁰ Local governments are delegated authority by the national government to

⁷ General Explanation of Law No. 23 of 2014 concerning Regional Government

⁸ The ups and downs are seen in the law on the local government sector and also regarding the election of regional heads, as in Law No. 32 of 2004, Law No. 12 of 2008, Law No. 23 of 2014, PERPPU 2 of 2014, Law No. 2 of 2015 and Law No. 9 of 2015.

⁹ Source: Socialization of Law No. 23 of 2014 by PROF. DR. H. Zudan Arif Fakrulloh, SH MH, December 16, 2014.

¹⁰ Diamond began his research by assessing the "third wave" of global democratization that began in 1974. With a wealth of quantitative data and case illustrations, he points out that the third wave is over, leaving a growing gap between the electoral form and the liberal form. With regard to the substance of democracy, he underlined the vacuum and fragility in many democracies and the importance of consolidation. He then defined the concept of democratic consolidation and identified the conditions that drove it. These include strong political institutions, appropriate institutional design, decentralization of power, a dynamic civil society, and improved economic and political performance. Larry Diamond. *Developing Democracy: Toward Consolidation*. (Baltimore: Johns Hopkins University Press, 2003) 120.

manage all financial issues,¹¹ frequently referred to as fiscal decentralization.¹² In Indonesia's decentralization framework, political decentralization grants local governments autonomous authority over regional policies. In contrast, budgetary decentralization enables them to levy taxes and operate businesses to generate economic advantages for their regions.¹³

There are PD (Regional Revenue) and PAD (Regional Original Revenue) frameworks in the domain of regional finance.¹⁴ Article 1, paragraph (13) emphasizes the need for professional development. Regional Revenue is the prerogative of the Regional Government and is recognized as an enhancement of net worth throughout the pertinent fiscal year. This is emphasized in Article 1, paragraph (20) of Law Number 1 of 2022 regarding PAD regarding Financial Relations between the Central Government and Regional

¹¹ See in the General Explanation section of Law 1/2022 Improving the implementation of Financial Relations between the Central Government and Regional Governments is carried out as an effort to create an efficient allocation of national resources through a transparent, accountable, and fair Financial Relationship between the Central Government and Regional Governments, in order to realize the equitable distribution of public services and improve the welfare of the community in all corners of the Unitary State of the Republic of Indonesia. In realizing these goals, the Financial Relationship between the Central Government and Regional Governments is based on 4 (four) main pillars, namely: developing a tax system that supports efficient allocation of national resources, developing Financial Relations between the Central Government and Regional Governments in minimizing vertical and horizontal inequality through TKD and Regional Debt Financing policies, encouraging the improvement of the quality of Regional Expenditure, as well as harmonizing fiscal policies between the Government and Regions for the implementation of optimal public services and maintaining fiscal sustainability.

¹² Fiscal decentralization is the delegation of revenue owned by the central government to local governments as a consequence of the delegation and distribution of power from the central to the regions. Briefly, the historical explanation of the birth of fiscal decentralization emerged after the idea of dividing the responsibility for implementing government from a centralized government to a decentralized system. See Paul Smoke, "Fiscal Decentralization in Developing Countries: A Review of Current Concept and Practice", *Democracy, Governance and Human Rights Programme Paper Number 2, United Nations Research Institute for Social Development* (2001): 2.

¹³ Thomas B. Phepinsky, Maria M. Wihardja, "Decentralization and Economic Performance in Indonesia", *Journal of East Asian Studies* 11, (2011): 337-371. <http://www.jstor.org/stable/23419041>.

¹⁴ Junaidi A Devita, A Delis, "Pengaruh Pendapatan Asli Daerah, Dana Alokasi Umum Dan Jumlah Penduduk Terhadap Belanja Daerah Kabupaten/Kota Di Provinsi Jambi," *Jurnal Perspektif Pembiayaan dan Pembangunan Daerah* 2, no. 2 (2014): 63–70. <https://doi.org/10.22437/ppd.v2i2.2255>.

Governments (Law 1/2022). Regional Original Revenue, hereafter designated as PAD, encompasses funds generated via regional taxes, regional levies, the management of distinct regional assets, and other legitimate regional original Revenue prescribed by relevant laws and regulations.¹⁵

This Article stipulates that all regional revenue activities must adhere to legal procedures mandated by law, specifically through Regional Regulations that comply with existing laws and regulations, utilizing the instruments for implementing these Regional Regulations, which must also align with other legal frameworks. The requirements of Law 1 of 2022 on Central and Regional Financial Relations (Law 1/2022) must comply with existing laws and regulations)¹⁶ Additionally, it governs the legally permissible sources of regional Revenue. The Regional Revenue in the context of Decentralization comprises Regional Revenue and Financing, which includes Regional Original Revenue, general allocation funds, special allocation funds, profit-sharing funds, and other legally permissible income.¹⁷

¹⁵ This is reaffirmed in Article 2 of the Law on the Financial Balance of Local and Central Governments, namely: (1) The Financial Balance between the Government and the Regional Government is a subsystem of the State Finance as a consequence of the division of duties between the Government and the Regional Government. (2) The provision of State financial resources to Regional Governments in the context of the implementation of Decentralization is based on the assignment of tasks by the Government to Regional Governments with regard to fiscal stability and balance. (3) The Financial Balance between the Government and Regional Governments is a comprehensive system in the context of funding the implementation of the principles of Decentralization, Deconcentration, and Assistance Tasks.

¹⁶ Fitria Ningrum Sayekti, "Penerapan Sistem Pengelolaan Barang Milik Daerah dan Kewajaran Laporan Keuangan Pemerintah Daerah", Jurnal *EKUBIS* 2, no. 1 (2017); 147-159, https://www.researchgate.net/publication/325398360_Penerapan_Sistem_Pengelolaan_Barang_Milik_Daerah_dan_Kewajaran_Laporan_Keuangan_Pemerintah_Daerah.

¹⁷ Based on the provisions of the Article, there are several understandings. To categorize regional income as PAD, the basis for reference is the local Regional Regulation. Every government action must have a legal basis in the form of Regional Regulations, not only relying on laws and regulations outside of the Regional Regulation, such as PP, Ministerial Regulations and Laws. Regional regulations are an absolute prerequisite for regions to benefit from every government action, which in this case is utilization. To be able to benefit from BMD, there must be a Regional Regulation that specifically regulates BMD, if this does not exist then the income from the use of BMD is illegal income.

Kosec and Tewodaj Mogues, in their research, asserted that increased formal decentralization in democratic nations correlates with more significant challenges for public services in achieving social welfare. This represents a type of fiscal decentralization wherein regions must innovate to generate regional financial Revenue.¹⁸ Fiscal decentralization is intrinsically linked to executing regional autonomy for managing regional finances following their potential.¹⁹ Sambanis et al. elucidated that fiscal decentralization compels regions to assess their unique characteristics and capability to implement it, ensuring the genuine realization of welfare.²⁰

One method to generate regional financial Revenue is utilizing regional property (Barang Milik Daerah/BMD)), a legally sanctioned instrument protected by laws and regulations. Numerous statutes and regulations contain multiple references to BMD. According to Law Number 1 of 2004 About the State Treasury (Law 1/2004), Regional Property (BMD) encompasses all assets acquired or received through the APBD expenditure or other lawful sources. Law Number 33 of 2004 on Financial Balance Between Central and Regional Governments (Law 33/2004)²¹ employs a phrase that aligns with Law 1/2004, specifically BMD.²²

Unlike Law 1/2004 and Law 33/2004, Law Number 17 of 2003 about State Finance (Law 17/2003) employs the term "Regional Wealth." Despite the differing terminology, they conceptually align with the definition of BMD. Article 2, letter g of the State Finance Law delineates state wealth or regional wealth, which may be managed independently or by third parties, encompassing monetary

¹⁸ Katrina Kosec & Tewodaj Mogues, "Decentralization Without Democracy". *World Politic: A Quartel Journal of International Relation* 72, no. 2, (2020): 165-213. <https://doi.org/10.1017/S0043887120000027>.

¹⁹ Bambang Brodjonegoro, "Fiscal Decentralization and Its Impact on Regional Economic and Development and Fiscal Sustainable", in *Decentralization and Regional Autonomy in Indonesia Implementation and Challenges*, ed Coen J.G. Holtzappel & Martin Ramstedt, (Singapore: Iseas Publishing, 2009), 202.

²⁰ Sambanis, Nicholas., & Milanovic, Branko. "Explaining Regional Autonomy Differences in Decentralized Countries". *Comparative Political Studies* 47, No. 13, (2014): 1855. <https://doi.org/10.1177/0010414013520524>.

²¹ Which was then repealed by Law Number 1 of 2022 concerning the Financial Balance Between the Central and Regional Governments, also uses the same term as before, namely BMD.

²² Article 55 of the Financial Balance Law: Regions cannot provide guarantees for loans from other parties. Regional Revenue and/or Regional property cannot be used as collateral for Regional Loans.

assets, securities, receivables, goods, and other rights with economic value, including assets segregated from state or regional enterprises; within this context, 'goods' constitute a component of the region's wealth. Analogous to the State Finance Law, Law Number 28 of 2009 regarding Regional Taxes and Levies (Law 28/2009)²³ utilizes the identical terminology as Law 17/2003, precisely 'regional wealth'.²⁴

The definition of regional wealth in Law 28/2009 aligns with the definition of BMD in Law 1/2004, as evidenced by the elucidation of Article 128 of Law 28/2009, which states that the utilization of regional wealth includes "leases of land and buildings...."²⁵, where land leases constitute a form of BMD utilization following Law No. 1/2004 and its subsequent regulations. As a form of regional wealth or assets, BMD constitutes a source of financial income for the region through its utilization. Government Regulation Number 27 of 2014 regarding the Management of State/Regional Property (PP 27/2014) defines utilization as the use of State/Regional Property that is not employed for the execution of the responsibilities and functions of Ministries/Institutions/Regional Apparatus work units, and/or the optimization of State/Regional Property without altering the ownership status.²⁶

The central government is a coach and overseer of BMD management, specifically represented by the Minister of Home Affairs (Mendagri). As a coach one aspect of coaching involves developing a Ministerial Regulation as an NSPK (Norms, Standards, Procedures, and Criteria), which serves as a regional reference for executing all local government operations and formulating Regional

²³ Currently, it has been revoked and is not valid by Law Number 1 of 2022 concerning Financial Balance Between the Central and Regional Governments.

²⁴ See in Article 128 of the PRDR Law: (1) The object of the Levy on the Use of Regional Wealth as referred to in Article 127 letter a is the use of regional wealth. (2) Excluded from the meaning of the use of regional wealth as intended in paragraph (1) is the use of land that does not change the function of the land.

²⁵ See in the Explanation Section of Article 128 of the PDRD Law: Use of Regional Wealth, among others, the rental of land and buildings, laboratories, rooms, and motor vehicles.

²⁶ See also in the Explanation section of PP 27/2014: State/Regional Property in the form of land and/or buildings that are not used in the administration of government and are not being used must be handed over to the Goods Manager. The Utilization and Transfer of State/Regional Property is carried out in the context of optimizing the utilization of State/Regional Property and to support the financial management of the State/Region.

Regulations. Article 90 of GR 27/2014 underscores that the Minister of Finance oversees the administration of State Property and formulates policies for the management of State and Regional Property. The policy outlined in paragraph (1) comprises the overarching policy on State/Regional Property and/or the technical policy about State Property. The Minister of Home Affairs shall offer direction on the administration of Regional Property and establish policies in alignment with the overarching policy outlined in paragraph (2).

In executing coaching, the Minister of Home Affairs relies on policies established by the Minister of Finance. This relational pattern subsequently engenders other issues. The primary issue in regulating the BMD sector at the central government level is the absence of cooperation among ministries. In formulating the Permendagri, which serves as a regional guideline, it is essential to consult the Ministry of Finance, as stipulated in PP 27/2014. Consequently, it engenders legal ambiguity within the regional regulatory framework of the BMD sector. The Minister of Finance has changed around three times since the issuance of the PP, whilst the Minister of Home Affairs has yet to adapt to the requirements. Furthermore, the Permendagri inadequately addresses several critical aspects as regional guidelines, resulting in numerous Regional Regulations/Regional Heads directly referencing the Minister of Finance, despite PP 27/2014 indicating that the Permenkeu is designed to govern BMN, which operates under a distinctly different regime from BMD.

The imperative to reform BMD sector rules in the future is to ensure that central government regulations are accommodating and serve as a regional framework for governmental actions. Conversely, local governments must enhance BMD management efficacy to bolster regional Revenue, thus achieving financial independence and robustness. If the local government possesses robust financial resources, the needs and welfare of the community will be addressed more expeditiously by the local authority.

Based on the aforementioned preliminary description, this study delineates the following issues: (1) the regulation of the regional property industry at both central and regional levels. (2) Format for reorganizing regulations about the regional property sector.

Method

This study primarily examines the legislation and regulations governing the BMD sector at both the central and regional levels. The researcher's perspective on this study perceives rules and regulations as a collection of ordered, interrelated, and systematically arranged systems. This study employs a legal (normative) research methodology.²⁷ According to Peter Mahmud Marzuki, legal research (normative) constitutes a scientific endeavour grounded in specific methods, systematic approaches, and theoretical frameworks. Its objective is to examine one or more distinct legal phenomena through analysis, facilitating the discovery of legal rules, principles, and doctrines to address pertinent legal issues. This aligns with the essence of legal science, which seeks to ascertain the coherence of the rule of law with legal norms, the alignment of mandates or prohibitions with legal principles, and the conformity of individual actions with these legal standards. The employed methodologies include legal and regulatory strategies and conceptual and case-based approaches. The legal materials comprise primary legal materials (statutes and regulations) and secondary legal materials (scholarly literature and commentary).

Result and Discussion

A. Problems of BMD Sector Regulation in Central and Regional Level Regulations

The fundamental concept of government decentralization grants regions the right to administer and regulate their domestic affairs, which also entails the capacity for regional authorities to establish legal policies as a manifestation of the implemented decentralization. Legal policies, manifested as regional laws established by local governments, aim to advance regional development objectives to enhance regional governance. This is intrinsically linked to Mochtar Kusuma Admadja's notion that the law cannot exist in isolation; it is inherently connected to various

²⁷ Febriansyah Ramadhan, & Ilham Dwi Rafiqi, "Penentuan Jenis Produk Hukum Dalam Pelaksanaan Putusan Mahkamah Agung Tentang Hak Uji Materil (Kajian Terhadap Tindak Lanjut Putusan Mahkamah Agung 28 P/Hum/2018)", *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1, (2022): 55-76, <https://dx.doi.org/10.33331/rechtsvinding.v11i1.850>.

surrounding factors, including the promotion of socio-economic and political advancement. Consequently, the extensive responsibilities²⁸ of local governments must be addressed through responsive and accommodating local regulations to meet developmental demands.

The regional regulation formation issue represents a missing link or a lack of harmony with higher hierarchical rules. This may stem from various factors, including a sluggish response to changes and needs among the referenced and referring regulations and contradictions and legal antinomies with the higher-level rules that serve as benchmarks for local governments. This situation results in dualism in the reference direction for local authorities, which is also closely tied to the management of the BMD sector. This critical area significantly contributes to the region's original income.²⁹

A primary issue with BMD sector regulation is the inadequate coordination between the Ministry of Home Affairs and the Ministry of Finance, resulting in regional laws lacking a robust legal foundation. PP 27/2014 distinctly delineates the BMN management system from the BMD despite being governed under a single regulation. Despite their separation, a legal strategy aims to establish a unified structure between BMN and BMD.

This is shown in Article 90: The Minister of Finance shall offer direction on the administration of State Property and formulate policies for the governance of State/Regional Property. The policy outlined in paragraph (1) encompasses the overarching policy on State/Regional Property and/or the technical policy of State Property. The Minister of Home Affairs shall offer direction on the administration of Regional Property and establish policies in alignment with the overarching policy outlined in paragraph (2). The item conveys that the Minister of Finance is empowered to offer guidance on BMN/BMD management; nevertheless, the Minister's ability to implement technical guidance or policy is restricted solely to BMN (see paragraph 2). All remaining general and technical policy issues concerning BMD are delegated to the Minister of Home Affairs. In formulating regional regulations concerning BMD

²⁸ Electrananda Anugerah As- Shidiqi, "Rule of Law Dalam Perspektif Critical Legal Studies", *Amnesti: Jurnal Hukum* 3, no. 1, (2021): 25-36. <https://doi.org/10.37729/amnesti.v3i1.895>.

²⁹ Zainal Arifin Muchtar & Eddy O.S.Hiariej, *Dasar-Dasar Ilmu Hukum : Memahami Kaidah, Teori, Asas dan Filsafat Hukum*, (Jakarta: Red and White Publishing, 2022), 181-209.

management, local governments must adhere to the regulatory instruments issued by the Minister of Home Affairs, which are informed by overarching policies from the Minister of Finance.

Since the introduction of PP 27/2014, the Minister of Finance's Regulation has undergone three amendments: Regulation Number 78/PMK.06/2014 regarding Procedures for the Utilization of State Property, Regulation Number 164/PMK.06/2014 concerning Procedures for the Utilization of State Property in Infrastructure Provision, subsequently amended by Regulation Number 65/PMK.06/2016, and Regulation Number 57/PMK.06/2016 concerning Procedures for Leasing State Property. Nevertheless, as of today, the Minister of Home Affairs Regulation governing the management of BMD remains limited to a single product, specifically Permendagri 19/2016.

This is a significant issue regarding whether the legal framework in PP 27/2014, which mandates the integration of management models between BMN and BMD, has been effectively implemented in central laws. From the standpoint of institutional politics, the desire to establish coherence in the regulatory framework is impeded by the roles of the Minister of Home Affairs and the Minister of Finance in cross-coordination. The Minister of Home Affairs is coordinated by the Coordinating Minister for Political Affairs and Security, whereas the Coordinating Minister for Economic Affairs coordinates the Minister of Finance.

The inadequate cooperation across the ministries presents practical challenges. The Minister of Finance has promptly reacted to alterations, whilst the Minister of Home Affairs remains unchanged. This is evident in various instances, particularly concerning the stipulations of BMD leases,³⁰ The provisions regarding 'rental tariff factors and rent adjustments' in the BMD are not entirely incorporated,³¹ whereas the Minister of Finance

³⁰ Rent is a form of BMD utilization. Article 27 of PP 27/2014 explains: The form of Utilization of State/Regional Property is in the form of: 1. Rent; 2. Borrow and Use; 3. Utilization Cooperation; 4. Build for Submission or Wake Up for Submission; or Cooperation in the Provision of Infrastructure.

³¹ Article 117: The rental rate formula for regional property is the result of multiplication of: the basic rate of rent; and rental adapter factor. Article 118 1. The principal rental rate as intended in Article 117 letter a is the result of multiplication between the index value of regional property with the area of land and/or buildings and the fair value of land and/or buildings. 2. The basic rental rate as intended in paragraph (1) is differentiated for: a. regional property in the

Regulation 115/PMK.06/2020 comprehensively presents the determining factors for leases.

Article 126, paragraph (3) of Permendagri 19/2016 stipulates that the rent adjustment factor, as mentioned in paragraph (1), is decided by the Governor, Regent, or Mayor, delegating the authority to the Regional Head. The inquiry pertains to the regulations that underpin the Regional Head's determination of the rent adjustment factor, as Permendagri 19/2016 fails to address these requirements adequately. Consequently, there are instances where a third party evaluates that the regional head has established an excessively high rental rate and is not grounded in a transparent calculation consistent with applicable rules and regulations. This resembles the situation between PT. Telkom and the Surabaya City Government.³²

Many regions currently reference the Minister of Finance for rent adjustment factors, despite the explicit stipulation that the Minister's authority is limited to regulating the NSPK just for BMN,³³ not for BMD. The Mayor of Surabaya's Regulation Number 80 of 2016 regarding the Rental Rate Formula for Regional Property, encompassing Land and/or Buildings, is based on the rental rate

form of land; b. regional property in the form of buildings; c. regional property in the form of part of land and buildings; and d. regional property other than land and/or buildings. 3. The basic rate of rental of regional property in the form of land and/or buildings as intended in paragraph (2) letters a, b and c can include the formula for renting regional property in the form of building infrastructure. Article 126: 1. The rent adjustment factors as referred to in Article 117 letter b include: a. the type of business activities of the tenant; b. the institutional form of the tenant; and c. lease period. 2. The rent adjustment factor as intended in paragraph (1) is calculated as a percentage. 3. The rent adjustment factor as intended in paragraph (1) is determined by the Governor/Regent/Mayor.

³² In this case, the Surabaya City Government carried out control over the utility network owned by PT. Telkom because Telkom does not pay rent. On the other hand, Telkom argued that PT. Telkom as a state-owned company (BUMN) that uses land without changing its functions, is free and rents and levies as affirmed in Article 127 of Law 28/2009. See in several media reports: The Surabaya City Government collects telecommunication network leases, this is what the Ombudsman said. Visited on November 10, 2022, In <https://industri.kontan.co.id/news/pemkot-surabaya-memungut-sewa-jaringan-telekomunikasi-ini-kata-ombudsman>.

³³ See in Article 90 of GR 27/2014: (1) The Minister of Finance conducts guidance on the management of State Property and establishes policies for the management of State/Regional Property. (2) The policy as intended in paragraph (1) consists of the general policy of State/Regional Property and/or the technical policy of State Property.

formula outlined in the Minister of Finance Regulation Number 57/PMK.06/2016 concerning the Procedures for Implementing the Rental of State Property.³⁴ Subsequently, Karawang Regent Regulation Number 90 of 2018 pertains to the Procedures for implementing Property Utilization. The Perbup implements the rental rate formula and rent adjustment variables stipulated in Minister of Finance Regulation Number 57/PMK.06/2016 about the Procedures for Leasing State Property.³⁵

An instance of inadequate coordination between the Minister of Home Affairs and the Minister of Finance is evident in the subsequent regulation of Article 128 of the Regional Tax and Levy Law, which lacks a definitive format or rule at the level of implementing regulations, including Government Regulations, Ministerial Regulations, and Regional Regulations. Article 128 of the Tax and Regional Levies Act: The purpose of the Levy on the Use of Regional Wealth, as specified in Article 127 letter a, is to utilize regional assets. Paragraph (1) excludes from the definition of regional wealth any land use that does not alter the land's purpose.³⁶ Article 127 elucidates that the tax on utilizing regional resources constitutes a kind of business taxation. The PDRD Law elucidates various aspects, mainly by using regional riches. The utilization of regional riches includes, among other factors, the leasing of land, buildings, labs, rooms, and automobiles. One definition of the utilization of regional riches pertains to land renting. The author asserts that land leasing is synonymous with the idea of BMD, specifically renting, where one BMD application is in the form of land and/or structures (see: Permendagri 19/2016).

Article 128 of the PDRD Law explicitly references regional levies and the utilization of regional resources. If it crosses with regional taxes, refer to the Minister of Finance or the Directorate General of Financial Balance. Subsequently, those that intersect with

³⁴ This provision has just been updated by the Mayor of Surabaya Regulation Number 1 of 2022 concerning the Rental Tariff Formula for Regional Property in the Form of Land and/or Buildings. In one of the foundations remembering, it has removed all provisions related to central regulations regarding BMN.

³⁵ See in the Basis of Remembering Number 7 of Karawang Regent Regulation Number 90 of 2018 concerning Procedures for the Implementation of the Utilization of Regional Property.

³⁶ This provision has also been revoked, by Law 1/2022. This is further explained in the next section.

regional wealth (BMD) should be sent to the Minister of Home Affairs, the Directorate General of Regional Financial Development.

Permendagri 19/2016 requires an amendment to incorporate details regarding the calculation methodology of the rent adjustment formula. The objective is to establish legal clarity for the BMD management framework implemented by local governments, providing them with a definitive foundation and base. This will serve as the primary reference for local governments in executing management, particularly regarding rent, which, if implemented, will foster peace and uniformity in perception among various regional governments. Harmony is essential, as a third party invests in and facilitates the development executed by a single legal organization across many locations. This also reinforces the assurance of commerce, enterprise, and investment. Additionally, Law Number 1 of 2022 on Financial Relations between the Central and Regional Governments (Law 1/2022) has been enacted, fundamentally governing numerous aspects of BMD.

B. Format for Rearranging Regulations on the Regional Property Sector

The author employs a paradigm based on the legal function articulated by Bagir Manan to reorganize the regulation of the BMD industry. Bagir Manan asserted that the functions of laws and rules can be categorized into two primary groups, namely:³⁷ First, the internal function pertains to regulating legislation as a sub-system of law (legal law) within the overarching legal rule system. Laws and regulations fulfil the roles of law creation, legal reform, integration of legal pluralism, and ensuring legal certainty. Laws and rules serve multiple tasks inside:³⁸

- a. The role of legislation formulation. The establishment of law (*rechtschepping*) that generates a system of widely recognized legal principles occurs through several means, specifically by judicial rulings (jurisprudence).³⁹ Habits that develop as practices within a community or state, alongside rules and regulations as formal decisions made by officials or governing

³⁷ Bagir Manan, *Fungsi dan Materi Peraturan Perundang-undangan*, Paper submitted in Jakarta in 1994, 47.

³⁸ *Ibid*, 17-20

³⁹ *Ibid*, 6.

authorities that are universally applicable.⁴⁰ The politics of national legal development emphasize using laws and regulations as the primary instrument. Contrast it with jurisprudential law and customary law. This is partly because national laws utilizing regulations as a tool can be formulated systematically.⁴¹

- b. The purpose of legal reform. Laws and regulations serve as a more effective mechanism for reform than customary law or jurisprudential law. Establishing laws and rules can be systematically organized, enabling the strategic planning of legal reform. Laws and regulations serve purposes beyond merely altering current statutes.⁴² Updating national laws and regulations established post-independence, which are now misaligned with contemporary demands and advancements, is equally crucial.⁴³
- c. The role of legal clarity. Legal certainty facilitates the incorporation of pluralism within the legal system.⁴⁴ Currently, Indonesia possesses multiple legal systems, specifically the continental (Western) legal system, customary law system, religious legal system (predominantly Islamic), and national legal system.⁴⁵ The current pluralism of the legal system is a colonial legacy that requires reorganization. The reorganization undermines many legal systems, particularly the one that exists as a tangible fact upheld in public relations.

⁴⁰ Paul Sanyaolu, C.O. Sanyaolu nad J. Segun, "The Process of Law Making By The Legislature In Democratic, Setting", dikunjungi pada 10 November 2022, di https://www.researchgate.net/publication/319630143_The_Process_Of_Law_Making_By_The_Legislature_In_A_Democratic_SetTING

⁴¹ *Ibid.*

⁴² Amartya Sen, "What Is The Role Of Legal And Judicial Reform In The Development Process?", *World Bank Legal Conference*, (Washington DC, 2000) 2. https://doi.org/10.1163/9789047411727_004.

⁴³ *Ibid.*, 2.

⁴⁴ Legal pluralism must be distinguished between the pluralism of the legal system and the pluralism of legal principles. In Indonesia, there is pluralism both in the legal system and the rule of law. Pluralism of the legal system because it applies to the Western legal system, the customary law system and so on. The pluralism of legal principles, for example, there are differences in laws that apply to Java and Madura and Outer Java-Madura. The pluralism of legal rules can occur in one legal system, due to certain needs.

⁴⁵ Bagir Manan, *Fungsi Dan Materi Peraturan Perundang-Undangan*, Paper presented in Jakarta in 1994, p. 6.

Legal certainty is a fundamental premise in legal actions and law enforcement.⁴⁶

- d. It is widely acknowledged that governmental legislation and regulations offer greater legal certainty than customary or jurisprudential law. Nonetheless, it is essential to recognize that the certainty of laws and regulations is not only derived from their written form (*geschreven*).⁴⁷ To provide legal certainty, laws and regulations must precisely fulfil formal requirements and additional prerequisites:⁴⁸ (1) Explicit in their formulation (unequivocal). (2) Consistent in its formulation, both internally and outwardly. Internally consistent denotes that within the same laws and regulations, a systematic link must be upheld among the rules, structural diversity, and terminology. Externally consistent refers to a "harmonizing" relationship among numerous rules and regulations. (3) Utilization of suitable and comprehensible language. The language of rules and regulations should reflect the vernacular generally employed by the people. However, this does not imply that legal terminology lacks significance. Legal language, organization, terminology, and a specific writing style must be employed temporarily as it assures legal certainty. Disregarding the circumstances above, statutes and regulations may exhibit more significant uncertainty than customary law or jurisprudential law.

Second, the external function pertains to the interaction between rules and regulations and their respective application areas. This exterior role is termed the social and legal function, encompassing the functions of change, stabilization, and convenience. Consequently, this role can also pertain to customary law or jurisprudential law. In Indonesia, rules and regulations will predominantly fulfil this social function due to the many aforementioned concerns. The following social functions can be identified:⁴⁹

⁴⁶ Vivi Oktaviani Pulukadang, Novendri M. Ngilu, Fence M. Wantu, "Regulatory Arrangement in The Welfare Sector Using the Omnibus Law Method", *AIP Conference Proceedings*, 2. <https://doi.org/10.1063/5.0110473>.

⁴⁷ Stefani Berteau, "Towards A New Paradigm of Legal Certainty", *Legisprudence* 2, Issue 1, (2008): 26. <https://doi.org/10.1080/17521467.2008.11424672>.

⁴⁸ *Ibid.*

⁴⁹ Bagir Manan, *Fungsi dan Materi Peraturan Perundang-undangan*, *Op.Cit.*, p. 21-22.

- a. Modify function. Legal education circles have long recognized the role of law as a mechanism for reform, often referred to as "law as social engineering".⁵⁰ Laws and regulations are established to promote societal change in economic, social, and cultural domains. A "patrilineal" or "matrilineal" civilization may transition to a "parental" society via marriage rules and regulations.
- b. Stabilization mechanism. Legislation and regulations can also serve as stabilizing mechanisms.⁵¹ Criminal laws and regulations about order and security are primarily designed to ensure societal stability.⁵² The principles of stability may also encompass economic activity, including employment structures, corporate configurations, and others. Likewise, in the field, oversight of other cultures can serve to reinforce the prevailing socio-cultural system.
- c. Utility function. Laws and regulations may serve as instruments for the regulation of certain facilities.⁵³ Legislation and rules featuring incentive measures, including tax relief, deferral of tax imposition, simplification of licensing processes, and capital structure in investment, constitute rules of convenience. However, it should be highlighted that convenience regulations do not always instantly fulfil their intended objective of providing convenience. Beyond the facilities above, additional prerequisites in investment include

⁵⁰ This teaching originated from Roscoe Pound. In Indonesia, it was popularized by Prof. Mochtar Kusuaatmadja.

⁵¹ In Stefanie and Frank "Stability, Predictability and The Rule Of Law: Stare Decicis As Reciprocity Norm" states that stability is a basic part of what is meant by law, without the law it is difficult for citizens to regulate and manage all their affairs effectively. Legal stability also has moral value as long as the stable law provides an equal value before the law and is carried out in a compliance. Stefanie A. Lindquist and Frank C. Cross, "Predictability and The Rule Of Law: Stare Decicis As Reciprocity Norm". visited on November 10, 2022, in <https://law.utexas.edu/conferences/measuring/The%20Papers/Rule%20of%20Law%20Conference.crosslindquist.pdf>.

⁵² An Introduction to Law And Society, visited on November 10, 2022, https://in.sagepub.com/sites/default/files/upm-assets/86864_book_item_86864.pdf?fbclid=IwAR3ZrxhXXnDUUnreuxUZFmls9iwOz-8P_tUwwDkwcb3RE51IMyvJSVbnnQZo.

⁵³ Dana Burhardt, "The Function of Law and Their Challenges: The Differentiated Functionality of International Law", *German Law Jurnal* 20, 4 (2019): 410, <https://doi.org/10.1017/glj.2019.29>.

political stability, economic infrastructure, employment opportunities, and similar factors.

Bagir Manan's perspective elucidates the roles of rules and regulations, delineating the function of a reformative vision for the future. This indicates that regulatory modifications inside a country are unavoidable in addressing every difficulty and assessing the prior system. Within the context of legal policy, elucidate the rationale for the restructuring or renewal of laws and regulations, the objectives to be attained, and the format of the reform.

The reform of BMD sector regulation aims to realign secondary legislation⁵⁴ with core legislation that has experienced significant changes. A singular statute does not govern BMD; it is delineated throughout multiple laws and regulations, including Law 17/2003, Law 1/2003, Law 33/2014, Law 28/2009, Law 23/2014, and Law 1/2022. The formulation of implementing rules necessitates meticulous attention due to its dispersion over numerous statutes.

Revising BMD sector regulations is essential, as Indonesia aims to effectively 'record and utilize' assets to bolster regional and national finances. Consequently, clarity of legal rules is required to prevent practical issues during implementation at the regional level. To ensure that the receipt of benefits from BMD generates direct regional income without impediments. The assurance of legal laws significantly impacts economic development and progress at the regional level. In this instance, government rules face significant challenges; if BMD sector regulations offer assurance, third parties will undoubtedly reconsider cooperating under the "BMD utilization" plan. Implementing BMD is an innovation that provides economic advantages to local governments. Consequently, restructuring must be executed to ensure that governmental and third-party innovations in the utilization of BMD are implemented effectively, thereby realizing economic advantages for local

⁵⁴ Lord Beith, Barones Corston, in his article *The Legislative Process: The Delegation of Powers* explains that the executive has empirical experience in adapting a general policy rule (law) to the challenges in the field, thus allowing the delegated legal rules to regulate in more detail. He said: Delegated legislation allows the executive to "work out the application of the law in greater detail" within the principles laid down by primary legislation. House of Lords, *The Legislative Process: The Delegation of Powers*, (HL, 2017): 19, <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/225/225.pdf> f.

governments and fulfilling the welfare of the populace. Claudio R. Frischtak previously expressed his perspective regarding the interplay between regulatory reform, financial innovation, and the adjustment process within prevailing dynamics. He states:⁵⁵

“Regulatory reform ensures these regulations fully respond to changes in the economic, social and technical conditions surrounding them. Many reforms are stimulated by technological developments that have changed the underlying cost and competitive structure in industries ranging from telecommunications to banking to biotechnology. At the same time, regulatory reform is a powerful stimulus to further innovation. Competition-enhancing reforms in both the manufacturing and service sectors have been essential to developing and diffusing new technologies, such as the Internet, automatic teller machines and optical scanners in supermarkets. The redesign of approaches to environmental, safety and health regulation has increased the flexibility of firms in developing innovative solutions to social problems with an emphasis on prevention rather than mere control. Streamlining administrative regulations has reduced the cumulative burden on business, freeing up resources for research and technology development. However, as these reforms have unleashed a new round of technical change, unforeseen side effects and different technology impacts have emerged to underline the need for regulatory revisions again.

According to the description above, rearrangement is unavoidable. The future restructure format, namely the implementing regulation on BMD, is more suitably executed by a single ministry without necessitating reference to or coordination with the Minister of Finance "in" the development of the Minister of Home Affairs Regulation.

To ensure the future harmonization of regulatory forms between BMD and BMN, coordination will occur at the level of Government Regulations rather than Ministerial Regulations, thereby eliminating the necessity for provisions requiring the Minister of Home Affairs to consult the Minister of Finance, subsequently, by delineating Government Regulations between the

⁵⁵ Claudio R. Frischtak, *“Regulatory Policies and Reform: A Comparative Perspective”*, (New York: Private Sector Development Department The World Bank: 1995), 16.

BMD and BMN frameworks. Bayu Dwi Anggono⁵⁶ asserts that Government Regulations fall under *verordnungs* (delegation/implementing regulations). Government regulation cannot exist without delegated legislation. The delineation of government rules governing BMD and BMN is necessary to ensure that each set of regulations aligns with the law, given the disparate and dynamic nature of BMD and BMN across various legal frameworks. Currently, inter-ministerial collaboration remains sectoral, namely occurring during the formulation phase of the Permendagri, which serves as a framework for establishing regional rules. Coordinating this is challenging due to the divergent lines of authority; the Minister of Home Affairs reports to the Coordinating Minister for Politics and Legal Affairs, while the Minister of Finance reports to the Coordinating Minister for the Economy.

Table 1. Some New Provisions in the BMD Sector in the Law

UU 11 /2020	UU 1/2022
Article 19 (1) As stipulated in Article 18 paragraph (3), the public consultation for the development plan is conducted to secure consensus on the development plan's location from: a. Entitled Parties; b. Managers of State Property/Regional Property; and c. Users of State Property/Regional Property.	Article 38 Paragraph (3) The PBB-P2 object, as delineated in paragraph (1), excludes the ownership, control, and/or utilization of: a. Land and/or government office buildings, regional government offices, and other state administrative offices classified as state or regional property;
	Article 158 (1) Regional properties and/or financing objects funded by Regional Sukuk may serve as the foundation for issuing Regional Sukuk.

Such a restructuring will enable the central government's leadership and supervision, represented by the Minister of Home Affairs, to be executed successfully by adhering to the legislative instruments it has issued.

This restructuring enables the law to be an effective regulatory mechanism in legal reform. The legal change aims to ensure

⁵⁶ Bayu Dwi Anggono. Dwi “Perkembangan Jenis, Hierarki Dan Materi Muatan Peraturan Perundang-Undangan: Permasalahan Dan Solusi.” Prosiding Konferensi Nasional Hukum Tata Negara (Knhtn) Ke – 4 “Penataan Regulasi Di Indonesia”, (2017): 908.
<https://repository.unej.ac.id/handle/123456789/84268>.

regulatory clarity in the BMD industry (*rechtszekerheid*), as this is a fundamental principle in legal actions and law enforcement (*hand having, uitvoering*). Should the regulation of the BMD sector at the central level possess legal clarity, external regulatory consistency will ensue, characterized by a "harmonization" relationship among the corpus of laws and regulations. Bayu Dwi Anggono asserts that Indonesia subscribes to the principle that rules and regulations should be organized hierarchically.⁵⁷

The renewal of PP 27/2014 and Permendagri 19/2016 will yield regulatory harmonization, whereby regional regulations and head regulations concerning BMD rental will no longer reference the Minister of Finance, which pertains to the BMN regime and does not apply to BMD.

Conclusion

The regulation of the BMD industry at the Central Government level continues to encounter numerous challenges. One aspect is the collaboration between the Minister of Home Affairs and the Minister of Finance in developing overarching and technical policies to be utilized by local governments. Historically, multiple rules crossed with the exemption of levies stipulated in Article 127 of Law 28/2009, promulgated by the Minister of Finance, which was not incorporated into Permendagri 19/2016. Furthermore, the stipulations of BMD rent adjustment variables are not comprehensively defined by Permendagri 19/2016, leading numerous areas to consult the Minister of Finance to determine these elements. Although the Minister of Finance Regulation is dedicated to the BMN regime, it does not pertain to the BMD. The alleged source of the issue is the disjointed collaboration among ministries. The Minister of Home Affairs reports to the Coordinating Minister for Political, Legal and Security Affairs, whereas the Minister of Finance is overseen by the Coordinating Minister for the Economy.

The reorganization of BMD sector rules is essential to establish specific guidelines for local governments, ensuring the effective utilization of BMD and fostering constructive regional economic Revenue. The restructure involves the segregation of Government Regulations for BMN and BMD, allowing for the production of the

⁵⁷ *Ibid*, p. 907

PP through cross-sector harmonization. This must be accomplished due to the regulation of BMD under several laws, necessitating harmonization in formulating technical rules at the PP level, along with heightened care. The split necessitates the revision of the implementing provisions of the most recent BMD regulations in Law 11/2020 and 1/2022, namely concerning BMD and regional sukuk managers, which are not addressed in PP 27/2014 and Permendagri 19/2016. The primary objective of this reorganization is to establish effective BMD management, hence generating economic advantages for the region and enhancing the well-being of its inhabitants.

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