



## Utilization Of State Property By Partners In The Perspective Of Utilitarianism Legal Theory

Sri Hartati<sup>1</sup>, Dani Sintara<sup>2</sup>, Halimatul Maryani<sup>3</sup>

<sup>1</sup>Faculty of Law, Universitas Muslim Nusantara, E-mail: sri.hartati79@kemenkeu.go.id

<sup>2</sup>Faculty of Law, Universitas Muslim Nusantara, E-mail: danisintara@yahoo.co.id

<sup>3</sup>Faculty of Law, Universitas Muslim Nusantara, E-mail: maryanuritonga@yahoo.co.id

ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> Partners; Utilization; Goods; Property; Country.</p> <p><b>How to cite:</b> Hartati, Sri, Et., Al. (2022). Utilization Of State Property By Partners In The Perspective Of Utilitarianism Legal Theory. <i>Veteran Law Review</i>. 5(1) 15 - 26.</p> <p><b>Received:</b> 2022-01-04 <b>Revised:</b> 2022-04-15 <b>Accepted:</b> 2022-05-10</p>	<p>The problem of the use of state property by partners needs to be studied in the perspective of legal expediency theory. after the Regulation of the Minister of Finance No. 115 / PMK.06 / 2020 on the Utilization of state property. Utilization of state property in practice, some are done by partners, such as what is the right to ownership of state assets and also the results of empowered utilization to increase state assets need to be analyzed in the perspective of utilitarianism legal theory. The research method used is normative juridical. The purpose of this research is to optimize the utilization of state property by partners.. The results showed that the utilization of state property by partners cannot be transitioned into property rights and must also be utilized productively to increase state assets. The right of utilization of state property is not essentially a property, so when using state assets, state property can only be used for productive assets, with the result of providing benefits to increase state assets. As a result, state assets are non-transferable when using state property.</p>

### 1. Introduction

The problem of state-owned goods and their various uses needs to be studied in the perspective of utilitarianism legal theory so that it can be studied about the efficiency of the utilization of state property after the existence of The Minister of Finance Regulation No. 115 / PMK.06 / 2020 on the Utilization of State Property.

State property can in essence be on all fronts, not only limited to ministries or institutions, it can also be found in State companies and State-Owned Legal Entities (BHMN)s or other forms of institutions that have not been established status as separate State wealth. Excluding the definition of state property, namely various goods controlled or owned by: (Faniyah Iyah, 2018)

1. Local Government;
2. State-Owned Enterprises (SOEs) or Regionally Owned Enterprises (BUMD) consisting of companies and public companies
3. Government Banks and Government-Owned Financial Institutions

One of the components of LKPP is the presentation of the fixed asset value of state-owned goods classified in several categories, namely land; buildings and buildings; equipment and machinery; roads, irrigation and networks; construction in the works; and other fixed assets. In 2020, the value of fixed assets increased by Rp26.42 billion compared to 2019. While current assets (inventories) increased by Rp173 and other assets, especially Third Party Partnership Assets rose by Rp112.04 trillion (38.58 percent). Compared to State-Owned Lbarang in 2019 (Audited), the Value of State-Owned Goods presented in State-Owned Lbarang in 2019 (Audited) increased by Rp29,389,059.87 million or 0.46%, from Rp6,409,461,145.82 million to Rp6,438,850,205.69 million. State-Owned Lbarang in 2019 (Audited) increased by Rp112,813,380.77 million or 1.58%, from Rp7,034,040,796.36 million to Rp7,146,854,177.13 million. The increase in the value of State-Owned Goods is intended, among others, because: 1) The addition of state property due to financial transactions, namely the addition of State-Owned Goods derived from the realization of capital expenditures and non-capital expenditures during the first semester of 2019; 2) Addition of state property due to non-financial transactions, namely the addition of state property which, among others, comes from transactions: initial balance, incoming transfer, reclassification of entry, correction of changes in value / quantity, incoming grants, and others; and 3) Increase in the value of state property due to state property Reassessment activities on Fixed Assets in the Balance Sheet, in the form of Land, Buildings and Buildings, Bridge Roads and Water Buildings.<sup>1</sup>

Utilization of state property, the Government has issued a Regulation of the Minister of Finance (PMK) on the Utilization of state property which has been changed several times recently PMK Number 115 / PMK.06 / 2020 on the Utilization of state property.<sup>2</sup>

Two obstacles in the management of state property are first, Goods Users and Goods Managers. Second, not all ASNs that manage State-Owned Goods do not understand the regulations, especially the types of utilization of state property.<sup>3</sup>

Partners in the utilization of state property are accommodated in Article 32

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<sup>1</sup> Faniyah Iyah. (2018). *Certainty of State Sukuk Law as an Investment Instrument in Indonesia*. Yogyakarta: Deepublish. (pp. 191).

<sup>2</sup> Darnadi. Head of State Wealth Management. Kanwil DJKN West Kalimantan. [www.djkn.kemenkeu.go.id/artikel/baca/14349/Mewujudkan-Barang-Milik-Negara-Untuk-Kemakmuran-Bangsa.html](http://www.djkn.kemenkeu.go.id/artikel/baca/14349/Mewujudkan-Barang-Milik-Negara-Untuk-Kemakmuran-Bangsa.html). was accessed on December 1. 2021 at 17.05 WIB.

<sup>3</sup> Subekti. (1979). *Aneka Agreement*. Bandung: Alumni.

paragraph (1) of Government Regulation of the Republic of Indonesia Number 28 of 2020 on Changes to Government Regulation No. 27 of 2014 on The Management of State/Regional Property (PP Barang Negara /D) Cooperation on The Utilization of State/ Regional Property implemented against: a. state property that is in the Management of Goods; b. Regional Property in the form of land and / or buildings that have been submitted by users Goods to the Governor / Regent / Mayor; c. state property located in the User of the Goods.

Article 4 of the Minister of Finance Regulation No. 115/PMK.06/2020 on the Utilization of state property (PMK No. 115/PMK.06/2020 on the Utilization of state property) stipulates that " state property Utilization Partners include: a. tenants, for the Utilization of state property in the form of Leases; b. borrowers use, for the Utilization of state property in the form of Borrowing; c. KSP partners, for the Utilization of state property in the form of KSP; d. BGS/BSG partners, for the Utilization of state property in the form of BGS/BSG; e. KSPI partners, for the Utilization of state property in the form of KSPI; and f. KETUPI partners, for the Utilization of state property in the form of KETUPI".

The problem of the utilization of state property by State-Owned Goods partners occurs in the rental sector, borrowing, utilization cooperation, building for handover, building handovers, cooperation in infrastructure provision, limited cooperation for infrastructure financing, tendering for the utilization of State-Owned Goods.

Utilization of state property by partners in order to produce something optimal, it is necessary to anticipate the opportunity of damage, loss, reduced benefits of state property. So, to overcome the problem, it needs to be studied in the perspective of usefulness theory.

## 2. Method

This type of research is normative legal research with a normative juridical approach. Normative juridical is finding the truth of coherence to examine whether the rule of law is in accordance with legal norms and whether the norm in the form of orders or prohibitions is in accordance with legal principles, as well as whether a person's actions (*acts*) are in accordance with legal norms (not just according to the rule of law) or legal principles.<sup>4</sup>

The steps in normative legal research include collecting, reading, and analyzing literatures that are related with the issues in this research as well as quoting several supporting opinions or statements to answer the issues in this research. Subsequently, all of the materials are arranged systematically as the

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<sup>4</sup> Peter Mahmud Marzuki. (2014). *Legal Research*. Jakarta: Prenada Media Group.

legal basis to answer the issues.<sup>5</sup>

The nature of the research in completing this thesis is descriptive. Descriptive research is research that merely describes the state of an object or event without a purpose to draw generally accepted conclusions.

### 3. Result & Analysis

#### 3.1 Utilization of state property by Partners in Positive Law in Indonesia

Plato and Aristotle introduced the state of law as a state ruled by a just state. According to him, the expected law is a law that is fair and can provide welfare for its people; Laws that are not a compulsion of the ruler, perform in accordance with the will of the citizens.<sup>6</sup>

A.V. Dicey in his book *Introduction To The Study Of The Law Of The Constitution*, outlines the existence of three important characteristics in each Negara *The Rule of Law*, namely: (i) *Supremacy of Law*; (ii) *Equality before the law*, (iii) *Due Process of Law* (Miriam Budiardjo, 2009). Furthermore, also stated the characteristics of the state of law in his view, the state of law is: (i) Protection of human rights; (ii) *Triassic politica*; (iii) Government based on law (*legality principle*); (iv) The existence of a *mandir i administrative judiciary*.<sup>7</sup>

The use of state property if referring to the constitution is stipulated in Article 28 H paragraph (2) of the Constitution of the Republic of Indonesia of 1945 stipulates that "Every Citizen is entitled to convenience and special treatment to obtain equal opportunities and benefits to achieve equality and justice".

The term state property refers to Government Regulation number 27 of 2014 on the Management of State/Regional Property, i.e. State-owned Goods are all goods purchased or obtained at the expense of the State Budget or derived from other legitimate acquisitions.

In the terminology of state wealth management, state property is goods owned by the state through the burden of the state budget or through other legitimate acquisitions.<sup>8</sup>

Article 1 number 1 of Government Regulation of the Republic of Indonesia Number 28 of 2020 on Changes to Government Regulation No. 27 of 2014 on Management of State/Regional Property (PP state property) " state property is all goods purchased or obtained at the expense of the State Revenue and

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<sup>5</sup> Ketut Andri Sena, I Gede Pasek Eka Wisanj ,The Sovereignty Aspect on Earth (Arctic, Antarctic, Seabed and Ocean Floor) and on Moon: Comparative Study, *Veteran Law Review*, Vol. 2, No. 2, (2019).

<sup>6</sup> Abdul Hamid. (2016). *State Theory of Modern Law*. Bandung. CV Pustaka Setia.

<sup>7</sup> Julius Stahl in Nomensen Sinamo. (2010). *Constitutional Law. A Critical Study of State Institutions*. Jakarta: Jala Permata Aksara.

<sup>8</sup> Darnadi. Kepala Bidang Pengelolaan Kekayaan Negara. Kanwil DJKN Kalimantan Barat. [www.djkn.kemenkeu.go.id/artikel/baca/14349/Mewujudkan-Barang-Milik-Negara-Untuk-Kemakmuran-Bangsa.html](http://www.djkn.kemenkeu.go.id/artikel/baca/14349/Mewujudkan-Barang-Milik-Negara-Untuk-Kemakmuran-Bangsa.html)

Expenditure Budget or derived from other legitimate acquisitions".

Article 1 number 1 of The Minister of Finance Regulation No. 115/PMK.06/2020 on The Utilization of state property (PMK No. 115/PMK.06/2020 on Utilization of state property) " state property, hereinafter abbreviated as state property, is all goods purchased or obtained at the expense of the State Revenue and Expenditure Budget or derived from other legitimate acquisitions".

Article 1 number 10 PP Of state property / D "Utilization is the utilization of State / Regional Property that is not used for the implementation of duties and functions of the Ministry / Institution / unit of work of regional devices and / or optimization of State / Regional Property by not changing the status of ownership".

Article 1 number 14 PMK No. 115/PMK.06/2020 on Utilization of State-Owned Goods "Utilization Cooperation, hereinafter abbreviated as KSP, is the Utilization of state property by Other Parties within a certain period of time in order to increase non-tax state revenues and other sources of financing".

Furthermore, the laws and regulations governing state property have the following legal basis:<sup>9</sup>

1. Law No. 17 of 2003 on State Finance;
2. Law No. 1 of 2004 on State Treasury;
3. Government Regulation No. 71 of 2010 on Government Accounting Standards;
4. Government Regulation No. 27 of 2014 on Management of State/Regional Property ( state property);
5. Regulation of the Minister of Finance No. 213/PMK.05/2013 on Central Government Accounting and Reporting System as amended by The Minister of Finance Regulation No. 215/PMK.05/2016;
6. Regulation of the Minister of Finance No. 214/PMK.05/2013 on Standard Account Chart;
7. Regulation of the Minister of Finance No. 65/PMK.06/2017 on Depreciation of state property in the Form of Fixed Assets in Central Government Entities;
8. Regulation of the Minister of Finance No. 29/PMK.06/2010 on Classification and Codefication of state property as amended and finally supplemented by the Decree of the Minister of Finance No. 327/KM.6/2019.
9. Regulation of the Minister of Finance No. 251/PMK.06/2015 on Procedures for Amortization of state property in the Form of Intangible Assets in Central Government Entities;
10. Regulation of the Minister of Finance No. 181/PMK.06/2016 on Management of State-Owned Goods;

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<sup>9</sup> DJKN. Laporan Barang Milik Negara. Audit Beberapa Tahun BARANG MILIK NEGARA. <https://drive.google.com/file/d/1XklYcIiiAwQkly9to0n1gO1WjpUrlec6/view> diakses pada tanggal 01 Desember 2021.

11. Regulation of the Minister of Finance No. 118/PMK.06/2018 on Procedures for Reconciliation of state property in the Framework of the Preparation of The Central Government's Financial Statements;
12. Decree of the Minister of Finance No. 53/KM.6/2012 on the Application of Depreciation of state property in the Form of Fixed Assets in Central Government Entities as amended by the Decree of the Minister of Finance No. 04/KM.6/2013;
13. Decree of the Minister of Finance No. 295/KM.6/2019 on The Table of Useful Life in the Framework of Depreciation of state property in the Form of Fixed Assets in Central Government Entities;
14. Decree of the Minister of Finance No. 128/KM.6/2015 on The Depreciation Module of state property in the Form of Fixed Assets in Central Government Entities;
15. Decree of the Minister of Finance No. 620/KM.6/2015 on The Useful Period in the Framework of Amortization of state property in the Form of Intangible Assets in Central Government Entities as amended by The Minister of Finance Regulation No. 81/KM.6/2018;
16. Decree of the Minister of Finance No. 385/KM.6/2016 on The Reconciliation Module of state property Data and Updating of state property Data;
17. Decree of the Minister of Finance No. 98/KM.6/2016 on The Amortization Module of state property in the Form of Intangible Assets in Central Government Entities;
18. Regulation of the Director General of State Wealth No. 07/KN/2009 on Procedures for Reconciliation of state property Data in the Framework of The Preparation of state property Reports and Central Government Financial Statements as amended by The Director General of State Wealth Regulation No. 1/KN/2014.

Analyzing the definition of the use of state property is a process to utilize state property as a state asset that can be optimized to increase state revenue, which is done by partnering with state-owned goods partners who utilize state-owned goods.

### **3.2 Utilization of state property by Partners in the Perspective of Utilitarianism Legal Theory**

Jeremy Bentham, as quoted by Sonny Keraf, essentially argues that judging good socio-political, economic, and morally legal policies is judged by public policies that have an impact on the benefit of the public morally. The most objective basis for looking at whether a policy or action is bringing useful benefits or outcomes or otherwise harming those concerned.<sup>10</sup>

The state of law begins with Plato with his concept that good government is based on good rule, an arrangement called *nomoi*. Then the idea of the rule

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<sup>10</sup> Sonny Keraf. (1998). *Etika Bisnis Tuntutan dan Relevansinya*. Yogyakarta: Kanisius.

of law was popular in the 17th century as a result of the political situation in Europe which was dominated by an absolute (Tutik Quarter Point, 2010).

Abrar Saleng opinion that The existence of certain cooperation or contractual relationships with the parties concerned. Another form could also be that the land is occupied by people without permission who are entitled to occupation. The meaning of occupation or accupation is more to physical or factual mastery without being followed by rights in the legally valid sense.

The role carried out by the private sector can be in the form of participation in organizing a number of affairs that are activities of the local government (in the form of procurement of goods and services).<sup>11</sup> Professional and modern management of fixed assets (State Property) by prioritizing good governance on the one hand is expected to be able to increase the confidence of state financial management from the community / stake-holder.<sup>12</sup> The findings of the Audit Board (BPK) every year have proven that asset management still needs serious attention. Because of the findings regarding the disorderly management of BMN.<sup>13</sup>

Governments in modern "social status" prioritize the interests of everyone, which is a consequence that forces them to participate in social interactions so that social welfare for each person can be maintained.<sup>14</sup>

In a state institution or work unit throughout the territory of the Republic of Indonesia, annually obtain goods and services that are useful in supporting the performance of the Agency. The purchase of these goods and services is financed from the STATE BUDGET or APBD. Goods purchased or acquired at the expense of the state budget can be identified as part of state assets. Decree No. 78/PMK.06/2014 that the utilization of STATE PROPERTY as an item is purchased or obtained at the cost of state revenue and budget expenditures or derived from other legitimate acquisitions. Acquisition of other legal assets under Government Regulation No. 6 of 2006, concerning the management of local assets including grants or donations, implementation of agreements or contracts, obtained under the provisions of the law. State finance is the rights of states and obligations that can be assessed in money and everything in the form of money or goods that can be used as state assets related to the exercise

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<sup>11</sup> Umbu Rauta, Titon Slamet Kurnia, and Arie Siswanto, "Telaah Teoretis Dan Yuridis Tukar Menukar Barang Milik Daerah Dengan Swasta," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 2 (2017): 232-254.

<sup>12</sup> Mujahidin, Roziqin, Elsa Aprina, Implementasi Peraturan Pemerintah Nomor 27 Tahun 2014 Tentang Pengelolaan Barang Milik Negara/Daerah Di Kabupaten Penajam Paser Utara, *Jurnal Lex Suprema*, Vol. 2, No. 2 (2020).

<sup>13</sup> Rasyid, Abdul. Konsepsi Penyelesaian Permasalahan Tanah Kemhan/ TNI yang Dikuasai Masyarakat Secara Turun Temurun. *Jurnal Hukum Militer STHM*. Volume 4 Nomor 2, (2019).

<sup>14</sup> E. Utrecht/Moh. Saleh Djindang. 1985. *Pengantar Hukum Adminstrasi Negara*. Jakarta: PT Ichtiar Baru.

of rights and obligations.<sup>15</sup>

This agreement is oriented to the public interest and forced. In a contract there is no freedom of contract, because the conditions specified in the contract are not based on the will of either party. However, contracts can only be based on the will of one party, namely the government. These conditions are determined by laws and regulations. The relationship between the government and its partners is not the same. Therefore, this agreement is called the Public Agreement.<sup>16</sup>

State property still shows uncertainties related to ownership, valuation, and administration. The rules for regulating state property management have been issued by the government of the republic of indonesia in the context of the successful revocation of income in the field of state property management, but misunderstandings regarding existing regulations still lead to irregular management. It takes an understanding of the concept between different parties so that state property management can be improved. Cycles associated with state property are stationary or unused for key tasks and functions for a variety of reasons. for example, state property is not used because the main task and function is closed, state property is not used to full capacity for the main task and function. in addition to state property not being used temporarily or having excess capacity, state property is not used at all for major tasks for various reasons, such as due to damaged assets, expiry, useless, lost, and other reasons. Can be classified as incidental cycles are: utilization; Assessment; while the initial activity for state property /d management is developing and the process that must be done in the budget cycle, namely through the Budget Work Plan. One of the follow-up management of receivables in the form of state bills for third parties or civil servants and civil servants who are unable to be responsible for state property in their control. other recipients who may appear as a result of state property management related to state bills as a result of utilization and transfer of state property. Another follow-up is an auction, i.e. when selecting a third party in the context of utilization and Transfer of state property.<sup>17</sup>

State finance is all the rights and obligations of the state that can be assessed by money and everything in the form of money or in the form of goods that can be used as state property related to the implementation of these rights and obligations.<sup>18</sup>

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<sup>15</sup> Ardian Prima Atmaja and Fredy Susanto. "Optimasi Aplikasi SIMAK-BARANG MILIK NEGARA Untuk Inventarisasi Barang Milik Negara Berbasis Aplikasi Mobile Android." *Jurnal Teknologi Informasi dan Ilmu Komputer* 6, no. 2 (2019): 201.

<sup>16</sup> Mariam Darus Badruzaman. (2014). *Aneka Hukum Bisnis*. Bandung: PT Alumni.

<sup>17</sup> Priyono D W I Nugroho. "Pengelolaan Barang Milik Negara/Daerah (Bmn/d) Priyono Dwi Nugroho. Ak. Msi. Mm\*" (2012): 1-12.

<sup>18</sup> Ardian Prima Atmaja and Fredy Susanto, "Optimasi Aplikasi SIMAK-BARANG MILIK NEGARA Untuk Inventarisasi Barang Milik Negara Berbasis Aplikasi Mobile Android," *Jurnal Teknologi Informasi dan Ilmu Komputer* 6, no. 2 (2019): 201.



In the management of goods and the use of state property, users are obliged to carry out security which includes administrative security, physical security, and legal security. As stated in Article 43 paragraph (1) which states that "State/ Regional Property in the form of land must be indicated on bePPf of the Government of the Republic of Indonesia / The Relevant Regional Government".<sup>19</sup>

Classification of State Property In government accounting, State Property is part of a tangible central government asset.<sup>20</sup> Utilization is carried out in the framework of activities outside the main duties and functions of the Ministry / Institution / Regional Device Unit / Institution as a User of Goods.<sup>21</sup>

The reasons for returning the State House are diverse, as if you get a replacement money, ask for help from a house without a down payment, if you already have a house, or other reasons. Based on the reasons presented by residents who are not entitled to continue to occupy the State House both willing and unwilling to do the dominant emptying ban on economic reasons because they do not have a house anymore and want to get replacement money so that they can buy another house to live in.<sup>22</sup>

The Minister of Finance c.q. Director General of State Wealth has the authority and responsibility in providing decisions on the proposed determination of the status of Use, Utilization, Transfer, and Elimination of State Spoils proposed by the Prosecutor's Office / KPK.<sup>23</sup>

An example of State Property benefits is Gede Pangrango National Park to realize world-class Eko-Tourisme, fresh and cold air, sunlight that looks shy out from behind clouds and trees that reflect solar spectra welcome the Bogor KPKNL team.<sup>24</sup>

Area with a total area of 22,851, The 03 ha. GPNP is a nature conservation area where there is a rich diversity of thousands of preserved flora species and dozens of species of fauna that are free to live freely. Gpnp itself is not something foreign to society. National Park, which has been designated biosphere reserve since 1977 by UNESCO, includes two mountains that are already popular with climbers, Mount Gede and Mount Pangrango. There are

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<sup>19</sup> Wahyu Adi Mudiparwanto Niken Wahyuning Retno Mumpuni, "Tinjauan Yuridis Pengelolaan Barang Berupa Tanah Dan Bangunan Milik Negara Di Lingkungan Tentara Nasional Indonesia Angkatan Darat (Tni Ad)," *Jurnal Yuridis* 1, no. 2021 (8AD).

<sup>20</sup> Kartika Amiri, "Pengelolaan Barang Milik Negara Secara Akuntabel Menuju Good Governance," *Potret Pemikiran* 20, no. 2 (2016).

<sup>21</sup> Priyono D W I Nugroho, "Pengelolaan Barang Milik Negara/Daerah (Bmn/d) Priyono Dwi Nugroho, Ak, Msi, Mm\*" (2012): 1-12.

<sup>22</sup> Hasya Ilma Adhana, "Penegakan Hukum Terhadap Penertiban Rumah Negara Di Lingkungan Kementerian Keuangan," *Dharmasiswa* 1, no. 1 (2021).

<sup>23</sup> W. Riawan Tjandra, "Pengelolaan Barang Hasil Rampasan Dan Sitaan Negara Dalam Tipikor," *Artikel* (2019).

<sup>24</sup> DJKN. Laporan Barang Milik Negara. Audit Beberapa Tahun BARANG MILIK NEGARA. <https://drive.google.com/file/d/1XklYcIiiAwQkly9to0n1gO1WjpUrlec6/view> diakses pada tanggal 01 Desember 2021.

theatre houses, camp buildings to the suspension bridge are state property. This asset is obtained through utilization cooperation (KSP) managed by third parties. Through the KSP scheme, third parties are required to build support facilities in the form of roads, rest buildings, and other facilities without changing or damaging actual natural conditions, then the advantage sharing system applied is recorded as third party and PNBP profits for the state, as well as assets. Those built by third parties and then submitted to TNGP are used as state assets.<sup>25</sup>

*Beneficial rights* are not property rights, so in the utilization of state assets, state property can only be utilized to be more productive and the results can provide benefits to increase state assets so that state property can be productive and useful. thus, in the process of utilizing state property, state assets cannot be transferred.

#### 4. Conclusion

The form of utilization of state / regional property can be in the form of leases carried out by the manager of goods to land / buildings utilization cooperation, buildings to serag or build handovers / build handovers, cooperation of infrastructure providers, security and maintenance, assessment, removal, transfer, and management. The right of utilization of state property is not essentially a property, so when using state assets, state property can only be used for productive assets, with the result of providing benefits to increase state assets. as a result, state assets are non-transferable when using state property.

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