

## Law Effectivity in Managing Village Asset for Sustainable Tourism Development in Indonesia

Rinitami Njatrijani<sup>1</sup>, Putri Ayu Sutrisnio<sup>2</sup>

<sup>1,2</sup>Fakultas Hukum, Universitas Diponegoro

**ABSTRACT:** Law No. 6 of 2014 concerning Villages and Regulation of the Minister of Home Affairs No. 1 of 2016 concerning Village Asset Management give authority to the Village Government to manage its assets, one of them is by holding a Build Operate Transfer (BOT) agreement to build a tourist village. The purpose of this study is to determine the effectiveness of the law in managing village assets for the development of sustainable tourism villages. Juridical Sociological Legal Research Method. The results of this study show that the effectiveness of the law in managing village assets is influenced by several factors, including: 1) the material legal factors that regulate the management of village assets, 2) legal enforcement factors in supervising village assets and enforcing the law in the event of a dispute between the parties in the BOT Agreement, 3) Factors of Facilities that Support Law Enforcement so that law enforcement will achieve its goals, 4) Community factors that participate in supporting and supervising village asset management activities, 5) Cultural factors, which include values that are considered good and reflect the village.

**KEYWORDS:** Law Effectivity, Village Asset.

### I. INTRODUCTION

Indonesia is the largest archipelagic country in the world with a total of 16,771 islands. Beside that, Indonesia has abundant potential, one of that is tourism potential. The potential for tourism can increase income in a region. With the potential for tourism, it can attract investors to invest their capital in the region. In addition, of course, this investment will have a positive impact on the development of society in the region.

Tourism is related to recreational travel undertaken by a person or group of people within a certain period of time with the aim of tourism. The tourism activities are supported by various facilities and services provided by the community, businessmen, government, and local governments, such as transportation, accommodation, and other services aimed at meeting the needs of the trip.

Currently, the Ministry of Tourism and Creative Economy is trying to promote the concept of sustainable tourism in Indonesia, where the concept aims for tourism to provide a sustainable impact on the environment, social, cultural, and economic for the present and future for all local communities and tourists who visit. One form of government effort and support for the concept of sustainable tourism is by giving authority to the Village Government to manage village assets according to the potential of the village, one example is by building a tourist village.

Through Law No. 6 of 2014 concerning Villages, village governments are now given the authority to regulate and manage their own households to develop the village and empower its assets to become a strong, advanced and independent village.

The village is the smallest unit in a country, each village has its own characteristics and diversity Through this village law, the state has given recognition and guarantee to the existence of village communities. And given the authority in managing village assets to develop the village and to improve the economy of the village community.

One of the efforts to improve the economy of rural communities is through the development of tourist villages, by making a Build, Operate, Transfer (BOT) agreement with the private sector (entrepreneurs) or often called a public private partnership. The Build Operate Transfer (BOT) agreement is an anonymous agreement that arises due to the principle of freedom of contract. A build operate transfer agreement is a cooperation agreement made by a landowner with an investor, where the investor is given the right to construct a building during the build operate transfer agreement period, and transfer ownership of the building to the land rights holder after the build operate transfer agreement period ends.[1] If the land owner is a regional government or the

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land that is the object of the agreement is a regional asset, then the build-operate-transfer agreement is a government legal action that must be based on legal regulations as its legal basis.

In managing government assets, it must refer to applicable laws and regulations., Including in managing village assets, which manage village assets refers to the Regulation of the Minister of Internal Affairs No. 1 of 2016 concerning Village Asset Management. So that related to the build-operate-transfer cooperation agreement carried out by the village government with investors in developing a tourist village business, it refers to the Regulation of the Minister of Internal Affairs Number 1 of 2016 concerning Village Asset Management.

In fact, there are quite a few villages that have failed in developing villages into tourist villages. This is due to various factors, one of which is the need for a lot of capital to build a tourist village, so there needs to be cooperation with the private sector or investors in developing tourist villages.

Researchers found several problems related to agreements on the use and management of village assets carried out by the village government and private legal entities, namely Limited Liability Companies (PT). One of the problems that arose was the agreement on the management and utilization of village assets in the form of Bengkok land owned by the Pandak Village Government with PT. Kokoria Mannayo, which PT. Kokoria Mannayo made an agreement with the Pandak Village Government to build the Mannayo Ressor Pandak Tourism Attraction. The area of the bengkok land rented by PT. Kokaria Mannayo is 10.22 hectares, with the rental fee per hectare per year being one hundred and fifty million rupiah. However, PT. Kokaria Mannoyo went bankrupt, so that the management and utilization agreement of Pandak village assets with PT. Kokaria Mannayo was canceled, and caused the bengkok land become abandoned.

Researchers also found several previous studies that examined issues related to management agreements and utilization of regional and village government assets, to find differences between previous research and the problems to be studied. This is done to avoid the plagiarism. Here the following problems that have been studied by previous researchers, namely by Uji Kartono who discussed the Analysis of Village Treasury Land Utilization in Sei Simpang Dua Village, Kampar Kiri Hilir District, Kampar Regency. The study discussed about the Utilization of Village Treasury Land in Sei Simpang Dua Village, Kampar Kiri Hilir District, Kampar Regency.[2]

In addition, researchers found research by author Nurwachid Febri Efendi entitled "The Role of Village Heads in the Framework of Village Wealth Management (Case Study in Soropaten Village, Karanganyar District, Klaten Regency)". That research discusses about the village asset management system that was experiencing obstacles due to the suboptimal performance of the village head and his staf. Regarding the implemented efforts to overcome these obstacles, this is done by making changes to the land rental system so that village land rental auctions are held for the community, carrying out negotiations and socialization as well as providing direction for village officials and the community so that they can simultaneously manage village assets.[2]

From the initial data obtained by the author above, it shows that with the enactment of the Minister of Home Affairs Regulation No. 1 of 2016 until now (8 years), there are still legal problems, especially related to the implementation of the BOT Cooperation Agreement between the Village Government and Investors, so in this study, the author wants to examine the effectiveness of the Regulation of the Minister of Home Affairs No. 1 of 2016, especially the BOT agreement in the utilization of village assets (land rights) with Investors. What factors are the obstacles or barriers, so that solutions are obtained for improvement or revision of the Regulation of the Minister of Home Affairs No. 1 of 2016.

Thus, there is a difference between the author's research with previous research, namely in the research that will be studied the author wants to discuss the effectiveness of the Minister of Internal Affairs Regulation No. 1 of 2016 concerning Village Asset Management, especially the Study of the Effectiveness of the Village Asset Build Operate Transfer Agreement. This research is important to be conducted to ensure whether there are any obstacles and barriers in the implementation of the Regulation of the Minister of Home Affairs No. 1 of 2016 after 8 years of its validity, so that a picture of the causes of its ineffectiveness can be obtained, so that the objectives of the Regulation of the Minister of Home Affairs for the management of village assets as an effort to obtain village income to improve the welfare of village communities can be realized.

## RESEARCH METHODS

This legal research is a Juridical Sociological legal research, where this research focuses its study on primary data and secondary data. Primary data is obtained through interviews. Secondary data through literature in the form of primary legal materials, secondary legal materials, tertiary legal materials. Secondary data by conducting a review of all laws and regulations related to related issues, textbooks, related scientific article journals.[3]

Primary data is the main data in this research. Survey visits were conducted to several predetermined research locations to determine the implementation of the BOT Cooperation Agreement in the village in managing village assets.

Primary Legal Materials are legal materials that are authoritative, meaning they have authority, in the form of laws and

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regulations, official records or minutes in the making of laws, and judges' decisions. In this study, the primary legal materials used are:

1. Civil Code
2. Commercial Code
3. Law No. 10 of 2009 concerning Tourism
4. Village Law No. 6 of 2014 concerning Villages
5. Regulation of the Minister of Internal Affairs No. 1 of 2016 concerning Village Asset Management.

Secondary Legal Materials are all publications on law that are not official documents regarding the basic principles of legal science and the views of qualified scholars, including textbooks, legal dictionaries, legal journals, and commentaries on court decisions.

## RESULTS AND DISCUSSION

### 1. *Success Factors for Sustainable Tourism Villages*

In an effort to develop sustainable tourism, the Ministry of Tourism and Creative Economy focuses on 4 pillars, namely sustainable tourism business management, long-term sustainable economy, cultural sustainability that must be developed and maintained, and environmental aspects. With the development of these 4 pillars, tourism in Indonesia can become sustainable tourism and be in great demand by tourists and investors.

The concept of sustainable tourism is very important, because sustainable tourism is one of the government's efforts in poverty alleviation, and creating an inclusive economy by growing jobs and increasing economic growth. In addition, in the development of one region, collaboration with various parties with a focus on the goal of developing capacity, technology transfer, and support to ensure sustainability. In other words, the concept of sustainable tourism is closely related to the 17 Sustainable Development Goals (SDGs) which aim to address global challenges.

The village is a legal community unit that is given authority by the Village Law to manage and administer government, as well as to develop and empower village communities for the benefit of the village, one of which is through the development of tourist villages. The legal basis that provides authority related to the management of village assets is Law No. 6 of 2014 concerning Villages and Regulation of the Minister of Home Affairs No. 1 of 2016 concerning Village Asset Management.

The management of tourist villages is carried out by Village-Owned Enterprises (BUMDes), namely business entities whose capital is wholly or mostly owned by the village government which are developed to manage assets, service services, and other businesses in rural areas, especially in the tourism sector. However, the existence of Village-Owned Enterprises has not been able to run effectively and has not been able to contribute to the development and empowerment of local rural communities.[4]

Of course, the development of tourist villages aims to develop and equalize the economy of the village community in order to achieve welfare for the village community. In addition, the development of tourist villages is one of the efforts to eradicate poverty, preserve resources and local wisdom by empowering village communities to develop their businesses through the utilization of natural and cultural resources.

The development of sustainable tourism villages is carried out through a mentoring, monitoring and award scheme, which involves various elements, namely the Ministry of Tourism, Regional Government, and the community. Therefore, the level of success of a tourism village is not only influenced by one aspect, but from various aspects. In other words, participation and support from the three elements are very important and influential in the development of sustainable tourism villages.

In the development of tourist villages, of course, it requires a lot of capital, so to overcome this, the village government entered into a cooperation agreement between the government and investors or the private sector, namely the Build Operate Transfer (BOT) agreement. In this agreement, the village government is the party that owns the assets in the form of land, while the investor is the party that is given the right to utilize the land by constructing buildings or facilities and facilities to be used for a certain period of time agreed upon in the agreement, and after the agreement ends, the building or facilities and facilities will be returned to the village government.

### 2. *Effectiveness of Law in Village Asset Management*

The effectiveness of the Minister of Home Affairs Regulation No. 1 of 2016 concerning Village Asset Management can be seen from several factors of the theory of legal effectiveness. According to Hans Kelsen, speaking of legal effectiveness, it also discusses legal validity, where legal norms are binding, that people must act according to what is required by legal norms, that people must obey and apply legal norms. Legal effectiveness means that people actually act according to legal norms as they should act, that these norms are actually applied and obeyed.[5]

Legal effectiveness is an indicator related to the ability to carry out tasks and functions in achieving previously determined targets or goals, as a measurement of where a target has been achieved in accordance with what has been planned.[5]

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The Theory of Effectiveness according to Soerjono Soekanto, Law as a rule is a benchmark regarding appropriate attitudes or behavior. The effectiveness of law in legal action or reality can be known if someone states that a legal rule is successful or fails to achieve its goals, then this is usually known from the success of influencing in regulating certain attitudes or behavior so that it is in accordance with its goals or not.[5]

Factors that influence the effectiveness of the law, namely:[5]

- a. Legal Factors themselves, where the law functions for justice, certainty and benefit.
- b. Law Enforcement Factors, where the parties that form or implement the law or law enforcement
- c. Factors of Facilities or Facilities that Support Law Enforcement, are supporting facilities that include educated and skilled human resources, good organization, adequate equipment, sufficient finances and so on. If these are not fulfilled, it is impossible for law enforcement to achieve its goals
- d. Community Factors, where law enforcement comes from the community and aims to achieve peace in society
- e. Cultural Factors, as a system (or subsystem of the social system), the law includes structure, substance and culture. Legal culture (system) basically includes the values that underlie applicable law, values that are abstract concepts about what is considered good (so that it is adhered to) and what is considered bad (so that it is avoided). These values are usually a pair of values that reflect two extreme conditions that must be harmonized

Through these factors, it can be analyzed related to the effectiveness of the Minister of Home Affairs Regulation No. 1 of 2016 concerning Village Asset Management in the implementation of the Tourism Village program.

- a. Legal Factors: Minister of Home Affairs Regulation No. 1 of 2016 has regulated the management of village assets through various instruments, one of which is the Build Operate Transfer Agreement (BOT), which gives the village government the freedom to manage village assets by collaborating with the private sector, without having to worry about the transfer of village assets.
- b. Law Enforcement Factors: in the implementation of asset management through several series of activities from planning, use, utilization, maintenance, guidance, supervision, and control of village assets. Supervision in the management of village assets is carried out through reports and supervision between agencies, such as that carried out by the Prosecutor. However, supervision carried out by law enforcement often makes investors who want to invest their capital in a tourism village.
- c. Factors of Facilities or Facilities that Support Law Enforcement, to resolve disputes that arise in this Build Operate Transfer agreement can be through mediation and litigation. Of course, the means and facilities provided by the state are good enough to resolve disputes that arise and in the process of law enforcement
- d. Community factors, in the management of regional assets often clash with the community, but there are also those who agree with the management of village assets, especially village land. However, the government needs to provide understanding and socialization to the village community regarding village asset management activities.
- e. Cultural factors, of course, every village government that will manage village assets, especially village land, must be in accordance with the values that grow in the village, and not conflict with applicable regulations.

Article 1 number 36 of the Regulation of the Minister of Home Affairs Number 19 of 2016 concerning Guidelines for the Management of Regional Property states that Build Operate Transfer, hereinafter abbreviated as BOT, is the utilization of regional property in the form of land by another party by constructing buildings and/or facilities including their facilities, then utilized by the other party within a certain agreed period of time, to then be returned to the land along with the buildings and/or facilities including their facilities after the end of the period.[6]

A Build-to-Deliver Agreement is a form of anonymous agreement that arises due to the application of the principle of Freedom of Contract as stipulated in Article 1338 paragraph (1) BW. So that the Parties can create the form of Agreement they wish. The BOT Agreement is a new agreement that is not specifically regulated in the BW.

In the Build Operate Transfer agreement, there are the following elements: [6]

1. There are parties as Exclusive Rights Holders, usually in this case the government c.q Non-Departmental Government Institutions (LPND), or other private parties as owners of a plot of land that is strategically located in a business area.
2. The exclusive rights owned by the department/LPND or the land that is strategically located in the business area need to be (immediately) realized in the form of a physical building for public services.
3. To realize the physical building, either arising from exclusive rights or buildings needed on land in the business area (both can be called infrastructure projects, because they require quite large funds).
4. Funds to realize the infrastructure project are not available in the APBN/APBD or the land owner in the business area does not have enough funds to build the infrastructure project.
5. There is an investor who provides funds to build the physical infrastructure project.

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6. In exchange for the funds issued by the investor to build the infrastructure project, the investor for a certain period of time (Concession period) is given the right to manage the physical building in question in order to obtain economic benefits with a profit-sharing pattern with the exclusive rights owner or the private party who owns the land.
7. With the expiration of the Concession Period, the land, building and its facilities and infrastructure are handed over to the exclusive rights owner or the land owner in question for further management.

The object of the Build Operate Transfer (BOT) agreement is regional assets in the form of land held by the asset manager, and regional assets in the form of land held by the asset user, as regulated in Article 223 paragraph (1) of the Minister of Internal Affairs Regulation No. 19 of 2016 concerning Guidelines for Management of Regional Assets.

In principle, in the BOT agreement, there is no transfer of land rights to the BOT partner, but the BOT partner only obtains physical control of the land to be managed and utilized according to the time specified in the BOT agreement. After the agreement ends, the BOT partner must return physical control of the land along with the facilities and infrastructure built on the implementation of the BOT agreement. Considering that in the BOT agreement the object of the agreement is land, it is considered necessary that the BOT agreement be reviewed from the aspect of land law.[6]

Characteristics of the Implementation of the BOT project, namely:[7]

1. Development, in the BOT agreement there is no transfer of land rights to the BOT partner, but the BOT partner only obtains physical control of the land to be managed and utilized according to the time specified in the BOT agreement. After the agreement ends, the BOT partner must return physical control of the land along with the facilities and infrastructure built on the implementation of the BOT agreement. Considering that in the BOT agreement the object of the agreement is land, it is considered necessary that the BOT agreement be reviewed from the aspect of land law.
2. Operation, in the BOT agreement there is no transfer of land rights to the BOT partner, but the BOT partner only obtains physical control of the land to be managed and utilized according to the time specified in the BOT agreement. After the agreement ends, the BOT partner must return physical control of the land along with the facilities and infrastructure built on the implementation of the BOT agreement. Considering that in the BOT agreement the object of the agreement is land, it is considered necessary that the BOT agreement be reviewed from the aspect of land law.
3. Return, in the BOT agreement there is no transfer of land rights to the BOT partner, but the BOT partner only obtains physical control of the land to be managed and utilized according to the time specified in the BOT agreement. After the agreement ends, the BOT partner must return physical control of the land along with the facilities and infrastructure built on the implementation of the BOT agreement. Considering that in the BOT agreement the object of the agreement is land, it is considered necessary that the BOT agreement be reviewed from the aspect of land law.

## CONCLUSION

The effectiveness of the law in managing village assets is influenced by several factors, including 1) material legal factors that regulate the management of village assets, 2) law enforcement factors in supervising village assets and enforcing the law in the event of a dispute between the parties in the BOT Agreement, 3) Facilities or Facilities that Support Law Enforcement so that law enforcement will achieve its goals, 4) Community factors that participate in supporting and supervising village asset management activities, 5) Cultural factors, which include values that are considered good and reflect the village.

In addition, the management of village assets by the village government can be done by collaborating with the private sector through a Build Operate Transfer (BOT) cooperation agreement to build and develop a Sustainable Tourism Village business. Where the development of the Tourism Village business is carried out through a mentoring, monitoring and award scheme, which involves various elements, namely the Ministry of Tourism, Regional Government, and the community. Therefore, the level of success of a tourism village is not only influenced by one aspect, but from various aspects. In other words, participation and support from the three elements are very important and influential in the development of sustainable tourism villages.

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