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The Dynamics of State-Owned Assets Insurance Regulation Drafting from Regulation Theory Lens

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ABSTRACT

State-owned assets (BMN) insurance is regulated by Minister of Finance Regulation (PMK) number 97 of 2019 which was issued as a replacement for PMK number 247 of 2016 for the reason of not successfully implemented as expected. Significant changes have occurred regarding BMN insurance through the 2019 PMK. The changes of regulation require strong urgency and arguments to be actualized. The arguments and discussions regarding regulation drafting come from many sources, from the regulator itself and the regulated parties. This research was conducted in the form of a case study to explore and get further understanding of the BMN insurance regulation drafting dynamics while observing through a regulation theory lens. The results of the study found that initially, the regulation drafting regarding BMN insurance was a necessity to have insurance as a risk transfer scheme, and also along the way, an intervention was needed for the failure of previous regulations while the assumed private motives involved coincide the public needs. The results also found that during the drafting process, there happened to be a capture process from the regulated party's side to the regulator, but later explained that what was expected by the regulated parties was also expected by regulators.

Keywords : asset management, state-owned assets insurance, regulation theory

INTRODUCTION

Indonesia is a country that has a high level of disaster risk, this is proven through the World Risk Index which Indonesia ranked 40th out of 181 countries (Behlert, et al, 2020). Examining further about disaster risk from a geological perspective, Indonesia is located on the equator and has a tropical climate, which causes Indonesia to potentially experience extreme weather (Handayani, 2010). Indonesia is also located where three large tectonic plates meet, which are generally characterized by the presence of deep trenches. Indonesia also has a series of volcanoes that are included in the series of volcanoes along the Asia-Pacific called the Ring of Fire (BNPB, 2016).

Based on Indonesian Statute (UU) Number 24 of 2007 regarding Disaster Management, the Government is responsible for the implementation of disaster management. From a fiscal perspective related to disaster risk mitigation in Indonesia in terms of disaster management, the Government implements a disaster risk financing strategy in the form of a combination of ex-post financing and ex-ante financing (Ministry of Finance, 2019).

Despite implementing the disaster risk financing strategy as described previously, the average annual economic loss between 2000 and 2016, from the damage done to buildings and non-building due to natural disasters that occurred in Indonesia is still around 22.8 trillion IDR, while contingency funds budgeted was 3.1 trillion IDR by average per year between 2005-2017 (BKF, 2018). Based on these terms, it is known that there is a financing gap of 19.75 trillion IDR or around 78% per year between losses needed to recover and the recovery budget.

By imposing all risks of disaster losses on the government, assuredly, will greatly affect the government's performance and the posture and form of the existing budget (Sudiarto, 2017). A well-rounded scheme is needed that can offer relief from the burden on the state budget, especially in post-disaster activities out of all disaster management activities. According to Suprayitno (2019), disaster risk managements can be classified into three groups, such as risk avoidance, risk acceptance, and risk avoidance. One of the options available to be implemented is the risk avoidance through insurance.

Related to disaster risk management in the form of insurance, the Government through the Ministry of Finance has developed a Disaster Risk Financing and Insurance (DRFI) Strategy where one of the priorities is the protection of the state-owned assets (BMN). The regulation regarding insurance for state-owned assets is based on Article 45 of the Government Regulation (PP) Number 27 of 2014 regarding Management of State/Regional-Owned Assets (BMN/BMD) that the Property Manager, in this case, the Ministry of Finance c.q. the Directorate General of State-Assets Management (DJKN) can arrange the insurance policies in the context of securing state assets by considering the state's financial capacity. The regulation was then made to a more technical level by issuing Regulation of the Minister of Finance (PMK) of the Republic of Indonesia Number 247/PMK.06/2016 regarding State-Owned Assets Insurance which was later changed through PMK Number 97/PMK.06/2019.

The process of drafting a regulation to replace the previous regulation and its implementation in the same year certainly requires a strong urgency to underlie it, especially when compared to the previous regulation in 2016 which gave a gap of one fiscal year before finally being implemented. The replacement of the BMN insurance implementation scheme cannot be separated from the interests of the parties involved, be it the property manager, property user, or the insurance service provider. The interests can be observed from the regulatory theory, such as the public interest theory, private interest theory, and regulatory capture theory. Thus, this paper attempts to get a further understanding of the dynamics of BMN insurance regulation drafting while observing through a regulation theory lens.

RESEARCH METHOD

The research objective is to explore and get a better understanding of the state-owned assets (BMN) insurance regulation drafting dynamics, therefore the research was conducted in the form of a case study with explorative characteristics. It was then observed through a regulation theory lens to get a further understanding of which party holds more power throughout the regulation drafting dynamics. The data are collected through sets of interviews with the regulator party, Directorate General of State Asset Management (DJKN), regulated party from both the industry point of view and the implementation point of view, namely State-Owned Assets Insurance Consortium and Secretariat General of Ministry of Finance. The data are also collected through a literature study which includes related journals, books, and regulations.

LITERATURE REVIEW

State-owned assets insurance

Regulations related to the management of state-owned assets (BMN) insurance introduced from Government Regulation (PP) Number 27 of 2014 regarding the Management of State/Regional-Owned Assets (BMN/BMD) article 45 paragraph (1) which reads, “The Property Manager may determine insurance policies or coverage in the context of securing certain BMN by considering the state's financial capacity."

The mandate of the Government Regulation (PP) was later translated in the form of Minister of Finance Regulation (PMK) Number 247 of 2016 regarding BMN Insurance, which was later refined into PMK Number 97 of 2019. The purpose of BMN insurance is as a form of BMN security, ensuring the continuity of providing public services, smoothing the tasks and functions of government administration by considering the state's financial capacity.

Objects included in regulations are buildings with the following criteria: a) having an impact on public services if damaged or lost; and/or b) support the smooth running of government administration tasks and functions. The object of BMN insurance can also include the facilities and infrastructure, including structural, mechanical, electrical, and external spatial components.

BMN insurance is implemented using one type of product that has received approval from The Financial Services Authority (OJK) in Indonesia. The insurance products are also determined using one rate as the basis for determining premiums according to the agreement, which is 1.961 (one point nine six one) per mil per year.

Regulation theory

Public interest theory is based on the assumption that the market economy suffers from a series of market imperfections or transaction failures, which, if left uncorrected, will lead to inefficient and uneven results. A potential market failure occurs when there is a failure of any of the conditions necessary for the best operation of a competitive market. Examples of potential failures include lack of competition, barriers to entry, imperfect information gaps (information asymmetry) between buyers and sellers, or certain market signals, and the nature of public goods of some products

This underlies the demand for government intervention through regulation. Therefore, regulations are initially provided to benefit society as a whole and the regulator (government) is trusted to represent the interests of the communities in which the regulatory body operates.

Private interest theory is based on the premise that government intervention is the result of the political power of interest groups seeking outcomes that benefit their groups. In terms of regulation, the government has one basic resource that is not granted even to the strongest of its citizens, namely the power to coerce (Stigler, 1971).

According to Godfrey, et al. (2010), the regulatory capture theory states that although the real purpose of regulation is to protect the public interest, this goal is not achieved for the reason of in the regulatory process, the entity that receives the regulation/regulated entity comes to control or dominate the regulator (Peltzman, 1976). The main reason for this view of capture theory centers on the fact that regulatory decisions usually have a large effect on the interests of the regulated industry.

RESEARCH ANALYSIS

The Dynamics of Regulation Drafting

Urgency of new regulation

<u>Indonesia is a disaster-prone country</u>

Indonesia is a country that has a quite high potential for disaster risk. The risks described have an impact on state-owned assets (BMN), especially those that have the function of health services, education, and those who carry out the duties and functions of government and community services. If the related BMN are affected by disaster risk, then its recovery must be completed immediately so that it can function anew in providing services to the community.

<u>Securing the State Budget from risks is a form of responsibility for disaster management</u>

Based on the Ministry of Finance Decree (KMK) Number 577 of 2019, it is known that risk is the possibility of an event occurring that has an impact on the achievement of organizational goals. One of the risk categories is named risk of state finances and state assets, which also includes those related to state-owned assets (BMN) and the management of it.

Implementing the Disaster Risk Financing and Insurance (DRFI) strategy

Based on this strategy, it is known that risks with a high frequency of occurrence and low impact implement the retention options, using the previously applicable scheme, namely the allocation of State/Regional Budget (APBN/APBD) and ready-to-use loans. On the contrary, risks with low frequency of occurrence and high impact implement risk mitigation options in the form of transfers through insurance, one of which is state-owned assets (BMN) Insurance.

Improve and reinforce previous regulations

In the process of drafting the derivative rules from Minister of Finance Regulations (PMK) Number 247 of 2016, it was then decided by DJKN to prepare a new PMK to replace the one which was deemed not to run optimally. The expectation from DJKN at that time was that the state-owned assets (BMN) insurance process could be implemented smoothly, without fraud, and easier to do.

Major points of changes

Based on the results of interviews conducted, it is known that the obstacles that occurred and became the attention of the Directorate General of State Assets Management (DJKN) at that time were at three points, i.e., determining and defining what types of state-owned assets (BMN) would be insured, defining the disaster-prone areas, and the most difficult was the preparation of procurement mechanism.

Defining what type of BMN to be insured is important because each type of BMN will require a different standard policy. The policy for BMN insurance with the type of buildings will not be the same as the policy for bridges or transportation equipment. From these obstacles, a decision was made to reduce the BMN type of objects that can be insured from four categories, leaving only one type in the form of buildings with it including the facilities and infrastructure covering them. It was hoped that a more focused and in-depth study would be carried out because it only requires one type of standard policy. Meanwhile, other types of objects are expected to follow observing the evaluation of BMN insurance for buildings.

Related to the definition of disaster-prone areas, DJKN stated previously at the Minister of Finance Regulation (PMK) Number 247 of 2016 that the area coverage for BMN insurance as disaster-prone areas is only those with high disaster risk. Of course, with these criteria, the rate that will be applied by the insurance company will be higher, because the more prone to disaster an insurance object will be, the higher the insurance rate will be applied. This statement urged a debate between two parties (regulator and industry) which conclude that the area defined as disaster-prone would be all regions of Indonesia, but the tariff agreed should be as low as possible.

Concerning insurance tariff, PMK Number 247 of 2016 does not explain what the tariff will be so that there is a gap in the imposition of tariffs on each procurement, which creates the potential for findings and fraud. This argument also urged the need for one specific tariff applied for the insurance, which is agreed at 1.961 (one point nine six one) per mil per year.

The need for one tariff proposed another debate, ‘is it needed for one type of insurance to be procured especially for BMN?' The previous PMK of 2016 does not clearly state what types of insurance can be procured. There were concerns about the different types of insurance provided, there were also differences in the extent of object and risk coverage of the insurance. In the process of drafting, finally, it was agreed to have a specific insurance type called "State-Owned Assets Insurance (ABMN)".

In terms of the procurement mechanism, the most contrasting point in the scheme amended is the direct appointment to the BMN Insurance Consortium while the procurement is done at the Ministry/Institutions level, wherein the previous regulation the scheme chosen was the general procurement of government's goods/services at the work unit (lower) level. There were concerns such as if the previous scheme continued, it would take a longer time to process the post-disaster management related to BMN and there would be different insurance tariffs issued between one Ministry/Institutions and another.

The direct appointment scheme as stated before was then consulted with the National Procurement Board (LKPP) and AAUI so that an agreement was born to form a BMN insurance consortium. The formation of the consortium also answers the criteria that direct appointments can only be provided by one capable business entity. The supporting argument is because when talking about the capabilities of insurance companies, no insurance company can single-handedly provide insurance services for the value of BMN spreads throughout Indonesia.

Of course, this creates another obstacle, this policy could be considered to support monopoly because it can dominate the market which is also questioned by the Business Competition Supervisory Commission (KPPU). However, the solution concludes that there should be convenience and no restrictions to join the BMN insurance consortium. As for the registration as a consortium member, it is carried out openly and an annual evaluation is carried out to ensure that consortium members still meet the criteria.

Involvement of various parties

<u>Indonesian General Insurance Association (AAUI)</u>

In carrying out its duties as representatives of the members in government institution forums, AAUI is involved in a series of discussions, reviews, and negotiations related to the preparation of state-owned assets (BMN) insurance regulations. The topics that were discussed jointly between the Directorate General of State Assets Management (DJKN) as the regulator and AAUI were around the preparation of standard BMN insurance policies, namely the insurance mechanism, tariffs, disaster-prone areas, and consultations related to articles of the regulation from the technical point of view.

<u>Financial Services Authority (OJK)</u>

In its involvement in the preparation of BMN insurance regulations, OJK plays a role in providing direction in its domain as a regulator in policies in financial services.

<u>National Procurement Board (LKPP)</u>

At the stage of drafting the BMN insurance regulation, DJKN consulted with LKPP regarding the procurement mechanism to be used, moreover, DJKN proposed the option of direct appointment of the BMN insurance consortium as a form of procurement compared to the previous scheme, namely the procurement of ordinary government goods/services.

<u>Business Competition Supervisory Commission (KPPU)</u>

At the stage of drafting BMN insurance regulations, the role of KPPU is to provide advice and considerations on policies to be taken in the form of a one-seller mechanism, specifically a consortium.

<u>Secretariat General of the Ministry of Finance</u>

Secretariat General of the Ministry of Finance was not necessarily involved in the preparation of BMN insurance regulations, precisely in the process of drafting Ministry of Finance Regulation (PMK) Number 97 of 2019 but was intensely involved in the preparation of its derivative regulations, namely Ministry of Finance Decree (KMK) Number 280 of 2019.

The involvement was then explained in the form of assistance in the preparation of the KMK related to the procurement mechanism in the process of meetings and discussions with the BMN Insurance Consortium and LKPP. This is because the position of Procurement Supervisor at the Ministry of Finance is at the BMN Management and Procurement Bureau, Secretariat General of the Ministry of Finance.

Other Parties

In the process of drafting BMN insurance regulations, DJKN as the regulator also asks for input and opinions from various institutions, both national and international. Some of the institutions are the World Bank, the Indonesian Brokers Association, and the Association of Insurance Loss Calculation Companies.

Application of Regulation Theory

Public interest theory

In its application, this research has a proposition in the theory of public interest that there was a necessity to have disaster insurance to lower the financial risk given the pressure it's given to state budget as a fulfillment to public needs and also there were market failures in the form of information asymmetry between the work unit and the information provider. This form of information asymmetry stems from the absence of derivative regulations from the state-owned assets (BMN) insurance regulations issued in 2016 so that the government has the responsibility for disaster management has the urge to intervene.

The necessity of disaster insurance is rooted back to the Indonesian Statute (UU) Number 24 of 2007 regarding Disaster Management. It also backed up with the Disaster Risk Financing and Insurance (DRFI) as the need of risk transfer, i.e., insurance to manage the low frequency of occurrence and high impact event such as disaster.

In practice, there were obstacles in implementing Ministry of Finance Regulations (PMK) Number 247 of 2016. These obstacles result in delays in the socialization process and difficulties in drafting derivative rules for BMN insurance from the PMK of 2016.

The root of these obstacles is also stated as the main obstacle of the Directorate General of State Assets Management (DJKN) side as the regulator in drafting BMN insurance regulations. The obstacle was the lack of knowledge from DJKN regarding insurance. Thus, concludes that the preparation of PMK Number 247 of 2019 did not yet have a strong enough basis of study or knowledge. One of the pressures of issuing the PMK was to follow up the mandate of Government Regulation (PP) Number 27 of 2014 regarding the Management of State/Regional-Owned Assets (BMN/BMD).

The conditions that occurred in PMK Number 247 of 2016 described the conditions of market failure in the form of information asymmetry. Information asymmetry is a form of information imbalance. If applied to PMK Number 247 of 2016, in the absence of technical instructions as derivative rules or socialization from DJKN as the regulator to work units related to BMN insurance, the work units will have information asymmetry where they have less knowledge than sellers or service providers, in this case, insurance company.

The market failures that occur related to information asymmetry were handled by DJKN as the regulator when issuing PMK Number 97 of 2019 and its derivative regulations. Changes that further clarify the old rules such as restrictions on objects, service providers, tariffs, types of insurance used, and procurement mechanisms.

Another market failure that needs to be faced by DJKN as the regulator is considering the lack of competition and the existence of barriers to entry in the procurement of BMN insurance. The previous regulations (PMK of 2016) only relied on the general government goods/service procurement scheme so that competition became open. The concerns as stated above are handled by DJKN through the new regulation (PMK of 2019) by changing the procurement scheme to a direct appointment to the BMN Insurance Consortium.

Further analysis of the public interest theory on BMN insurance found that at the beginning of its formation, the regulation on BMN insurance in PMK Number 247 of 2016 was formed to overcome fiscal risks caused by the post-disaster rehabilitation and reconstruction phase, which is the responsibility of the government. Along the way, there were market failures in the implementation of the regulation, so it was essential to intervene in the form of a new regulation to replace the previous regulation, i.e., PMK Number 97 of 2019. However, with the issuance of PMK Number 97 of 2019 and its derivative rules, the work unit still issues the need for a more comprehensive technical guidance in implementing the regulation in case the information asymmetry can still occur.

Private interest theory

In its application, this research has a proposition in private interest theory that state-owned assets (BMN) insurance regulations do not arise through public demands or government intervention for market failures, but rather an encouragement from other parties related.

From the Directorate General of State Assets Management (DJKN) side as the regulator, one of the main motives for the issuance of Ministry of Finance Regulation (PMK) Number 97 of 2019 was driven by the urgency to amend the previous regulation that could not be implemented as expected. However, it should also be noted that based on the results of interviews conducted, the acceleration of the preparation of these regulations was carried by the statement of the Minister of Finance at the 2018 IMF-World Bank Group Annual Meeting in October 2018 related to the insurance.

Related to the private benefits obtained by DJKN from the issuance of insurance regulations for BMN, the reputation, and ease of managing BMN can be speculated as to the motives. The issuance of PMK Number 247 of 2016 nearly at the end of the year with terms of implementation in the 2018 fiscal year cannot be carried out due to a lack of socialization and the absence of derivative rules issued. This certainly has an impact on the reputation of DJKN as the Property Manager in carrying out its duties, especially related to the BMN management regulations. With the issuance of PMK Number 97 of 2019 which was immediately implemented in the same year, the problems from previous regulations (PMK of 2016) were resolved.

The ease of managing the BMN is related to the completeness of the data required for each BMN is higher. This is related to the BMN management plan in the future, if it continues to be used within the next two years, insurance will be carried out, while if it is planned to be used, transferred, or written off, the BMN cannot be insured. Thus, it is being considered by the work unit level BMN manager and affected the continuous management of the BMN as a whole.

In terms of the insurance industry, the existence of BMN insurance regulations certainly has a big impact. There are at least two things that benefit the industrial side with the issuance of PMK Number 97 of 2019, particularly the admission of state expenditure flows in the form of premium payments at a rate of 1.961 per mil per year to the BMN Insurance Consortium and the increasing of insurance awareness.

Concerning private interests, the overall benefits obtained by both DJKN and the insurance industry have the potential to encourage the drafting of BMN insurance regulations. However, it should be noted that the results or policies based on public and private interests do not have to be different. With the better reputation and management of BMN carried out by DJKN, it will have an impact on the BMN management cycle carried out by

Ministry/Institutions. On the other hand, with the inflow of state expenditure to the consortium, this can be an incentive for the insurance industry to develop and expand insurance coverage, especially to accommodate all BMN owned by the government.

Regulatory capture theory

In its application, this research has a preposition in the regulatory capture theory that there is a capture process carried out by the insurance industry on state-owned assets (BMN) insurance regulations. The capture stated is related for the regulators to achieve mutual sharing that grants regulations according to the hopes of the industry.

In the case of BMN insurance, the regulator is the Directorate General of State Assets Management (DJKN), and the party who gets the effect of the regulation is the insurance industry, in this case, represented by Indonesian General Insurance Association (AAUI). Of course, there is a potential for capture in the process of drafting regulations given the extent of the impact to the insurance industry if BMN insurance is applied.

The first thing related to determining the occurrence of capture from the industrial side of the regulation is which of the parties initiates the discussions for regulation drafting first. Based on the results of interviews conducted, the initiation of amendment of BMN insurance regulations came from DJKN.

Apart from the initial initiation, the overall dynamics of the insurance regulation drafting process that involves the industry must be a concern to see if the capture process as described previously took place. Based on the results of interviews, there are at least four crucial points in determining what policies will be included in the BMN insurance regulation.

The first crucial point of discussion is regarding the decision of the type of insurance to be used and its coverage. The decision of BMN Insurance as one type of product to be procured also has the basis of the improvement of previous regulations. In the previous regulation, it was worried that there would be problems if the tariffs set between one work unit and another were different, as stated by the DJKN in the interview. It turned out that this was also responding to concerns from the industry side, where there will be a tariff bargain which results in the tariff is too low, thus endangering the insurance industry. This has become a point of concern for the industry and also the second crucial point because the potential for BMN to be insured is immense. In the discussion process between DJKN and AAUI, it is known that the tariff agreed was a form of win-win solution drawn from the regulator's desire to have low tariffs by maintaining object selection only in disaster-prone areas and challenges from the industry that with the requested conditions it would be challenging to get the low rates desired.

The third crucial point is related to the mechanism change into a procurement method through direct appointments and changing the level of the work unit that carries out procurement to the Ministry/Institutions level. This creates a gap in the form of difficulties in supervising the procurement process which is very much carried out by each work unit in each Ministry/Institutions as well as being a potential loophole for unwanted fraud. In the discussion process, the DJKN as the regulator not only consulted with AAUI but also discussed it with National Procurement Board (LKPP) to conclude the decision of the policies for direct appointment.

The direct appointment as stated is done by appointing a service provider. The insurance industry agreed to form a consortium. Thus, it became the fourth crucial point. The urge to appoint a service provider was initiated by DJKN that to facilitate the implementation of BMN insurance, a scheme that simplifies the procurement and supervision process is needed, particularly one product, one tariff, and one seller. The existence of a BMN insurance consortium did not only involve DJKN and AAUI in the discussion but also Business

Competition Supervisory Commission (KPPU). This was to overcome the potential for unwanted market monopolies because the applicable scheme was only for one seller.

It can be concluded that there was a capture process where the regulator and industry achieve mutual sharing that provides regulation according to the wishes of the industry. This was found from a series of discussions conducted by DJKN with the insurance industry where there were negotiations so that the policies adopted as part of the insurance regulation met the goals of the industry. In the process of drafting regulations on Ministry of Finance Regulations (PMK) Number 97 of 2019, it should be noted that DJKN as the regulator is the party that initiated a series of consultations in the preparation of regulations. It also should be noted that the goals expected by the insurance industry at all four crucial points also met the expected points expected by DJKN as the regulator of BMN insurance regulations.

CONCLUSION

This research was conducted to explore and get a further understanding of the state-owned assets (BMN) insurance regulations drafting dynamics along with the underlying reasons. The authors use the lens of regulatory theory to find out the reasons underlying the issuance of new BMN insurance regulations i.e., Ministry of Finance Regulation (PMK) Number 97 of 2019. Based on the study that has been carried out, it can be concluded that the drafting of BMN insurance regulations was initially initiated by the Directorate General of State Assets Management (DJKN) as the regulator and was intended to meet the public interest of disaster insurance necessity and also in the form of intervention on previous regulations that were not effective to be implemented as expected. Along with the consultation and negotiation process, especially with the insurance industry, a capture process took place on four of the crucial points. The results of consultations and negotiations which were then interpreted into regulations did fulfill several goals expected of the insurance industry, but on the other hand, they also met and had the impact expected by DJKN from the very beginning of the initiation of the drafting of BMN insurance regulations. Meanwhile, related to private interests, the private motives assumed of DJKN as a regulator and the insurance industry have also proven to be things that parallel or at the least not opposing the public interest as well.

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