



Analysis of Cooperation in The Management of Cipanas Indah Hotel and Resort Between The Regional Government of Garut Regency and Private Companies in Connection with Post Transition Staffing Positions

Pradana Aditya Wicaksana, Kemal Taufik, Ari Widi Prakasa

Universitas Borobudur

Email: pradanaadityawcaksana@gmail.com, kemaltaufik.1007@gmail.com, ariwidi.prakasa@untara.ac.id

Keywords

transfer of management, private sector and local government, workforce

Abstract

One form of utilization of other regional property is KSP (utilization cooperation) apart from renting, borrowing, BGS (building handover)/ BSG (building construction for use), and KSPI (cooperative infrastructure provision). Utilization cooperation is defined as the utilization of regional property by other parties within a certain period to increase regional income or sources of financing. The process of creating a cooperation contract for the management of the Cipanas Indah Hotel and Resort between the regional government and the private sector, where in general the cooperation process has been carried out by statutory provisions, starting from document checking, feasibility checks, auctions to signing the agreement carried out by the Regional Cooperation Coordination Team (TKKSD) Garut district, but in reality the agreement leaves a new problem, namely the status of the employees who are being transferred is not clear, so it is quite difficult to resolve it. The position of Cipanas Indah Hotel and Resort employees before and after the transition of management where previous management was regulated by Law Number 23 of 2014 concerning Regional Government and Government Regulation of the Republic of Indonesia Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State Property /Regional and its derivatives are under the UPTD (Regional Technical Implementation Unit) Tourism Service with the principles of Good Governance but after the transition, employees are regulated by Law Number 40 of 2007 UUPT in conjunction with Law Number 11 of 2020 concerning Copyright Work and the Commercial Law Code as well as the rules.



© 2023 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>).

1. Introduction

Law of the Indonesia Republic Number 1 of 2004 concerning State Treasury in Article 49 paragraph (6) mandates that the Management of State/Regional Property is regulated in a Government Regulation. Then, the government formulated the Government Regulation Number 27 of 2014 concerning Management of State/Regional Property, which is the basis for Ministries/Institutions and regional governments in managing state/regional property.

Along with its development, the management of State/Regional property becomes increasingly complicated, so it needs to be managed optimally, effectively and efficiently. Meanwhile, the regulation regarding the Management of

State/Regional Property as regulated in Government Regulation Number 27 of 2014 concerning Management of State/Regional Property have not fully accommodated several regulatory needs in the management of State/Regional Property, so the Republic of Indonesia Government Regulation Number 28 was issued regarding amendments to Government Regulation Number 27 of 2014 concerning Management of State/Regional Property, which is an improvement to the provisions in the government regulation.

One form of utilization of other regional property is KSP (Utilization Cooperation) beside renting, borrowing, building handover, building for use, and cooperation in providing infrastructure. Utilization cooperation is defined as utilization of regional property by another party within a certain period of time in the framework of increasing regional income or financing sources. In general, the points in the obligations of KSP Partners are in accordance with statutory provisions, but in the case of employee transition, problems occur because the statutory provisions relating to Cipanas Indah employees have different legal bases. Article 61 paragraph (3) of the Manpower Law, which states: In the event that a transfer of the company occurs, the rights of the worker/laborer become the responsibility of the new entrepreneur, unless it is stated differently in the transfer agreement which does not reduce the rights of workers/laborers, the problem is that in the KSP the transfer is from regional government to private companies.

**The theoretical reference used as a basis for analyzing the results of this research is:
Agreement Theory and Contract Law.**

In running a business, basically humans cannot do it alone, but must do it together or with help from other people. For this reason, a legal instrument is needed for ongoing business activities. This legal instrument is called an agreement. For this reason, a legal instrument is needed for ongoing business activities. This legal instrument is called an agreement.

An agreement is a legal act, a legal act will give rise to a legal relationship or what is usually called an agreement, so it can be said that a legal relationship arises because of the existence of a legal act of agreement. When the parties sign an agreement, the parties are carrying out legal actions so that after the agreement is signed the parties are bound to each other in a legal relationship of engagement.

Agreement activities carried out because of the interests, goals and needs of the parties, are essentially defined as an event where someone makes a promise to another person or where two people promise each other to carry out something. In essence, an agreement is needed to ensure that the parties carry out their business activities or maintain legal certainty, while the contents are handed over to the parties based on the principle of freedom of contract which is guaranteed by Article 1338 paragraph (1) of the Civil Code which determines that: "every agreement made by applies as law to those who make it".

Theory and Provisions of Industrial Relations.

Industrial relations arrangements are intended to create harmonious relations between employers and workers. Harmony between entrepreneurs and workers not only encourages increased productivity, but also encourages the creation of work peace (industrial peace). Conditions like this are the main signal for industrial development so that a boost to the rate of economic growth can be expected. One of the implications of this harmonious relationship is the fulfillment and improvement of workers' welfare, such as social guarantees and other welfare facilities, while still taking into account the company's capabilities. The management and existence of cooperatives or the success of other productive businesses is increasingly increasing the welfare of workers.¹

According to Article 1 number 16 of Law Number 13 of 2003 concerning Manpower, industrial relations are relations between actors in the production of goods and services consisting of the government, employers and workers which are based on the values of Pancasila and the 1945 Constitution.

It can be seen that the actors in industrial relations in Indonesia consist of three parties, namely the government, entrepreneurs and workers. This is one of the peculiarities of industrial relations issues in Indonesia compared to other countries which consist of only two parties, namely entrepreneurs and workers.

These differences in interests must be sought for harmonization between the two parties because both workers/laborers and entrepreneurs have the same goal, namely producing goods and/or services so that the company can continue running.

If for some other reason the company is forced to close, then those who will experience losses will not only be the company, but also the workers/laborers because they will lose their jobs as a source of livelihood. With this same goal, an inter dependent relationship arises between entrepreneurs and workers/ laborers in the process of producing goods and/or services which we know as industrial relations.

The Theory of Good Governance.

Definition of Governance, or what is more commonly known as good governance, in general, the meaning is all things related to actions or behavior that are in the nature of directing, controlling or influencing public affairs. To manifest these values in everyday life, good governance is not only limited to the management of government institutions, but concerns all institutions, both government and non-government.

The orientation of good governance is:

- a. Ideal orientation, namely a country that is directed at achieving national goals. This orientation is based on democratization in state life with its constituent elements such as: legitimacy, accountability, securing of human rights, autonomy and devolution of power, and also assurance of civilian.
- b. A government that functions ideally is effective and efficient in making efforts to achieve national goals. This orientation depends on the extent to which the government has competence and the extent to which political and administrative structures and mechanisms function effectively and efficiently.

2. Materials and Methods

Methods and systems form the essence of science. The system is related to the concept and content of science, while the method is related to the formal aspect. To be precise, a system means an ordered whole of knowledge or the totality of the contents of science. Meanwhile, the method literally describes the path or way in which the totality of the science is achieved or built.

An approach to a field of knowledge is said to be methodical if the method of studying it is carried out according to a plan, the fields are carried out in a certain way, the various findings are arranged logically, and the results are as many as possible. Conducting scientific research must use methods, because the characteristic of science is using methods. Method means investigation that takes place according to a certain plan. take a certain path to achieve a goal

3. Results and Discussions

The Process of Creating a Cooperation Contract for The Management of The Cipanas Indah Hotel and Resort Between The Local Government And The Private Sector.

Just as regulations are constantly undergoing changes and improvements, regulations regarding the use of state property have also undergone many changes from time to time. Regulations regarding the use of state property began to emerge in 1994 through a decree of the Minister of Finance Number 470/KMK.01/1994 concerning Procedures for the Elimination and Utilization of State Property/State Assets. In this decision, there are only three forms of utilization that apply according to this decision, namely renting, building for rent, and lending.

In 2020, Minister of Finance Regulation Number 115/PMK.06/2020 concerning Utilization of State Property was issued as a simplification of all regulations related to the use of state property to date. The basis for cooperation in managing CV Wulandari is based on the Build to Transfer provisions, namely the use of state property in the form of land by other parties by constructing buildings and/or facilities and their facilities, then utilized by the other party within a certain agreed period.

The land buildings and/or facilities and facilities will then be handed back after the expiry of the period. A maximum of 30 (thirty) years from the signing of the agreement and cannot be extended accompanied by an annual contribution and the results of the building for handover/construction of the mixed-use building.

The existence of CV Wulandari at Cipanas Indah Hotel and Resort is based on regional asset management cooperation with the Garut Regional Government for 30 years starting from November 2018. The purpose of this Cooperation Agreement is to improve the tourism sector, improve the regional economy, absorb labor, increase community income, improve community services, and increase local original income after handing over development and management by the Regional Government of Garut Regency regarding Regional Property in the form of the Cipanas Indah Hotel to the parties private sector then after the term of this cooperation agreement expires, the private sector handed back the results of the development and management to the Regional Government of Garut Regency.

While, this Cooperation Agreement aims to optimize the usability and usability of Regional Property in the form of the Cipanas Indah Hotel, and increase Regional Original Income in the tourism sector in Garut Regency through the development and management of Regional Property in the form of the Cipanas Indah Hotel belonging to the Regional Government of Garut Regency by the private sector, with obligations that must be fulfilled by CV Wulandari, namely:

- a. Revitalization of the agreement object with an estimated cost of 10 billion (all in) which is divided into 3 stages, namely 2020, 2022, and 2025 according to the spec determined by the Regional Government.
- b. Contributions start from IDR 305,000,000 per year with an increase of 5% per year from the last contribution payment (payment in 2021 is IDR 363,000,000,-
- c. Profit sharing is 5% of net income in (net profit) every year.
- d. Regional tax payments amounting to 20% of tourism facilities and 10% of hotels and restaurants every month.
- e. Pay obligations arising from external audit activities.
- f. Employee turnover compensation payments.

In general, the cooperation process has been carried out by statutory provisions, starting from checking documents, checking feasibility, and tendering to sign the agreement carried out by the Garut Regency Regional Cooperation Coordination Team, but in reality the agreement has left new problems that have not been resolved until now, they are some of the land being collaborated is still controlled by a third party (Garut Police) and the second is that the status of the employees being transferred is unclear, making it quite difficult to resolve.

Position of Cipanas Indah Hotel and Resort employees before and after the transfer of management

As a result of the change in management, the initial condition of Cipanas Indah gave rise to several problems, both company management and staffing, especially the legal regulations that covered it, namely:

- a. Management was previously regulated by Law Number 23 of 2014 concerning Regional Government and Government Regulation of the Republic of Indonesia Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State/Regional Property and its derivatives under the Regional Technical Implementation Unit (UPTD) Tourism Department with good governance principles (Good Governance). Meanwhile, now it is regulated by Law Number 40 of 2007 UUPT jo Law Number 11 of 2020 concerning Job Creation and the Commercial Code as well as the rules of good private company governance (good corporate governance).
- b. Previous management of employees refers to Law of the Republic of Indonesia Number 5 of 2014 concerning State Civil Apparatus and Regulation of the Regent of Garut Number 6 of 2016 concerning Management of Non-Civil Servants in Regional Work Units or Work Units within the Garut Regency Government which implement The Financial Management Pattern of the Regional Public Service Agency with the Leading sector of the Regional Civil Service Agency (BKD) where the legal status of existing employees is currently unclear.

Now it is regulated by Law Number 3 of 2003 in conjunction with Law Number 11 of 2020 concerning Job Creation and its derivatives (PP 35, 36 and 37 of 2021) with the Leading Sector Department of Manpower and currently only 4 people have clear employee status.

Due to changes in the laws that cover it, there are changes to the terms and conditions of work which are not understood by employees so they demand that old habits (habits) continue to be implemented with TUPE arguments (Trans Undertaking Protecting Employee) while the employees themselves do not understand the provisions and procedures of TUPE and what happens Jure's idea is that employees have carried out a whitening (zero reset)

i Apart from that, the status of employees who work at Cipanas Indah is unclear, this occurs because of unfounded demands and employees' lack of understanding of employment provisions and the attitude of some employees is quite difficult to accept this change.

From the explanation above, management took steps related to employee positions, where in the period before the transfer of employee status it was not clear whether permanent employees or non-permanent employees were bound by contract because in reality the wages given were included in the operational budget, not the personnel budget, so we can assume that the status before The transition is voluntary, but this has an impact on employees because employees ask for their rights like permanent employees if they are transferred or laid off, but legally, because of their position, these employees/employees do not have their rights by statutory provisions.

The steps taken by management are to determine the status of employees of the state civil apparatus and non-employees of the state civil apparatus to become employees who are bound by work agreements for an indefinite period and work agreements for a certain period as regulated in Government Regulation 35 of 2021 so that their status is clear regarding the work period before the transition. only to the extent of recognition and at the discretion of the private sector, the period of service will be counted in calculating pensions or years of service.

4. Conclusion

The transfer of management by the regional government or private company should take into account the best interests of employees. In the Cipanas Indah case, the regional government should expressly dismiss all employees first and give them all their rights, but even if they are to be continued to be handled by the management recipient, the legal basis and status and management must be firmly established. position so that employees have certainty of the value they will obtain if they are continued or terminated but this does not happen, legally the management cooperation agreement between the regional government of Garut Regency and the private sector in this case CV Wulandari is valid and meets the qualifications as an agreement but with The uncertainty of employee status and position is not clear and is only conveyed verbally without paying attention to statutory provisions.

5. References

- Dadang Sukandar, Membuat Surat Perjanjian, Yogyakarta, Andi, 2011
- Faisal Santiago, Pengantar Hukum Bisnis, Jakarta Mitra Wacana Media, 2012,
- Hari Supriyanto, Kesejahteraan Pekerja Dalam Hubungan Industrial di Indonesia, Universitas Atmajaya, Yogyakarta. 2013.
- Lalu Husni, Pengantar Hukum Ketenagakerjaan, Edisi Revisi, Raja. Grafindo Persada, Jakarta 2014,
- Maimun, Hukum Ketenagakerjaan Suatu Pengantar, Jakarta, Pradaya 2007
- Nurjaman Arsyad Keuangan Negara. Jakarta: Intermedia, 1992
- Rahmat Trijono, Pengantar Hukum Ketenagakerjaan, Depok, Papas Sinar Sinanti 2014,
- Sanapiah Faisal, 2015, i“Format-Format Penelitian Sosial” Rajawali ipers Bandung
- Sedarmayanti, Good Governance (Pemerintahan Yang Baik) Dalam Rangka Otonomi Daerah, Bandung: iMandar Maju, 2003,
- Soerjono Soekanto, Sri Mamudji Penelitian ihukum inormatif : suatu tinjauan singkat Jakarta Rajawali Pers, 2015
- Subekti, Pokok-Pokok Hukum Perdata Cet. ke-29, Jakarta, PT. Intermasa 2001
- Sugiono 2017, “Metode Penelitian Kuantitatif, Kualitatif dan R&D” Alfabeta, Bandung,
- Undang-Undang Republik Indonesia Nomor 1 Tahun 2004 tentang Perbendaharaan Negara
- Undang-undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan,
- Undang-Undang Republik Indonesia Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara
- Undang Undang Republik Indonesia Nomor 11 Tahun 2020 Tentang Cipta Kerja
- Peraturan Pemerintah Nomor 27 Tahun 2014 tentang Pengelolaan Barang Milik Negara/Daerah
- Peraturan Pemerintah Republik Indonesia Nomor 28 Tahun 2020 Tentang Perubahan Atas Peraturan Pemerintah Nomor 27 Tahun 2014 Tentang Pengelolaan Barang Milik Negara/Daerah
- Peraturan Pemerintah Republik Indonesia Nomor 6 Tahun 2006 Tentang Pengelolaan Barang Milik Negara/Daerah,
- Perpres Nomor 67 Tahun 2005 tentang Kerjasama Pemerintah dengan Pihak Ketiga dengan Badan Usaha dalam Penyediaan Infrastruktur sebagaimana telah diubah dengan Perpres No. 13 Tahun 2010 dan Perpres No. 56 Tahun 2011
- Peraturan Pemerintah Republik Indonesia Nomor 35 tahun 2021 tentang perjanjian kerja waktu tertentu, alih daya, waktu kerja dan waktu istirahat, dan pemutusan hubungan kerja
- Peraturan Bupati Garut Nomor 6 Tahun 2016 Tentang Pengelolaan Pegawai Non Pegawai Negeri Sipil Pada Satuan Kerja Perangkat Daerah Atau Unit Kerja Di Lingkungan Pemerintah Kabupaten Garut.