

The Dynamics of Politics of Law in the Exchange of State-Owned Assets in an Indonesian Context

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The politics of law regulating state and/or region-owned property or assets in Indonesia, particularly exchanges based on the historical dimension of the law, is still colonially inherited legal politics where legal obscurity exists and this can result in the loss of assets and losses for the state. The efforts to overcome the legal problems are the restructuring of political law regulations, determining quality standards for regulations, and establishing an independent, professional, and accountable asset management body. Based on normative legal research combined with socio-legal research methods, in particular applying the theory of access to justice, this study finds a model of how legal politics should be regulated regarding the exchange of state wealth, and rigidly regulated so as not to open multiple interpretations. This would increase access to justice in realising valuable assets for their benefits. It is necessary to establish a national and regional asset management body under coordination with the Minister of Finance, who is responsible for managing state and regional assets in a transparent, accountable, equitable and responsive manner.

Key words: *Politics of Law, State Owned Assets, Exchange.*

Introduction

The tasks and obligations of the State as mandated in the 1945 Constitution and in the Preamble are “to improve the public welfare, to promote general welfare, to advance the intellectual life of the people and to contribute to the establishment of world order based on freedom, lasting peace and social justice.” This mandate becomes the duty of the government as the holder of the power given by the people to perform duties and obligations and to be as accountable as possible. (Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2020) As the executive authority on behalf of the state, the government performs lawful acts of exchange

according to Article 33 Clause (3) of the 1945 Constitution of the Republic of Indonesia, which states: “The land, the waters and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people’s welfare”. The meaning of to “be controlled by the State” raises diverse law interpretations based on the provisions of Article 2 Clause 4 on the right of control by the state over land resources.(Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2020)

The most essential element in the formation of legislation is the politics of law (*rechtspolitiek*). In this paper, this is examined from the perspective of legal history. The reason for doing so is that there are significant historical aspects since the agency of the state or local wealth/assets exchange was introduced in the country.(Lego Karjokoa, Djoko Wahyu Winarno, Zaidah Nur Rosidah, I Gusti Ayu Ketut Rachmi Handayani, 2020) The political relevance of legal history with legal regulations concerning the exchange of state- and/or region-owned property or assets is obscure. According to Jeremy Bentham, imperfections that may affect the laws and regulations can be used as a basis for the formation of legislation, due to ambiguity, vagueness, and lack of depth. Second, it is caused by the inconsistency of expression, inappropriateness of importance, redundancy, lengthiness, confusion, lack of understanding, and disorderliness.(Soediro, Handayani, I.G.A.K.R., Karjoko, L.,2020)

The arguments above indicate the obscurity of political law in controlling the exchange of state-owned land assets since colonial times, namely the implementation period of Indische Comptabiliteits Wet 1925 No. 448 (ICW) up to its promulgation as Law No 1 of Year 2004 concerning State Treasury, in conjunction with Government Regulation No 38 of Year 2008 on the Management of State- and/or Region-Owned Properties. In terms of originality of research concerning political law of exchanges of state-owned assets, it can be stated that this research has never been done, as can be shown by the following research results.(Leonard, T., Pakpahan, E.F., Heriyatia, Karjoko, L., Handayani, I.G.A.K.R., 2020)

There is also a controversy concerning the term “*ruilslag*”, because referring to Dutch, there is no combination of the words *ruil* and *slag*. Thus, according to Soeria Atmadja, the term *ruilslag* was intentionally created by adopting two Dutch words, which became the basis of legitimising the lawful act of state-owned asset exchanges. The term *ruilslag* first appeared in Article 13 Clause (4) of Presidential Decree No. 16 of Year 1994 on the State Budget (APBN), which states that: “immovable assets in the form of land can be removed to be sold, alienated, exchanged, or bequeathed, only after approval from the president, on the basis of proposal from the Minister of Finance” (Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2019)

Based on the above, the formulation of research problems is why does the political history of legal regulation of land wealth/assets exchange of the state deny the essence of expediency and public access to justice and how does the order of politics of law on the exchange of state wealth/assets align with society's access to justice, in order to achieve the greatest and best use of state-owned assets as expected by justice seekers.

Methods

This study refers to Mathias M Siems, using legal research of the micro-legal type, intended to "analyse specific legal issues such as the special provisions of a statute or code, or specific case or line of cases through primary legal materials and secondary legal materials, as cases of exchanges of land and building that constitute state assets that are selected according to their value, whether national, regional, or local scale." This study critically examines legal materials with the statute and conceptual approach on the act of exchange of legal/state-owned assets to find out the clarity of the problem by analysing the case of a legal dispute (through the case approach) of the exchange of assets of a particular state and/or region. (Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2020)

Results and Discussion

The essence of legal politics is contextualised with the exchange of state/region possessions as described above, as an appropriate step to answer the questions posed in a legal action against the state and/or region-owned property or assets, including: 1) Is there alignment between the philosophical bases to regulate the exchange of wealth/assets, in harmony with the state philosophy of Pancasila, the ideals contained in Article 33 Clause (3) of the 1945 Constitution of the Republic of Indonesia along with operational legislation?; 2) Is the agreement to exchange state- and/or region-owned property or assets (*ruilslag*) among public officials with third parties in line with the aim to achieve the greatest prosperity of all the people?; 3) What is the political manifestation of the law in regulating the exchange of state- and/or region-owned property or assets in the form of land and/or buildings that provide access to justice for the disadvantaged? (Sudarwanto, A.S., Handayani, I.G.A.K.R, 2019)

Thus, it can be said that through legal political arrangements, the state desires to regulate the management, access, control, and imposition of sanctions against violation of the legal act of exchanging state and/or region-owned property or assets to third parties. This is very important because strong pressure from capital investment to gain access to natural resources motivates the central government as well as regional or local governments to perform the legal act of exchanging state and/or region-owned property or assets with the private sector through a particular mode. (Prasetyo, B., Handayani, I.G.A.K.R., Sulistyono, A., Karjoko, L., 2019)

The general logic of the law states that the exchange of state and/or region-owned property or assets between the government and third parties should not cause any losses to the state. The legal action of exchange of state-owned assets, whether by the central, provincial or regency/city government, should be based on the spirit of protecting state-owned assets such as land and/or buildings from reduction or loss of value. (Sari, S.D., Handayani, I.G.A.K.R., Pujiyono, 2019)

Table 1: Political Analysis of Exchange of State and/or Regional Assets Based on Era/Period

Political Era	Legal Subject	Policies / Actions / Government Actions	Research Findings
Colonial Period as <i>Indische Comptabiliteits Wet</i> Law of Financial Management of Year 1925 Number 448 and Article 13; centralistic, authoritarian, exploitative capitalistic	General-Go-vernor of Dutch Colonial	Article 14 (1) <i>Indische Comptabiliteits Wet</i> of Year 1925 Check the phrase at ICW year 1925 No. 448: “ <i>de opbrengst der producten in het dienstjaar verkocht, voor zoover die opbrengst gedurende het opstaan van den dienst is ontvangen</i> ” (negative imperative of selling state-owned assets except for urgent reasons).	<ol style="list-style-type: none"> 1. Application of Dutch law (concordance principle), colonised government is a legal entity, orderly administrative system, formal legalised centralised; 2. Political law on exchange of state-owned assets is intended to cover the deficits of budget for building/government offices, unused old buildings (efficient budgets of central or local government); 3. Decision of exchanging state owned asset/<i>ruilslag</i> is a discretionary policy
The Old Order with philosophy of Panca-sila; centralistic, neo-populist, anti-capitalist (nationalism)	President conducted by the Minister of Finance	Act 6 of 1954, object of state-owned land handled by departments/state institutions	<ol style="list-style-type: none"> 1. President may order the Minister of Finance to redeem all assets of the country, after receiving written approval from DPRGR; 2. Weak administrative procedures, resulting in the politicisation of natural resources associated with the ideology of the party; 3. <i>Ruilslag</i> done for facility construction project of a

<p>The New Order with philosophy of Panca-sila; centralistic, closed, neo-capitalist economic approach (developmental)</p>	<p>President conducted by the Minister of Finance on behalf of the government as holders of state property referring to the Minister of Finance Decree No. 350/KM K.03/1994 and Minister of Finance Decree No. 335/KM K.03/1994</p>	<ol style="list-style-type: none"> 1. Law No. 9 of 1968 and Article 13 of Presidential Decree 16 of 1994, objects of land controlled by the state department / state institution / state-owned company; 2. Article 13 (4) of Presidential Decree No. 16 of 1994 on the Implementation of the Budget and Expenditure as amended and supplemented by Presidential Decree No. 24 of 1995 on Amendments to Presidential Decree No. 16 of 1994; 3. Minister of Home Affairs Regulation No. 1 of 1982; 4. Article 2 of the Minister of Finance Decree 350 / KMK. 03 /1994 on Procedures of Exchanges of State-Owned Property; 5. Addendum to the Minister of Finance of the Republic of Indonesia Decree 350 / KMK. 03 /1994 Number 1 Letter d on reasons of exchange by department/ agency/ government agencies on fixed objects; 	<p>political basis</p> <ol style="list-style-type: none"> 1. The dominance of government (executive) is very large, only the permission of the president without approval of the House of Representative could legitimise exchange, thus violating Law No. 9 of 1968; 2. Strong administrative procedures, closed bureaucracy accountability, tight audit parameters, but not transparent and not accountable; 3. Article 13 Clause (4) Letter a of Presidential Decree No. 24 of 1995 in conjunction with Article 2 of Minister of Finance Decree 350 / KMK.03 / 1994 proves that no legal argument as the definite basis for exchanging fixed state-owned assets for reasons of unavailability of funds in the state budget includes: <ol style="list-style-type: none"> a. Exposure to the action planner; b. Assets that are idle or have not been used optimally; c. Pooling of spread assets; d. Meeting the operational needs of the government due to organisational expansion; e. Consideration of the strategic plan of defense and security <p>The reasons of letters a-e are</p>
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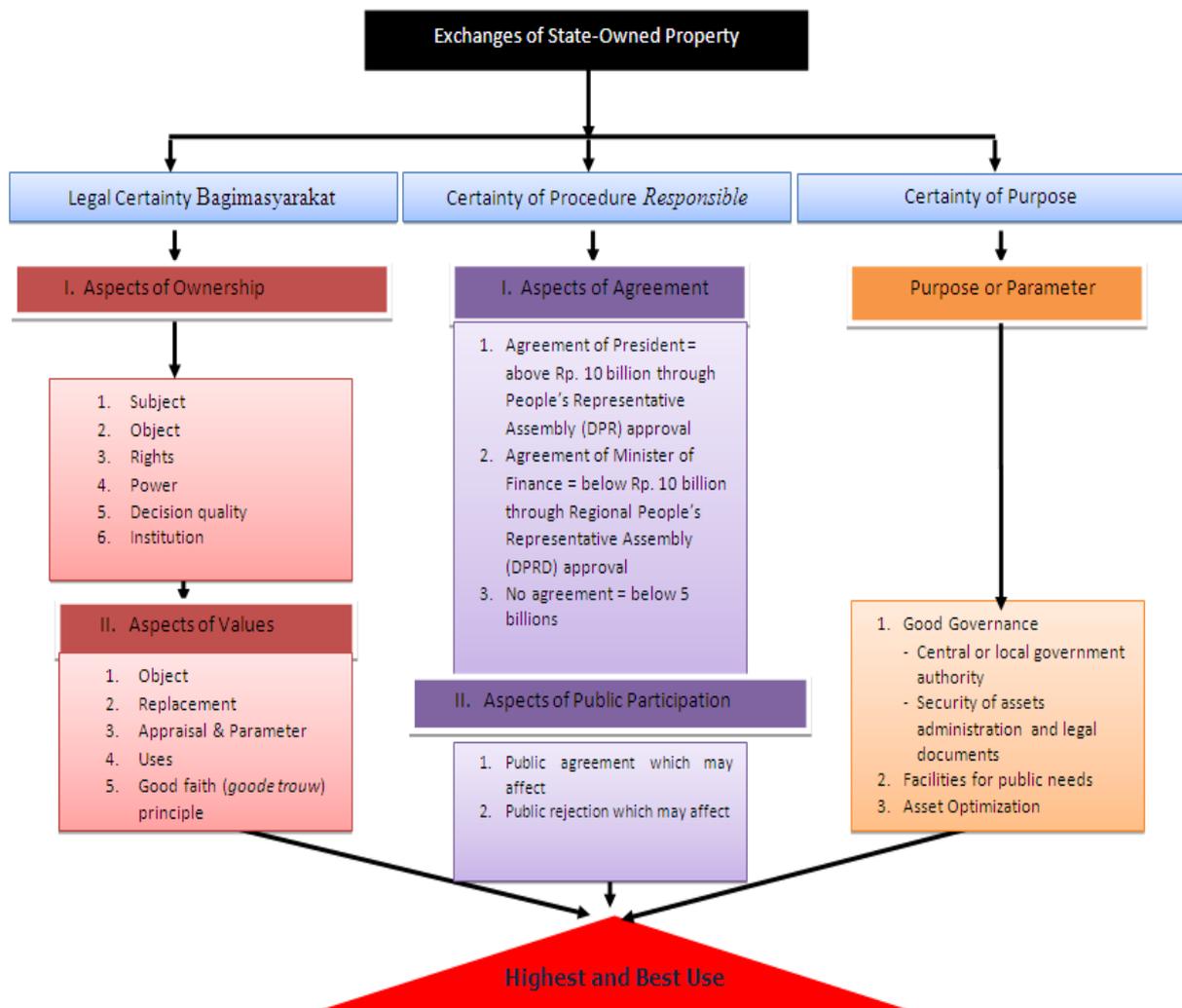
		6. Minister of Finance Decree 335 / KMK. 03 /1994	given detailed criteria/parameters on whether <i>ruilslag</i> is possible
Transition (Reformation) Order; capitalism, transparency, participation, optimism, efficiency of state- and/or region-owned property for achieving greatest social justice, civil society	President as head of government, in this case conducted by the Ministry of Finance as the Chief Financial Officer (CFO) of government/ institutional leaders/ chief of non-ministerial government institution /state agencies	<p>1. Government Regulation No. 2 of 2001 as part of consideration</p> <p>2. Law No. 17 of 2003, Letters a, b and c, Article 2 Letters g, h, i as part of consideration</p> <p>3. Law No. 1 of 2004 Letter b in financial management and treasury conducted openly and accountably as part of consideration</p> <p>4. Article 2, Letters g, h and j: investment and state- and/region-owned property management</p> <p>5. Article 4 Clause (1) (2) and Article 5 Letters a-f, Articles 6 to 10</p> <p>6. Article 1 Number 1 Government Regulation No. 2 of 2001</p> <p>7. Government Regulation No. 6 of 2006 amended by Government Regulation No. 38 of 2008</p> <p>8. Minister of Finance Decree No. 323 / KMK. 03/2000 Article 1 Number 2</p> <p>9. Minister of Finance Decree No. 55 / KMK. 03/2000 Article 1 Clause 2</p>	<p>1. The purpose of the law as in the wording is still common as a basis for the exchange of fixed assets of the state or region (<i>ruilslag</i>) for the reasons as set out in :</p> <p>1.1 Article 54 Clause (1) of Government Regulation No. 6 of Year 2006 as amended by Government Regulation No. 38 of Year 2008:</p> <p>a. The operational needs of government;</p> <p>b. Optimisation of state- and/or region-owned property;</p> <p>c. Unavailability of funds in the State / Regional Budget;</p> <p>1.2 Article 64 Clause (1) of Government Regulation No. 27 of Year 2014 stated: Exchanges of state- and/or region-owned property are done under the consideration of:</p> <p>a. the operational needs of government;</p> <p>b. the optimisation of state- and/or region-owned property; and</p> <p>c. unavailability of funds in the State/Region Budget.</p> <p>The reasons as in letters a-d in practice are prone to abuse of power, so that carefulness</p>

		<p>10. Minister of Home Affairs Decree No. 11 of Year 2001 Article 1 Number 13, Article 33; 11. Law No. 17 of Year 2003 on State Finance in conjunction with Act 1 of 2004 on State Treasury, Law 32 of Year 2004 as amended by Law No. 1 of Year 2015 on Regional Government, Government Regulation No. 1 of Year 2014 on Management of State / Regions replacing Regulation No. 38 of Year 2008 on the Amendment of Regulation 6 of Year 2006 on the Management of State-and/or Region-Owned Properties</p>	<p>in managing state- and/or region-owned property is needed, including for investors. Therefore, audit of the legal and economic aspects is needed. Audit should be conducted in order to prevent abuse of power, or arbitrary action (unreasonableness) in the management of state- and/or region-owned assets. When the audit shows abuse of authority for personal purposes, the purpose of authority is essentially irrational; there have been maladministration when a public agency fails to act in harmony with the laws or the principle(s) that govern them (PM Hadjon, 2005:19). This is the reason why from the planning stage to the drafting of the agreement and the stage of implementation of the exchange of state- and/or region-owned property always has problems.</p>
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Source: Primary legal materials (2016, updated through third period of this research in 2018) Legal efforts should be made to address the vagueness of the law that has occurred so far, which has resulted in large amounts of loss of state/region-owned wealth/assets and losses to the state. Legal efforts here include[Ⓢ]Aprilindo, N., Handayani, I.G.A.K.R., Sulistiyono, A., 2019)

1. Building legal political management arrangements of state/region-owned wealth based on the four pillars of political philosophy of law, constitution, laws, and morals;
2. Necessarily having standards for measuring the quality of decision-making on aspects of public law that have been applied in Netherlands with the following criteria:

- a. The effectiveness of administrative decisions
 - b. The efficiency of public expenditure
 - c. Legitimacy of procedures and arguments
 - d. The lawfulness of the exercise of legal powers
3. Establishing institutions on state/region-owned wealth that are responsible, transparent, accountable, responsive, accommodating, efficient, and effective;
 4. Restructuring the procedure or mechanism to exchange state- and/or region-owned property or assets, so that the public can be entitled to know, participate to control, and evaluate of the course of the legal process as well. The findings in this study may be described briefly in the flow chart illustrated below:



The dilemma that occurs is that the transfer of state property that is actually prohibited is permissible as long as this exception is approved by the People’s Representative Assembly

and used for public services, not for commercial purposes. The basis of this exception is the opinion based on the view of Hariadi Kartodihardjo that first, reductionism in administrative policies and accountability is a solution to state financial problems that are not available for certain sector development activities.(Gumbira, S.W, Jaelani, A.K., Tejomurti, K, Saefudi, Y.,2019)

Thus, the implementation of policy and the underlying laws and regulations has its own right-and-wrong logic, which is independent of the logic of what the community actually needs. Second, work relations and conflicts of interest in closed governments occur between policy makers and subjects affected by the policy or between supervisors and those supervised. Third, communities are seen not as the subject of development because almost no activity program implementation is accompanied by knowledge about what problem is to be solved and what the benchmark of success is for the community.(Nurhidayatuloh Febrian, Apriandi, M., Annalisa, Y., Sulistyaningrum, H.P., Handayani, I., Zuhro, F., Jaelani, A.K., Tedjomurti, K., 2020)

It is recommended that the government discuss with the People's Representative Assembly and Regional Representatives Assembly, Supreme Audit Agency, National Development Planning Agency, and Corruption Eradication Commission within one year to revise the national law on wealth management institutions as well as to institute changes in the national agency managing the state- and/or region-owned property or assets. It is proposed that the government restructures the legal political management of state- or region-owned wealth based on the ideologies of Indonesia, which are Pancasila, fully open access to justice, legal certainty, and expediency of state- or region-owned wealth to achieve greatest and best usage.(Kukuh Tejomurti, Seno Wibowo Gumbira,Naim Fajarul Husna,Abdul Kadir Jaelani,Nurhidayatuloh, 2020)

Conclusion

Political history of legal regulation of land exchange of state-owned assets denies the essence of expediency and public access to justice due to legal vagueness caused by violation of norms, maintaining of the rational paradigm in the legal system of Indonesia from the Dutch colonial period, and lack of adequate space for participation of groups of people seeking justice.. Efforts to build a political legal action arrangement of exchange of state-owned assets should be in line with access by people toward justice, in order to achieve the greatest and best use of state-owned assets as expected by justice seekers.. This is done through restructuring the norms and institutions at the level of central, regional and local levels, in order to realise access to justice by citizens.

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