

FORMATION OF REGIONAL ENDOWMENT FUNDS ACCORDING TO LAW NUMBER 1 OF 2022 CONCERNING FINANCIAL RELATIONS BETWEEN THE CENTRAL GOVERNMENT AND REGIONAL GOVERNMENTS

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Abstract

The government continues to refine and strengthen the policy of governance of financial relations between the central and regional governments in order to achieve national goals by enacting Law Number 1 of 2022 concerning Financial Relations between the Central and Regional Governments, which regulates regional endowment funds. This regulation provides space for the formation of Regional Endowment Funds but also provides limitations with certain criteria. Law Number 1 of 2022 stipulates that the formation must consider, among other things, regional fiscal capacity and the fulfillment of mandatory Government Affairs needs related to basic public services. The objectives of this research are To determine the urgency of establishing a Regional Endowment Fund. The results of the study show: First, the factors that encourage the formation of DAD, namely 1) The formation of DAD becomes a strategy to ensure the sustainability of long-term and cross-generational regional finances; 2) Optimization of regional spending in regions with established fiscal policies; 3) Encouraging regional investment activities in an effort to increase regional income. Second, the governance scheme in the formation of DAD is the establishment, management, use, and supervision. All of these stages must receive support from all parties, especially regional leaders.

Keywords: Regional Endowment Fund, Financial Relations between Central and Regional Governments, Decentralization.

INTRODUCTION

The amendment to the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia, has mandated the division of authority between the central and regional governments through the concept of decentralization. This concept opens up space for regional governments to think about and determine various problems related to social and economic affairs in their regions. The implications of decision-making for the implementation of affairs directly handled by this region ultimately encourage the creation of a democratic government system.

Delegation of tasks to regional governments in autonomy accompanied by financial delegation (money follows function) The existence of a relationship of authority results in financial relations between the central and regional governments. Where this fiscal decentralization approach aims to encourage economic growth, improve equity, and improve the quality of public services and community welfare. An important aspect to realize this principle is marked by the existence of a balance between central and regional finances in Indonesia. This financial balance between the central and regional governments aims to reduce fiscal disparities between regions.

The Central Government provides transfer funds that can be managed by the government to organize government. Regions are required to optimize their capabilities by

exploring their income to minimize dependence on transfer funds. With the flow of funds through revenue sharing funds, regions have the capital to explore regional potential. However, this revenue sharing fund scheme creates anomalies, especially in regions rich in natural resource (SDA) exploration results. Regions that receive high income from natural resource management are sometimes not in line with the increase in the economy of their people.

The establishment of DAD is a strategic step to ensure that regional financial management is not only focused on meeting short-term needs, but is also able to provide sustainable benefits and strengthen financial stability for the welfare of society in the future. The HKPD Law provides space for the establishment of DAD, but also provides limitations with certain criteria. The HKPD Law stipulates that the establishment of DAD takes into account, among other things, the fiscal capacity of the region and the fulfillment of the needs of mandatory Government Affairs related to basic public services. This is reaffirmed in Government Regulation (PP) Number 1 of 2024 concerning Harmonization of National Fiscal Policy which is one of the implementing regulations of the HKPD Law. Article 73 paragraph (1) of PP Number 1 of 2024 stipulates that regions that will form DAD must meet the following criteria: have high or very high regional fiscal capacity; and the needs of mandatory Government Affairs related to basic public services have been met.

This law provides space for regions that have sufficient fiscal capacity to form an “Eternal Fund” which is then referred to as the Regional Endowment Fund (DAD). The concept of endowment fund management, in this HKPD Law, is expected to be a solution to distribute the benefits of natural resource exploration evenly to future generations. Departing from this description, the author will examine the urgency of establishing a Regional Endowment Fund to ensure sustainable development and to understand the governance scheme of the Regional Endowment Fund that is oriented towards regional independence.

Based on the background above, several problem formulations can be taken as follows:

1. The urgency of establishing a regional endowment fund?
2. What are the regional criteria and stages for establishing regional endowment funds?

METHOD

This research uses normative legal methods to find legal rules, legal principles, and legal doctrines to try to answer the issues faced. This research is exploratory in nature with the aim of gaining a deeper understanding of the formation of Regional Endowment Funds according to Law Number 1 of 2022 concerning the financial relationship between the central government and regional governments, then the governance and effective supervision of Regional Endowment Funds (DAD) to ensure the sustainability of regional development and independence. The approaches used are the statute approach and the conceptual approach. The statute approach is related to the position of the endowment fund in the legislation. The conceptual approach is related to the concept of DAD as a Sovereign Wealth Fund which is compared with SWF developed in other countries. The case approach is related to the implementation of the endowment fund and its various problems.

RESULTS AND DISCUSSION

Urgency of Establishing Regional Endowment Funds

The development of a decentralized government affects the management regime of resources. This affects the extent to which the community can participate in the management of natural resources. In Indonesia itself, natural resources are controlled by the state to be used as much as possible for the prosperity of the people (Article 33 of the 1945 Constitution of the Republic of Indonesia). The state as the embodiment of the people has the authority to determine the extent to which the community can participate in the management of resources. The implementation of decentralization and regional autonomy is expected to position the community not only as an object of policy, but as a subject who can participate in determining regional policies, including those related to the management of natural resources.

The fiscal decentralization policy scheme also provides authority to regions to manage funds from the management of their resources directly by establishing a Regional Endowment Fund (DAD). The concept of DAD Endowment Fund Management has long been known in the realm of public finance under the name Sovereign Wealth Fund. The International Monetary Fund defines the Sovereign Wealth Fund (SWF) as a special investment fund created or owned by the government. DAD is formed in order to optimize SiLPA for regional spending. So, regional governments that can form DAD are regions that have high SiLPA and high service performance. SiLPA is the difference between the revenue budget and the realization of spending in the APBD which results in a surplus or deficit. If the income exceeds the spending budget, then SiLPA is said to be a surplus.

On the other hand, if the regional budget expenditure is greater than the revenue budget, then there is a budget deficit. Then, if a regional budget experiences a surplus, then the budget can be used for regional financing as stipulated in the regional regulation on the budget, the implementation of which is in accordance with the provisions of laws and regulations. The use of the budget surplus is prioritized for: a) payment of principal installments of debt that is due, regional capital participation, formation of reserve funds, provision of regional loans; and/or other financing expenditures in accordance with the provisions of laws and regulations.

Encourage regional investment activities in an effort to increase regional income. The encouragement of regional governments to invest has existed since the regional autonomy regime. The existence of regional authority to manage their own households underlies several regions to start investing. The embodiment of regional governments to invest is regulated in Article 300 Paragraph (2) of Law Number 23 of 2014 concerning Regional Government, hereinafter referred to as the Regional Government Law.

This policy breakthrough deserves appreciation, because it has a very good purpose. This initiative is expected to encourage changes in financial management behavior from dependence on public funds to entering the government. In addition, the author believes that there are several other important reasons why local governments should initiate the formation of the DAD. First, the formation of the DAD is a strategy to ensure the sustainability of long-term and cross-generational regional finances. According to data from

the Ministry of Finance 2018-2021, the ratio of dependence on regional income from central transfer funds for the average region in Indonesia is 66.4 percent each year.

In fact, most regions have a dependency ratio of more than 80 percent. For example, in Riau, their dependence on transfer funds reaches 80-85 percent, while the other 30 percent comes from natural resource revenue sharing (DBH SDA). In this context, the initiation of DAD policies is urgent as an effort to reorganize regional financial management from transfer funds, especially those sourced from the potential of DBH SDA. Because natural resources from the oil and gas, forestry, and general mining sectors are certain to decline in production and even run out in time. So that the regional government needs to leave some of the DBH SDA in the DAD scheme for future generations.

Regional Criteria

The HKPD Law provides space for the formation of DAD, but also provides limitations with certain criteria. The HKPD Law stipulates that the formation of DAD takes into account, among other things, the fiscal capacity of the region and the fulfillment of the needs of mandatory Government Affairs related to basic public services. This is reaffirmed in Government Regulation (PP) Number 1 of 2024 concerning the Harmonization of National Fiscal Policy which is one of the implementing regulations of the HKPD Law. Article 73 paragraph (1) of PP Number 1 of 2024 stipulates that regions that will form DAD must meet the criteria: have high or very high regional fiscal capacity; and the needs of mandatory Government Affairs related to basic public services have been met. To determine the Regional Fiscal Capacity (KFD), there is a calculation and determination of the KFD category regulated by the Regulation of the Minister of Finance (PMK) concerning the Regional Fiscal Capacity Map which is determined periodically.

In this PMK, there are 5 (five) categories of KFD, namely very low, low, medium, high, and very high. KFD that can be used in the formation of DAD is guided by the PMK regarding the Regional Fiscal Capacity map at least in the relevant year. The current PMK on the Regional Fiscal Capacity Map is PMK Number 84 of 2023 concerning the Regional Fiscal Capacity Map which will come into effect on September 1, 2023. Article 1 number 1 of PMK Number 84 of 2023 stipulates that the Regional Fiscal Capacity (KFD) is the financial capacity of each region reflected through regional income and certain regional financing receipts minus income whose use has been determined, certain expenditures, and certain regional financing expenditures. The KFD map consists of a provincial KFD map and a district/city KFD map, which are compiled through 2 (two) stages of calculation, namely the KFD calculation followed by the KFD Ratio calculation stage.

The fulfillment of basic public services is marked by the achievement of minimum service standards with the category of complete pratama, with achievement data sourced from the ministry that organizes Government Affairs in the financial sector and/or other related ministries/institutions. If the minimum service standard achievement data is not yet available, the criteria for fulfilling basic public service needs use public service index data with a minimum moderate category. Minimum Service Standards (SPM) are provisions regarding the Type and Quality of Basic Services which are Mandatory Government Affairs

that every Citizen has the right to obtain at a minimum. Provisions regarding SPM are regulated in Government Regulation Number 2 of 2018 concerning Minimum Service Standards, which regulates the types and quality of basic services that must be fulfilled by provincial and district/city governments. In relation to the implementation of SPM, regional governments, both provincial and district/city, are required to submit a report on its implementation, including in the content of the report on the implementation of regional government.

Stages of Establishing Regional Endowment Funds

Once the criteria for establishing a DAD have been met, the Region can establish a DAD which is stipulated in a Regional Regulation (Perda). The preparation of the draft Regional Regulation is a preparatory stage for the formation of DAD before the assessment stage and the determination stage are carried out. Provisions regarding the formation of DAD are further regulated in the Regulation of the Minister of Finance (PMK) Number 64 of 2024 concerning Procedures for the Formation and Management of Regional Endowment Funds. Article 7 paragraph (3) of PMK Number 64 of 2024 stipulates that the draft regional regulation only contains provisions regarding the formation and management of DAD for 1 (one) specific type of DAD.

a. Establishment

The endowment fund is obtained from the excess of the realization of budget revenues and expenditures during one budget period (SILPA). In the preparation of the APBD, the SiLPA figure should be zero. However, if there is an excess of revenue from regional spending, then SiLPA can be used for regional development which then becomes a source of financing. SiLPA as a source of regional financing can be used to cover the budget deficit, pay principal and debt installments, form reserve funds, capital participation, and provide loans. In order to optimize this SiLPA, the HKPD Law further provides the authority for regional governments to form DAD.

DAD is a new component of financing expenditure in the regional financial management structure. Its objectives include organizing cross-generational public benefits. The Regional Government Law and Law Number 17 of 2003 concerning State Finance (hereinafter referred to as the State Finance Law) in principle regulate that DBH and PI are included in the APBD. The formation of DAD must consider the financial capacity of the region and the fulfillment of the needs of mandatory government affairs related to basic services. The basic services referred to are basic services that have been regulated in Law Number 23 of 2014 concerning Regional Government.

Some of these basic services are education, health, public works and spatial planning, public housing and residential areas, security, public order, and community protection, and social. Minimum Service Standards (SPM) are provisions regarding the Type and Quality of Basic Services which are Mandatory Government Affairs that every Citizen has the right to obtain at a minimum. Provisions regarding SPM are regulated in Government Regulation Number 2 of 2018 concerning Minimum Service Standards, which regulates the types and quality of basic services that must be met by provincial and district/city governments. In

relation to the implementation of SPM, regional governments, both provincial and district/city, are required to submit reports on its implementation, including in the content of the report on the implementation of regional government.

In PP Number 63/2019 concerning Government Investment, the sources of Government Investment are from: a) APBN, b) yields, c) income from services/businesses, d) grants, and/or e) other legitimate sources. In Bojonegoro Regency, for example, the Endowment Fund is obtained from annual profit sharing funds received from the Central Government obtained from the results of Participating Interest (PI). Funds from both sources are then transferred to the APBD and then to the Endowment Fund after being approved by the DPRD.

b. Management

The institutional framework in DAD management should be formed based on the regulations stipulated in the HKPD Law, Government Investment PP and Permendagri No. 52/2012 concerning Guidelines for Regional Government Investment Management. Although in the regulation the “deposit in management” scheme is possible to be implemented with a third party, in the HKPD Law, DAD management can only be managed by the Regional General Treasurer (hereinafter referred to as BUD) or the Regional Public Service Agency (hereinafter referred to as BLUD). The establishment of BLUD aims to ensure independence and competence in DAD management. Whatever institutional format is chosen, this institution must ensure transparency in DAD management, starting from the flow of incoming funds, management, to distribution to the community. Regional financial management cannot be separated from the political process and negotiation, especially in the early stages of formulating objectives and establishing DAD as well as the legal process of drafting special policies that regulate its management mechanisms.

Political leadership is needed as a holder of public commitment and guarantee of protection of citizens' rights as the highest owner of an asset. The purpose of establishing a Regional Endowment Fund as stipulated in the Academic Manuscript of the HKPD Law states that the DAD is intended to: 1. Obtain economic benefits, social benefits, and/or other benefits previously stipulated; 2. Provide contributions to regional revenues; and 3. Organize public benefits across generations. Then in the Body of the UUHKPD, it is stated that "SiLPA can be invested and/or used for the establishment of a Regional Endowment Fund". The word "invested" in this norm indicates that the management of the DAD can be invested.

Basic Regulations on Investment from DAD are focused on investments that are free from the risk of decline in value. DAD management does not invest in risky instruments. This is based on the principle of accuracy and prudence to secure and maintain the principal of the Endowment Fund. The use of DAD focuses on low-risk financial instruments such as Government Securities issued by the Central Government or deposits in healthy banks. Investment results from DAD management become Regional Income. Utilization of returns from DAD is used to finance social activities.

c. Supervision

Supervision of DAD management involves many parties. DAD Supervision Management can be carried out by internal or external audits. Internal audits by forming a Board or Supervisory Board or other internal supervision. The Supervisory Board as an addition to the board of directors structure but with limited authority. External audits can be carried out by auditors from the Audit Board of Indonesia (BPK). An important aspect in supervision is ensuring transparency, accountability, and effectiveness of fund use.

There are three things that have a role in maintaining the quality of management, namely supervisory institutions, laws and regulations, and supervisory mechanisms. The main supervisory institution in regional financial management in Indonesia is the BPK. Based on Article 23 C Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the BPK has the task of auditing state financial management and checking compliance with applicable laws and regulations. Then in Law Number 15 of 2004 concerning Audit of Management and Responsibility, it explains that the BPK has the task and authority to audit state financial management and responsibility, including financial management in regional governments.

Furthermore, Government Regulation Number 12 of 2019 concerning Regional Financial Management states that the BPK has the authority to audit regional finances. As an independent institution, the BPK audits regional government financial reports to ensure compliance, fairness, and transparency in regional financial management. The BPK Provincial Representative Office will conduct audits in accordance with applicable audit standards and will provide an opinion on the fairness of regional financial reports. The BPK audit report is the basis for assessing regional government performance and affects regional financial accountability. The results of the audit must be submitted to the DPRD for follow-up.

One of the problems in the implementation and management of DAD is the tug-of-war between business interests and regional interests, then the tug-of-war of the need for public spending: The existence of SiLPA in regional financial management should be avoided. The high SiLPA indicates counterproductiveness to the APBD budgeting process which is oriented towards improving community welfare. The amount of SiLPA which increases every year is feared to hamper the development process. Although it is difficult to detect the cause of SiLPA, several studies show that there is an excess of regional income that is not included in the budget calculation, and there is a realization of spending lower than the budgeted ceiling.

CONCLUSION

- a. The implementation of regional autonomy is marked by the opening of space for regional governments to play an active role in improving welfare in society. The failure of the government in the economic development sector with a centralistic approach has given rise to new inspiration, namely in compiling/designing the implementation of decentralized development. Several factors that encourage the urgency of the formation of DAD, namely 1) the formation of DAD as a sustainability of regional finances, long-

term and across generations; 2) optimization of regional spending in regions with established fiscal policies; 3) encouraging regional investment activities in an effort to increase regional income.

- b. The governance scheme in the formation of DAD is the establishment, management, use, and supervision. Based on PP Number 1 of 2024, the stages of DAD formation include: Preparation stage, which consists of the preparation of a draft Regional Regulation concerning DAD, inclusion of sources and amount of funds used to form DAD in the KUA and PPAS, preparation of DAD managers, and preparation of DAD management facilities and infrastructure. Assessment stage, namely the substantive assessment process carried out by the Minister of Finance based on considerations from the Minister of Home Affairs. Determination stage, in the form of stipulating a Regional Regulation concerning DAD, and allocating DAD as a financing expenditure in the APBD. DAD tends to be intended as a savings fund rather than as a stability or sterilization fund. The problem in DAD fund governance that needs to be considered is the separation between political interests that can cause conflicts of interest. In addition, the tug of war between the need for public spending and the need for investment for sustainability has the potential for conflict. So that governance is needed that pays attention to the principles of endowment fund management that have been recognized.

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