



## The Utilization of Lands Asset as Regional Property in Construction of Sentra Pasar Raya Through Build Operate and Transfer System in Padang City

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### **Abstract**

In smoothness of development, it needs several important aspects, one of it is in terms of capital. This becomes very important to note given the limited funds owned by the region in running economy and physical development of the region. As solution of this problem, it is necessary to have encouragement from the private sector that can be done through investment cooperation. Agreement of Build Operate Transfer (BOT) was chosen as a solution to the shortcomings of the Regional Government. One example of an agreement made is the agreement between Padang Government and PT. Cahaya Sumbar Raya in the construction of the Sentra Pasar Raya (SPR) in Padang. There are many things that need to be considered in carrying out this cooperation considering that there are many obstacles faced in other regions that are cooperating with samen issues. Therefore it is necessary to look at the effectiveness of cooperation chosen. Based on background above, the writer is interested to explore this furture cooperation. This paper discussed about the position of Padang Government on the land and building assets of Sentra Pasar Raya which was built by Build Operate Transfer during the period of use by the developer. This research using empirical juridical approach. In empirical juridical method, the results of the study constitute basic data in (scientific) research classified as primary data and also supported by secondary data, in this case legislation relating to financing cooperation agreements that form the basis of cooperation for Building Used. Based on research the implementation of investment cooperation between Padang Government with PT. Cahaya Sumbar Raya as a mutual agreement and mutual benefit. Cooperation contained in a cooperation contract that are containing the rights and obligations of the parties. Referring to the provisions of the Civil Code Book III concerning commitments. Padang Government performs an obligation by providing facilities in the form of land and land clearing. While PT. Cahaya Sumbar Raya performs its obligations in the form of building construction and used for 25 years (Operate). After the period ends building and management will be handed over to Padang Government. During the utilization period, private sector can take economic benefits from building management. The rights of Padang Government are from taxes and user charges, the utilization of some parts of building and obtaining the building and its management after the agreement ends. In general, the process of implementing agreement went smoothly, but could not be separated from the obstacles in its implementation.

**Keywords:** *The Utilization of Land Assets; The Agreement of Build Operate and Transfer; Regional Property*

## **Introduction**

Indonesia not only experiences a lack of quantity in terms of infrastructure, but also a lack of quality such as: the number of damaged roads, collapsed bridges, and old and inadequate ports. On the way to procure infrastructure requires a very large fund, that will burden if it only charged to the State and Regional Budget. Seeing the limitations of the government through State and Regional Budget in providing funds for the construction of this infrastructure, it is needed to find new models of development project financing. In infrastructure procurement in the regions, it is common the government involves the private sector (national or foreign) as an alternative to funding in its projects.

Private participation in the procurement of infrastructure projects is certainly a new phenomenon in the implementation of projects in Indonesia, therefore land acquisition by investors is very important because land is the main object of the development of these projects so that there will be a tendency for investors to try to control widest land area with minimal capital. This is the background for new concepts such as Build Operate Transfer (BOT).

Forms of utilization of state property / regional property contained in Government Regulation No. 27 of 2014 concerning Management of State / Regional Property, namely:

1. Rent;
2. Borrowing and Use;
3. Cooperation in utilization
4. Build Operate Transfer (BOT
5. Cooperation in Provision of Infrastructure

Buildings and facilities that are part of BOT implementation must be equipped with a Building Permit on behalf of the government. Preparation costs incurred by the manager of properties or users of properties up to the appointment of BOT partners are charged to Regional Budget. BOT preparation costs incurred after the BOT partner have determined and BOT implementation fee is burden by the partner concerned.

Receipts from BOT implementation is an income that must be deposited entirely into the regional general cash account<sup>1</sup>. Determination status of regional property as a result of the implementation of BOT is implemented by the Governor / Regent / Mayor in the context implementation of duties and functions of Regional Work Unit. The party that implement BOT is the manager of the properties, parties who can become BOS partners include<sup>2</sup>:

1. SOE (State-Owned Enterprise)
2. ROE (Regionally-Owned Enterprise)
3. Private except individuals
4. Other Legal Entities

One way to finance the project by inviting the private sector to participate in the procurement of government projects with Build Operate Transfer (BOT) system. Project financing under BOT Agreement covers feasibility studies, procurement of properties, financing, and operations. Here the project implementer gets a concession right for a certain period of time to take economy advantage and ultimately returns all of these assets to the government at the end of the concession period.

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<sup>1</sup>Yusran Lapananda, 2017, *Hukum Pegelolaan Barang Milik Daerah*, PT. Wahana Semesta Intermedia, Jakarta, I ed., page 91.

<sup>2</sup>*Ibid*

BOT is a project concept that is built base on fully private company expense, several private companies or cooperates with State-Owned Enterprise (SOE) and after construction, it is operated by a contractor and after the operation phase is completed, as specified in the BOT agreement, the project then transferred to government as the project owner<sup>3</sup>. Clifford W. Garstang<sup>4</sup> states that BOT is a form of development project financing in which the contractor must provide his own funding for the project as well as the contractor must bear the procurement of materials, equipment, other services needed for project completion. In return the contractor is given the right to operate and take economic benefits in exchange for all costs incurred for a certain period of time.

With the basic framework of BOT cooperation mentioned above, it is illustrated that the basis of BOT is the existence of dependency among parties. It can be said that not all parties, in practice, have funds and at the same time have land rights as part of wealth capital to run a business. Such conditions force them to cooperate with other parties based on the principle of mutual benefit, namely BOT. BOT agreement is a form of cooperation agreement made between the holder of land rights with the investor, which states that the holder of land right gives the investor right to construct the building during the BOT agreement period and transfer the ownership of the building to the holder of land right after the term of the agreement expires<sup>5</sup>. Thus, the BOT agreement is a concept where the project is built at the full expense of a private company, several private companies or cooperation with SOEs, after being built, it will operated by contractor and after the operational stages are completed as specified in the BOT agreement, then the project is transferred to the government as the project owner<sup>6</sup>.

In Article 34 paragraph (1) Government Regulation No.27 of 2014, Build Operate Transfer properties owned by regional is implement with consideration to:

1. Users of properties need buildings and facilities for the administration of regional government for the benefit of public services in the context implementation their duties and functions;
2. Not available or insufficient funds available in Regional Budget for the supply of buildings and facilities.

In line with case above, in change of second amendment 1945 Constitution of Republic Indonesia Chapter IV, concerning Regional Government in article 18A paragraph (2)<sup>7</sup>, result a change in the balance system between the central and regional finances. In reality, to realize the mandate in the 1945 Constitution, local governments are faced with investment constraints and challenges in the region, one of which is the limited financial resources owned by the region and the amount of regional responsibility in implement development in the region.

<sup>3</sup>Budi Santoso, 2008, *Aspek Hukum Pembiayaan Proyek Infrastruktur dengan Model BOT (Build Operate Transfer)*, Yogyakarta, Genta Press, page 14.

<sup>4</sup>Muhammad Zea Algabili, 2016, *Tinjauan tentang Kerjasama Pembiayaan dengan Sistem BOT dalam Mengefisiensikan dan Mengoptimalkan Sistem Penyediaan Air Minum (SPAM)*, Diponegoro Jurnal Law Review, Volume 5 Nomor. Clifford W. Garstang States BOT: is a variety of type of project financing known as contractor provided financing. In the standard contractor provided financing a project entity may request proposal for the construction of a project pursuant to which the contractor will not only provided the materials and services needed to complete the project but will also provide or at least arrange the necessary financing. The contractor will also need to operate the project and use its cash flows to repay the debt it has incurred.

<sup>5</sup>Ima Oktorina. 2010. *Kajian Tentang Kerjasama Pembiayaan dengan Sistem BOT dalam Revitalisasi Pasar Traditional*, Diponegoro Univesity: Semarang, page. 12.

<sup>6</sup>Ibid. page.1

<sup>7</sup>The 1945 Constitution of Republic Indonesia, Chapter IV, concerning Regional Government Article 18A paragraph (2) "Financial relations, public services, utilization of natural resources and other resources between the Central Government and Regional Governments are regulated and carried out fairly and in accordance with the Law".

Therefore, in meeting these needs, one of the efforts made by Padang Government to obtain other basic development funding outside the Regional Budget and budget provided by central government is through increasing the value of investment, and one alternative financing that can be done is to invite parties from private sector to participate in the form of infrastructure development in form of facilities and infrastructure to support the achievement of public facilities as public services to the community.

### ***Problems***

The formulation of problems in this paper, namely: (1) How is process of building the Sentra Pasar Raya as an infrastructure of urban facilities in Padang City? (2) How is the application of Build Operation Transfer in the use of Padang Government's land assets for the construction of Sentra Pasar Raya as urban infrastructure? (3) How is the position of the Padang Government regarding land and building assets of Sentra Pasar Raya that was built with Build Operation Transfer Design during the period of use by developer?

### ***Research Method***

Peter Mahmud Marzuki argues, that legal research is used to produce new arguments, new theories or concepts as a prescription in solving problems encountered, so that the answers expected in legal research are right, appropriate, inappropriate or wrong. Thus can be said that the results obtained in legal research already contain value<sup>8</sup>.

This article uses normative juridical approach that is to conceptualize the law as norms, rules, principles, or dogmas, by using the statutory approach that is described descriptively based on problems with various legal and literary rules, and looking for a legal opinion about the problem that become the object of the problem.

### ***Results and Discussions***

#### **1. The Development Process of Sentra Pasar Raya as Urban Facilities Infrastructure in Padang City**

Development in the regions is one part of national development, as an effort to carry out development evenly throughout the country. The government uses land / assets owned to support in improving the economy in the region based on the principles of economic democracy. Consequently, the role of community is also demanded in terms of development, while the government has obligations in providing direction and guidance to economic growth and creating a healthy climate for the development of the business world<sup>9</sup>.

Various methods are used by the Padang Government in attracting investors to invest in their regions. This is also can be seen by the increasingly physical development carried out illustrating the success of the Padang Government in promoting their area. Evidenced by many emerging shopping centers that are the result of cooperation between Padang government and investors, especially domestic investors. Physical development in the form of buildings, hotels, shopping centers, terminals that require great capital.

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<sup>9</sup>Anita Kamilah, *Op. Cit*, page 171

Historically, Padang City used to have 2 (two) terminals, Lintas Andalas terminal located at Plaza Andalas (PA) now and the Goan Hoat terminal for city transportation located at Sentra Pasar Raya (SPR). In the early 2000s, the Padang government issued a policy to move the two terminals and build 2 (two) modern shopping centers namely Plaza Andalas (PA) and Sentra Pasar Raya (SPR)<sup>10</sup>. This certainly raises new social problems in the community. For example, most traders lose their place in their business and cause chaos in traffic. Obviously, when the development of modern market must pay attention to relevant rules specifically Minister of Domestic Affairs Regulation No.53 / M-DAG / PER / 12/2008 concerning Guidelines for Structuring and Guiding Traditional Markets, Shopping Centers and Modern Stores. As an object of research, the author examines the use of land assets as regional property in the construction of the Sentra Pasar Raya (SPR) which is carried out through the concept of a Build Operate Transfer (BOT) agreement between Padang Government and PT. Cahaya Sumbar Raya. PT. Cahaya Sumbar Raya is a company engaged in the field of development and expansion that is interested around investing in strategic land owned by Padang Government.

The area of land assets referred to Agreement Letter Number: 183.11 / Huk-PDG / 2005 dated January 5, 2005 between Padang Government and PT. Cahaya Sumbar Raya regarding Revitalization of Pasar Raya Barat Mall is 28,850 m<sup>2</sup> covering Pasar Raya Barat Padang area starting from the Goan Hoat terminal area of the IWAPI Shopping Complex, Blok A, B, C and D shops in Kampung Jawa, West Padang District.

Before the cooperation is agreed upon and signed, because the object of the cooperation is the land / assets of Padang City, it must request the approval of Padang City Regional House of Representative after that agreement is signed by both parties, namely Padang Government which was represented by Fauzi Bahar as Mayor of Padang and Welly Rosario as Director of PT. Cahaya Sumbar Raya on 5 (Five) January 2005 with Agreement Number 183.11 / Huk-Pdg / 2005. With the signing of this agreement means the parties are considered to have agreed on the contents of the agreement<sup>11</sup>.

Through cooperation agreement between Padang Government and PT. Cahaya Sumbar Raya, modern market or shop will be built which is one of the urban facilities as regulated in Perka BPS No.37 of 2010 concerning Urban and Rural Classification in Indonesia. The foregoing is contained in Article 3 of the Cooperation Agreement which reads "This cooperation agreement is implemented in the form of a Build Operate Transfer (BOT) which is the second party build a shopping center and parking lot and other facilities as referred to in article 2 paragraph (2) at location referred to article 2 paragraph (1) and make use of it for a period of 25 years by paying contributions to the first party, and after the expiration of the Second Party relinquish the land and buildings and / or other facilities along with the said facilities and their utilization to the First Party".

The legal basis of cooperation agreement between Padang Government and PT. Cahaya Sumbar Raya are:

1. Law No.22 of 1999 concerning Regional Government (State Institution of 1999 Number 60, Supplement to State Gazette Number 3839);
2. Government Regulation No. 25 of 2000 concerning Government Authority and Provincial Authority as an Autonomous Region;
3. Government Regulation No. 105 of 2000 concerning Management and Accountability of Regional Finances;

<sup>10</sup><https://klikpositif.com/baca/9535/begini-kondisi-padang-sebelum-dua-terminal-jadi-pasar-modern>

<sup>11</sup> Interview with Ibu Heny Puspita as Head of Supervision and Price Stability on Monday 9 March 2020 at the Padang City Trade Office at 10:00 a.m.

4. Decree of Minister of Home Affairs Number 152 of 2004 concerning Management of Regional Properties;
5. Padang Level II Regional Regulation No. 4 of 1982 concerning Evaluation and Revision of the Padang II Level II Regional Master Plan for 1983-2003;
6. Padang City Regional Regulation No.18 of 2004 concerning the Padang City Long-term Development Plan for 2004-2020;
7. House of Representatives of Padang City Decree No. 18 / II-DPRD / 2002 concerning Approval of 16 (sixteen) Market Development Plans;
8. House of Representatives of Padang City Decree No. 189.27 / DPRD-PDG / 2004 concerning Agreement on the Cooperation between Padang Government and PT. Cahaya Sumbar Raya in the Development and Revitalization of Pasar Raya Barat West Shopping District.

The agreement will create rights and obligations for both parties, the obligation stated in Article 5 explains that the first party, namely Padang Government to vacate the location by giving permission to PT. Cahaya Sumbar Raya to dismantle everything that is on it. The obligation of Padang Government are to guarantee the land of the object of cooperation from confiscation, court proceedings or claims from any party and not in collateral for first party debt guarantees. If the land which is the object of the agreement has a problem, the agreement cannot be done because the disputed land will become a legal basis for not issuing building permit.

With agreement between Padang Government and PT. Cahaya Sumbar Raya means that there has been a legal relationship between the two parties because of the creation of a right and obligation between each of them. Where is one of obligations of the second party, PT. Cahaya Sumbar Raya is running the construction after the issuance of Building Permit and the signing of Minutes of Field Handover by both parties.

Land rights obtained by the investor for a certain period of time in the agreement stipulated in Article 5 regarding the obligations of the parties explain that the granting of a license to the second party, PT. Cahaya Sumbar Raya to obtain Building Operate Rights above the land of the First Party Management Rights namely Padang Government over the location of the land that was the object of the agreement.

However, over time, because of earthquake in Padang on September 30, 2009, Sentra Pasar Raya was severely damaged and based on the Mayor's Letter No. 811/57 / BPBD-TD / X-2009 on October 15, 2009 concerning the condition of the building of Sentra Pasar Raya was declared not suitable for use.

In addition, there is also public pressure through the decision of Padang House of Representatives number 189.05 / DPRD-PDG / 2010 regarding Providing Recommendations for the Relocation of Markets, Terminals, and the 2007 Earthquake Relief towards the existence of a representative market and city transportation terminal and in order to anticipate the occurrence of earthquake and tsunami, it required a shelter as a place to evacuate the community around the main market, it is necessary to immediately realize the rebuilding of the Sentra Pasar Raya shopping center building, parking building, and city transportation terminal.

Because of the cases above, the parties made a cooperation agreement that became inseparable relationship with the cooperation agreement in 2005. This new agreement was outlined in the Cooperation Agreement between the Government of Padang City and PT. Cahaya Sumbar Raya (CSR) concerning Rebuilding of Pasar Raya Central Number: 183,422 / Huk-PDG / 2010 on 29 December 2010 signed by Dr. Fauzi Bahar as the First Party and Jimmy H Tampi as the second party.

The object of cooperation in this agreement is a part of land of Padang City Government Management No.40 / Kampung Jawa which has been issued Build Operate Right on behalf of PT. Cahaya

Sumbar Raya (CSR) covering an area of 8,840 M2 on which a certificate of ownership of a flat (HM SRS) has been issued.

The scope of this cooperation agreement covers the redevelopment of Sentra Pasar Raya shopping center building along with other supporting facilities in accordance with the technical planning agreed upon by first party and it is an inseparable part of the cooperation agreement and its utilization until the land is returned, the building and other supporting facilities to the first party.

## **2. Implementation of Build Operate Transfer in Utilization of Padang Government's Land Assets for the Construction of Sentra Pasar Raya as Urban Facilities Infrastructure**

The concrete step to realize the economy based on the economic democracy is through the use and development of land / assets owned by Padang Government with the private sector, namely PT. Cahaya Sumbar Raya through the concept of the Build Operate Transfer (BOT) agreement. At first glance, seeing from understanding of the Build Operate Transfer, the legal relationship in the Build Operate Transfer has involved the Padang Government and PT. Cahaya Sumbar Raya as an investor who funds the construction of BOT objects.

In Build Operate Transfer agreement between Padang Government and PT. Cahaya Sumbar Raya (CSR) Number: 183.11 / Huk-PDG / 2005 Concerning Revitalization of Pasar Raya Barat Shopping Complex on Land Owned by Padang Government that become a party to this agreement is the Mayor of Padang who acts for and on behalf of Padang Government, and the President Director of PT. Cahaya Sumbar Raya (CSR) acts for and on behalf of that company. They agreed to bind themselves in a Cooperation and Delivery Build Operate Transfer Agreement through the Tender mechanism. The Mayor as the authorized party to this Agreement.

Property that agreed in Build Operate Transfer Agreement is 28,850 m<sup>2</sup> (twenty eight thousand eight hundred and fifty square meters) in accordance with the certificate of Operate Right Number 18 and Operate Right No.20 of Padang Government. Later changed to Certificate of Management Rights No. 40 on behalf of Padang Government in 2005 issued by Padang City Land Office, where the land will be recommended by the first Party for the issuance of Building Operate Rights on the Land Management Rights to the second party as stipulated in the BOT Agreement. So that within the concession period the second party as the holder of Build Operate Right on that land can operate and get benefit from the agreement. Build Operate Transfer Cooperation Agreement between Padang Government and PT. Cahaya Sumbar Raya was signed on January 5, 2005. The laws and regulations which form the legal basis for this cooperation agreement are:

1. Law No.22 of 1999 concerning Regional Government;
2. Government Regulation No. 25 of 2000 concerning Government Authority and Provincial Authority as an Autonomous Region;
3. Government Regulation No.105 of 2000 concerning Management and Accountability of Regional Finances;
4. Decree of the Minister of Home Affairs No.152 of 2004 concerning Management of Regional Properties;
5. Regional Regulation of Padang District Level II Regional Regulation No.4 of 1982 concerning Evaluation and Revision of Padang Regional Level II Regional Master Plan for 1983-2003;
6. Padang Regional Regulation No.18 of 2004 concerning Padang Long-term Development Plan for 2004-2020;
7. Decision of Padang House of Representatives No.18 / II-DPRD / 2002 concerning Approval of 16 (sixteen) Market Development Plans;

8. Decision of Padang City House of Representatives No.189.27 / DPRD-PDG / 2004 concerning the Agreement on Cooperation between the Government of Padang and PT. Cahaya Sumbar Raya in the Development and Revitalization of Western Pasar Raya Area.

In the Decree of Minister of Home Affairs No.152 of 2004 concerning Management of Regional Properties. In article 42 paragraph (1) it is stated that "property owned or controlled by regional government, both movable and immovable property, can be leased or levied on regional retribution as long as it benefits the region."

The period of this cooperation is for 25 (twenty five) years as contained in the cooperation agreement article 3. Because in the construction of Sentra Pasar Raya the investor gets Right to Build above Management Right from Padang Government in the provisions that the maximum time limit for building rights is 30 (thirty years) as stipulated in article 25 of Government Regulation No.40 of 1996 concerning Land Operate Rights, Building Operate Rights and Land Operate Rights. During this period the second party has the authority to operate and take advantage of the Sentra Pasar Raya building and its supporting facilities by contributing to the first party during the management of the land.

In 2010, Padang Government and PT. Cahaya Sumbar Raya re-held cooperation agreement, Number: 183,422 / Huk-PDG / 2010. The rules of law which form the legal basis in this second agreement are:

1. Code of Civil law;
2. Law No.5 of 1960 concerning Basic Agrarian Regulations;
3. Law 16 of 1985 concerning Flats;
4. Law No.32 of 2004 concerning Regional Government as amended several times, the latest by Law No.12 of 2008;
5. Law No.25 of 2007 concerning Investment;
6. Regulation of Law No.4 of 1988 concerning Flats;
7. Minister of Domestic Affairs Regulation No.17 of 2007 concerning Management of Regional Properties;
8. Padang City Regulation No.10 Year 2004-2013;
9. Padang City Regulation No.18 of 2004 concerning Padang City's Long-term Development Plan 2004-2020;
10. Padang City Regional Regulation No.9 of 2009 concerning the Medium-term Regional Development Plan of Padang City in 2009-2014;
11. Padang City Regulation No. 11 of 2009 concerning Provision of Incentives and Provision of Investment Ease;
12. Letter of Cooperation Agreement between Padang Government and PT. Cahaya Sumbar Raya No.183.11 / Huk-PDG / 2005 on January 5, 2005, Addendum I Number 183.16 / HUK-I / 2007 and No.124 / Dir / SPR-CSR / I / 2007, January 19, 2007 and Addendum II Number. 183.7 / Huk-PDG / 2009 and Number 7.7001 / CSR-2009 on July 6, 2009.

We can see that the legal basis contained in this agreement does not contain Government Regulation No.6 of 2006 concerning Management of State / Regional Property which is one of the main rules of the establishment of cooperation agreements through Build Operate Transfer and also Law No. 1 Year 2004 on State Treasury. But, the related rules regarding Build Operate Transfer are only taken from Minister of Domestic Affairs Regulation No.17 of 2007 concerning Technical Guidelines for the Management of Regional Property.

In article 41 paragraph (2) letter b 7. Minister of Domestic Affairs Regulation No.17 of 2007 and article 29 paragraph (3) letter b Government Regulations No.6 of 2006 concerning Management of State /



Regional Property, it is stated that "partners of build operate transfer do not guarantee, mortgage, or handover object of build operate transfer".

The regulation on the use of management rights as a regional asset is regulated in Law No. 1 of 2004 concerning State Treasury and Government Regulation No. 6 of 2006 about Management of Property / Regions and Minister of Domestic Affairs Regulation No.17 of 2007 concerning Technical Guidelines for the Management of Goods Regional Ownership has become non-functional and neglected, although the agreement emphasized the form of cooperation in the form of Build Operate Transfer.

In land use management agreement, the local government has ignored the principle of using land for management rights in the form of build operate transfer, but rather using legal construction in the form of granting building rights which is regulated in article 16 of the Basic Agrarian Law and Government Regulation No.40 1996 concerning the Cultivation Right, Property Operate Right, and Land Use Right.

From two forms of legal construction above, it creates legal uncertainty and contradictory to the laws and regulations managing cooperation agreements in the form of build operate transfer which is a form of utilization of state / regional property.

### **3. The position of Padang Government on Land Assets and Sentra Pasar Raya Buildings that Built by Build Operate Transfer during the Use of Period by the Developer.**

As previous discussion, that Padang Government, which has management rights over the land, granted Building Operate Rights to PT. Cahaya Sumbar Raya. Since initial agreement made in 2005, it was stated that Padang Government would receive and get benefit from the building that had been built by the investor after 25 (twenty five) years of use.

The benefits to be obtained by Padang Government during the concession contained in Article 5 regarding what was requested by the Padang Government are:

1. Obtain contribution in the form of royalties annually from second party of 1 (one) per mil from building construction at each stage.
2. Receive all buildings and other facilities built by second party after the period of cooperation agreement ends in a well maintained and technically feasible condition after research by Special Team formed jointly by the two parties and registers as assets / property of Padang Government.

While the benefits to be obtained by the second party (PT.Cahaya Sumbar Raya) during the concession are:

3. Be able to manage shopping center building, parking, and other facilities and receive all the proceeds for a period of 25 (twenty five) years;
4. Be able to collateralize Right Operate Build on land / buildings, shopping centers, and parking buildings to Bank and or other financial institutions with the obligation to notify the first party;
5. Be able to lease or make cooperation with other parties over the shopping center building and parking building and other facilities provided as long as they do not exceed the time period and do not conflict with the contents of agreement.

Based on research that author has done on the form of management of Sentra Pasar Raya (SPR) which is the use of land on management rights of Padang Government and the issuance of Building Operate Transfer to PT. Cahaya Sumbar Raya, the authors get the following things:

1. It turns out that most of stores in SPR have been bought and sold by PT. Cahaya Sumbar Raya to be used as ownership by issuing certificates for flat units<sup>12</sup>;
2. Since 2009, PT. Cahaya Sumbar Raya no longer pays contributions in the form of royalties that should be paid annually, as stated in the agreement<sup>13</sup>;
3. PT. Cahaya Sumbar Raya has made Sentra Pasar Raya as collateral for credit collateral in banks.

From the problems that the writer found in the field, the writer will discuss and describe the problems one by one in this sub-chapter. As we know that in a sale and purchase agreement as regulated in Article 1457 of the Civil Code:

"Sale and purchase is an agreement with which one party binds itself to handover an item, and the other party pay the promised price".

From formulation of the article, sale and purchase agreement will create obligations for both parties, where one party is obliged to handover the goods and the other party (the buyer) pay the price according to agreement. But the question is whether there has been a sale and purchase because the goods have not been sold. In the formulation of Article 1458 of Civil Code it is explained again that the sale and purchase has occurred because each party has made an agreement even though the goods sold have not been handed over by the seller to the buyer.

With the sale and purchase of Sentra Pasar Raya store units that were built on the basis of Build Operate Transfer on land of Management Rights as an asset of Padang city, the sale and purchase resulted ownership transfer of Sentra Pasar Raya store units from PT. Cahaya Sumbar Raya as manager to buyers. In this case, the buyers have the right to transfer the title of the object being traded. When the buyers have been transfer of title, the buyers as the rights holder can also transfer the rights in the form of buying, selling, and mortgaged, and used as collateral.

Sale and purchase like this is a legal act because the object of the sale and purchase are buildings originating from build operate transfer, where buildings originating from the results of BOT agreement an at a certain time period will be taken back by government as a whole as well as other facilities on it. Regarding sale and purchase of store units which building is obtained from build operate transfer, this is very contrary to the relevant regulations, namely Government Regulation No.6 of 2006 concerning Management of State / Regional Property, Minister of Domestic Affairs Regulation No.17 of 2007 concerning Technical Guidelines Management of State / Regional Property.

PT. Cahaya Sumbar Raya in this agreement was granted Build Operate Right on Management Right by Padang Government. If we see from the applicable rules regarding Building Operate Right, so it give authority to the right holders to be able to transfer these rights to other parties and can be used as collateral for debts by being burdened with mortgage rights and as a basis for the construction of flats and on flats units can transferred in the form of purchase and sale.

The meaning of the word "handover"<sup>14</sup> is exchanging their owners, this is regulated in the Civil Code articles 1481 to 1483, namely handover is the transfer of goods that have been sold into the authority of the buyer. So we can see from this that objects are not allowed to be traded or handover.

In article 41 paragraph (2) letter b 7. Minister of Domestic Affairs Regulation No.17 of 2007 and article 29 paragraph (3) letter b Government Regulations No.6 of 2006 concerning Management of State / Regional Property, it is stated that "partners of build operate transfer do not guarantee, mortgage, or

<sup>12</sup>Interview with one of the traders at Sentra Pasar Raya on Saturday 29 February 2020 at 2 p.m.

<sup>13</sup>Interview with Mr. Emil Septiandri (general functional staff at the Head of Padang Regional Revenue, Finance and Assets Management Service) on Tuesday 23 March 2020 at 09.30 a.m.

<sup>14</sup>Sudarsono, 2002, *Kamus Hukum*, PT. Asdi Mahasatya, Jakarta, 2<sup>nd</sup> ed., page. 362

handover object of build operate transfer". Object of build operate transfer in Padang Government cooperation agreement with PT. Cahaya Sumbar Raya is the land along with the Sentra Pasar Raya building along with the facilities above it. Then in Article 46 paragraph (1) also stated that "regional property in the form of land must be certified in the name of regional government". From both articles that arrange cooperation build operate transfer, we can conclude that there was a mistake in applying the rules for build operate transfer in agreements I and II.

According to the writer, the Padang Government has been negligent in applying rules contained in the agreement. Sale and purchase can be done in the control of land operate right, as long as the object for sale and purchase does not belong to the region and not obtained from a cooperation agreement build operate and transfer. This problems will be a time bomb for store owners who have bought a store units from PT. Cahaya Sumbar Raya.

For the second problem, Padang Government no longer accepts contribution payments in the form of royalties in accordance with agreements made since 2009. This will certainly affect regional income. Then the third problem is that PT. Cahaya Sumbar Raya can collateralize Build Operate Right in Banks with the approval of the Padang Government. If seen in Article 49 paragraph (5) of Law Number 1 of 2004, it is stated that "State / regional property is prohibited from being mortgaged or used as collateral to obtain a loan".

In progress of development Sentra Pasar Raya in 2009, earthquake struck Padang City which resulted in heavy damage to the Sentra Pasar Raya building. To rebuild Padang Government is constrained in terms of financing consequently it needs a loan to continue construction. The loan was carried out with Bank Artha Graha, located in Pekanbaru City. Therefore, Padang Government and PT Cahaya Sumbar Raya revitalized the cooperation agreement Number 183.422 / HUK PDG / 2010 jo 7.17 / DIR / CSR / XII / 2010 states Sentra Pasar Raya as Flats that received Building Operate Rights over Management Rights.

The regulation regarding build operate transfer which regulates that land / building originating from build operate transfer cannot be guaranteed and mortgaged for obtaining a loan is the basis for the Padang Government to revitalize the development of Sentra Pasar Raya as a flat unit. Therefore, from the Cooperation Agreement Number 183.11 / HUK-PDG / 2005 issued addendum I Number 183.16 / HUK-I / 2007 and Number 124 / Dir / SPR-CSR / I / 2007 on January 19, 2007 and Addendum II Number 183.7 / HUK -PDG / 2009 and Number 7.7001 / CSR-2009 on July 6, 2009 which explains that some of Sentra Pasar Raya have issued Ownership Certificates to Flat Unit and some in Block B and C are still under Build Operate Transfer cooperation agreement at 2007. Discussing about Build Operate Transfer agreement, the period given by Padang Government is 25 years from the signing of the cooperation agreement in 2005 and can be extended Sentra Pasar Raya Party.

Objects that can be used as security rights are (1) ownership rights; (2) cultivate right; (3) and building operate rights<sup>15</sup>. Based on the Mortgage Rights Law, objects that can be burdened with mortgages are land rights and properties related to land. In article 4 of Law No.4 of 1996 concerning Mortgage Rights and Land Related Objects are: (1) ownership rights (2) cultivate rights (3) building operate rights; (4) use rights over state land according to the applicable provisions must be registered and according to its nature can be transferred; (5) rights over existing or future buildings, plants and works of land which is one unit with the land and which belongs to the holder of the land rights<sup>16</sup>. From the rules contained in the Mortgage Rights Law, it is stated that management rights are not the object of mortgage rights.

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<sup>15</sup>Adrian Sutedi, 2012, *Hukum Hak Tanggungan*, Publisher Sinar Grafika, Jakarta, page 51

<sup>16</sup>*Ibid*

With the problems encountered, we can see that cooperation agreement between Padang Government and PT. Cahaya Sumbar Raya (CSR) has experienced many mistakes in the application of legal rules and resulted unclear position of the land and building assets of the Padang Government.

Therefore it can be concluded that partners build operate transfer that have been selected must really have the capacity in funding / financial matters and are serious about carrying out their obligations in accordance with the agreement that has been made and may not deviate from the rules that have been regulated regarding the build operate transfer, namely Government Regulation No.6 of 2006 concerning the Management of State / Regional Property which applies at the time cooperation agreement is made without neglecting the provisions stipulated regarding the status of state / regional property as contained in Law No.1 of 2004 concerning State Treasury.

### **Conclusion**

Based on the descriptions that have been discussed, the conclusions that the authors can take are:

1. With the construction of this shopping center, there is a contra in the community, especially for traders who previously sold around the Goan Hoat terminal. Not only that, the construction of the Pasar Raya Center (SPR), which is a modern shopping center, has resulted in the city of Padang having absolutely no domestic transportation terminal. Consequently, it is one of the cause of traffic jams, because the location that should have been used as a terminal has turned into a shopping place.
2. In applying the concept of build operate transfer, Padang Government uses land as an asset / property belonging to Padang City to construct buildings and facilities. Afterward used by investors, PT. Cahaya Sumbar Raya, within agreed period of 25 (twenty five) years, after that return the land, building, and facilities after the end of the concession period by the user or investor. There are no complete rules regarding build operate transfers form both legal basis contained in two agreements between Padang Government and PT. Cahaya West Sumatra in 2005 and 2010. Therefore, if the application of build operate transfer rules aligned with Law No. 5 of 1960 concerning Basic Agrarian Regulations and Government Regulation No. 40 of 1996 concerning Cultivate Rights, Building Operate Rights and Land Operate Rights, it creates legal uncertainty and tends to conflict with one another.
3. The position of Padang Government has become unclear with the sale and purchase agreement between PT. Cahaya Sumbar Raya with store owners / traders. With sale and purchase of Sentra Pasar Raya store units built base on Management Rights land as an asset of Padang Government, sale and purchase resulted transfer ownership of Sentra Pasar Raya store units from PT. Cahaya Sumbar Raya as manager for buyers. This kind of sale and purchase is a legal act because the object of sale and purchase is a building that originates from build operate transfer, where buildings originating from build operate transfer agreement for certain period of time will be taken back by the government entirety along with other facilities that are is above it. Padang Government has been negligent in implementing the rules in the agreement. Problems like this will become a time bomb for store owners who have bought a store units from PT. Cahaya West Sumatra. In addition, sale and purchase of store units at Sentra Pasar Raya, Padang Government also allows investors to make land and buildings of Sentra Pasar Raya as objects of credit collateral to the Bank. This case also contradicts Law No.1 of 2004 concerning State Treasury Article 49 paragraph (5) which states that state / regional property is prohibited from being pawned or used as collateral for obtaining loans. For the following problems, PT. Cahaya Sumbar Raya no longer pay contributions in the form of royalties every year since 2009 as regulated in article 6 of the agreement Number 183.11 / Huk-PDG / 2005. This has an impact on regional income of Padang City because PT. Cahaya Sumbar Raya is no longer carrying out the contents of the agreement properly.

## Suggestion

From the research conducted, the writer delivers the following suggestions:

1. Padang government is expected to pay more attention to the positive and negative impacts of the emergence of modern shopping centers in Padang City. Especially relating to the position of shopping centers in the middle of city which is one of reason for traffic chaos because the location which used to be a terminal now being converted into a modern shopping center. Related regulation from Minister of Home Affairs Regulation No.53 / M-DAG / PER / 12/2008 concerning Guidelines for the Arrangement and Development of Traditional Markets, Shopping Centers and Modern Stores.
2. The government should study from feasibility study specifically, especially in terms of financial and community interests because this agreement related to many aspects, such as environmental, social, and economic aspects. In addition, Padang government should also be more careful in determining what legal basis to use or rules related to the agreement to be made.
3. Padang government expected can be more responsive in dealing with problems in the field, because the assets used are regional assets and there should be no party who uses the regional assets for their own benefit. And for the partners of build operate transfer, it is better if they really have the ability in terms of funding / finance and serious about carrying out their obligations in accordance with the agreements that have been made in the agreement, and must not deviate from the rules that have been set about build operate transfer itself, Government Regulation No.6 of 2006 concerning the Management of State / Regional Property which was apply at the time cooperation agreement was made without ignoring the provisions stipulated regarding the status of state / regional property contained in Law No.1 of 2004 concerning State Treasury.

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