

# Juridical analysis of land asset utilization on legal entity college State University of Surabaya

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**Abstract.** Surabaya State University is one of the Universities that has changed its campus autonomy from a Public Service Agency State University to a Legal Entity State University. These changes are regulated in Government Regulation Number 37 of 2022 concerning State Universities Legal Entities of Surabaya State University. The change in status has a significant impact in various ways and one of them is on the management of Unesa's Wealth, as stipulated in [1] Article 88 paragraph (1) of PP No.37 of 2022 concerning PTNBH Surabaya State University stated that "Unesa's initial wealth as referred to in [1] Article 87 paragraph (1) point a is in the form of state wealth separated except land. This research arises because specifically the use of land assets is regulated separately unlike other assets of Surabaya State University, so further study is needed in this study. The problem to be studied is, first, how is the juridical analysis of land assets at Surabaya State University as PTNBH? Second, how is the management and utilization of land assets at Surabaya State University as PTNBH? The problems in this study will be analyzed using normative legal research methods, namely studies based on legal philosophy, legal theories, legal principles and applicable legal norms using a normative juridical approach.

## 1 Introduction

Higher Education as regulated in Law Number 12 of 2012 concerning Higher Education (Law on Higher Education) has a definition described in [1] Article 1 number 2, namely, the level of education after secondary education which includes diploma programs, undergraduate programs, master programs, doctoral programs, and professional programs, as well as specialist programs organized by universities based on Indonesian culture. From this definition, higher education must have a teaching basis from Pancasila, the Constitution of the Republic of Indonesia Year 1945, the Unitary State of the Republic of Indonesia, and Bhinneka Tunggal Ika.

This basis makes the functions of higher education as stipulated in [1] Article 4 of the Higher Education Law, among others: (a) Develop abilities and shape the character of

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dignified national civilization in order to educate the nation's life; (b) Developing an innovative, responsive, creative, skilled, competitive, and cooperative academic community through Tridharma; and (c) Developing Science and Technology by paying attention to and applying Humanities values.

The function of education is also accompanied by the objectives as stipulated in [1] Article 5 of the Higher Education Law, namely: (a) the development of students potential to become human beings who believe and fear God Almighty and have noble character, healthy, knowledgeable, capable, creative, independent, skilled, competent, and cultured for the benefit of the nation; (b) the production of graduates who master the branches of science and / or technology to meet national interests and increase nation's competitiveness; (c) the production of Science and Technology through Research that pays attention to and applies Humanities values to benefit the progress of the nation, as well as the progress of civilization and the welfare of mankind; and (d) the realization of community service based on tools and research work that is useful in advancing general welfare and educating the life of the nation.

Seeing from the functions and objectives of higher education cannot be realized without the implementation and management itself, so in this case, the government realizes in the form of Government Regulation Number 4 of 2014 concerning the Implementation of Higher Education and Management of Higher Education (PP Management of PT). Through [1] Article 21 of the PT Management PP, it stipulates that Higher Education Management includes: a. Higher Education autonomy, b. Higher Education Management patterns; c. governance of Higher Education, and d. public accountability.

Referring to [1] Article 22 paragraph (1) of the PT Management PP the form of Higher Education autonomy is the management of its institution as the center of implementing the Tridharma of Higher Education. Then the autonomy of the university is divided into 3 (three) as stipulated in [1] Article 22 paragraph (2) of the PT Management PP, namely as follows: (a) State Universities (PTN); (b) Legal Entity State University (PTNBH); and (c) Private Universities (PTS). The focus of this writing is to discuss Legal Entity State Universities (PTNBH). PTNBH is a State University established by the Government which has the status of a public legal entity and is given full autonomy in managing the campus. This form of autonomy is divided into two, namely academic and non-academic autonomy.

The existence of this form of autonomy can be seen in that legal entity-based higher education is one application to build the world of education by making a legal subject acceptable, considering that the goal is to carry out the implementation of strong and authoritative education [2]. With the existence of Higher Education as a legal entity, the implementation of education will be supported in an organization that has rights such as humans, not easily used, deceived or made slaves by parties or legal entities that have no interest in education.

Discussing PTNBH that the existence of this autonomy is in the financial sector, the government through Government Regulation Number 26 of 2015 Jo. Regulation Number 8 of 2020 concerning the Form and Mechanism of Funding for State Universities Legal Entities. Therefore, the source of funding for PTNBH comes from two sources, namely

the State Budget (APBN) and other than the state budget as stipulated in [1] Article 2 of PP No. 26 of 2015.

The development of PTNBH to date, it is known that President Joko Widodo has established 5 PTNs to become PTNBH. Including Surabaya State University which has been outlined in Government Regulation Number 37 of 2022 concerning State Universities Legal Entities of Surabaya State University (PP PTNBH Unesa). Please note that the issuance of PP PTNBH Unesa makes Surabaya State University one of 21 PTNBH throughout Indonesia. And as it should be Surabaya State University (Unesa) has funding sources other than the State Budget.

The income that Unesa may have as PTNBH is the utilization of assets divided into 2 parts, as stipulated in [1] Article 88 paragraph (1) of PP PTNBH Unesa stated that, "Unesa's initial wealth as referred to in [1] Article 87 paragraph (1) point a is in the form of state wealth separated except land. That implicitly the [1] Article divides assets into land assets and assets other than land. The difference in ownership status is certainly the cause of different rules in utilizing the two types of assets. Land assets with the status of State Property (BMN) follow the provisions for the utilization of BMN, while the utilization of non-BMN land assets and assets other than land is regulated separately by PTNBH.

The distribution of these assets also affects the regulation regarding the utilization of these assets. Focusing on land assets the use of land assets causes problems due to differences in regulations as mentioned earlier. Related to land assets in PTNBH Unesa in particular, in this case, further study is needed on how the juridical analysis of land assets at Surabaya State University as PTNBH, and how to manage and utilize land assets at Surabaya State University as PTNBH.

## **2 Methods**

### **2.1 Research approaches**

This research uses a normative legal research method approach, namely a study based on legal philosophy, legal theories, legal principles and applicable legal norms. This research also uses normative juridical, empirical juridical and comparative approaches. This research is legal research, where this research aims to find the truth of coherence, namely whether legal rules are in accordance with legal norms [2] and whether these norms are in accordance with legal principles, as well as a person's actions in accordance with legal norms. The method used in writing this research is a normative legal research method, namely a study based on legal philosophy, legal theories, legal principles and applicable legal norms. This research uses a normative juridical approach.

Researchers also use comparative because it aims to compare with other state universities by analyzing the respective laws between Surabaya State University and other state universities which are used as comparisons. Another research consideration in using comparative research is as a benchmark for the management and utilization of land assets at the University in order to exchange opinions regarding ways or tips for handling a university asset in a systematic or comprehensive and systematic manner.

## **2.2 Research focus**

The focus of this research is to discuss the juridical analysis of land assets at Surabaya State University as a Legal Entity State University (PTN-BH) as regulated in [1] Article 88 paragraph (1) of PP PTNBH Unesa, which states that, "Unesa's initial wealth as referred to in [1] Article 87 paragraph (1) letter a constitutes separate state assets except land. Management of land assets at Surabaya State University PTN BH. Utilization of land assets at Surabaya State University PTN BH.

## **2.3 Techniques for collecting and processing legal materials**

There are 4 data collection techniques in qualitative research, including observation, interviews, documentation and a combination of the three [3]. In this research, the data collection techniques used were focused group discussions, interviews and empirical research. This is done in order to obtain complete information regarding the analysis of the position, function and content of the Chancellor's Regulations and Senate Regulations based on Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

1. Focus Group Discussion (FGD) between research members. This technique is used to obtain basic data on laws and regulations that are still in force regarding the accuracy of competence and material in the content of the discussion.
2. Interview. The interview method used in this research is in-depth interviews, namely by extracting information in depth, openly, and freely with the problem and focus of the research. Informants were selected who had competence in the field of Constitutional Law or Governance Law.
3. Empirical research is a research method carried out using empirical evidence. Empirical evidence is information obtained through observation or experimentation. Empirical evidence is done by analyzing the data and then collecting this empirical evidence using quantitative and qualitative research methods. According to the Big Indonesian Dictionary (KBBI), empirical is something based on experience, especially experience obtained through discovery, experimentation or observation. So, empirical research can be interpreted as social science, namely a group of sciences that focuses on research on human behavior and the environment. However, it is different from natural science or science which examines nature and its symptoms. Several opinions from experts regarding the meaning of empirical research: According to Amiruddin and Zainal [4] Asikin, empirical research focuses on examining a phenomenon or situation of the research object in detail by collecting the facts that occur and developing existing concepts. Anwar and Adang [5] said that empirical research is a science based on common sense, not speculative and based on observations of reality. According to Hilman [6], empirical research is research that is exploratory, descriptive and explanatory.

## **2.4 Analysis of legal materials**

At this stage, data is collected through focused group discussions, interviews and empirical research. By collecting all data related to the analysis of PTN BH's land assets. Data reduction is a selection process, focusing attention on rough simplifications that

emerge from written notes during data collection through focused group discussions, interviews, and empirically, where data reduction takes place continuously throughout the research. The selection of rough data was obtained from the results of focused group discussions, interviews and empirical research. This selection is done by summarizing data that is appropriate to what is being researched, while those that are not appropriate are not used.

Data presentation (data display) is a collection of information that is structured and provides several possibilities for drawing conclusions and making decisions that continue to develop into a presentation of data, which can be presented not only in the form of photos, but also in the form of descriptions of conversations from interviews conducted by researchers with the sources used. research subject. Next, the data will be presented in the form of sentences supported by documentation in the form of photos so that the data presented from the information obtained becomes valid data. In this research, the data presented is data relating to Land Assets at Surabaya State University.

The final stage of data analysis is drawing conclusions and verifying the data. Drawing conclusions is part of an activity and a complete form. Data is presented in descriptive form about Land Assets at Surabaya State University along with their management and utilization.

The data collected is supporting data about Assets at Surabaya State University along with management and utilization obtained from focused group discussions, interviews and empirical research. So that the conclusions from the results of this research can connect theory with existing data. The final stage of analysis needs to be verified so that it is stable enough and truly accountable.

## **3 Result and discussion**

### **3.1 Juridical analysis of land assets at Surabaya State University as PTNBH.**

PTNBH is a form of implementing higher education autonomy as regulated in [1] Article 65 of Law Number 12 of 2012 concerning Higher Education (hereinafter referred to as the Higher Education Law). [1] Article 65 paragraph (3) of the Higher Education Law regulates that the implementation of autonomy in question is as follows: (1) Initial wealth consists of separate state assets except land; (2) Governance and independent decision making; (3) Units that carry out accountability and transparency functions; (4) The right to manage funds independently, transparently and accountably; (5) Authority to appoint and dismiss lecturers and educational staff; (6) Authority to establish business entities and develop endowment funds; And (7) Authority to open, organize and close Study Programs.

The implementation of higher education autonomy mandated by PTNBH is certainly very broad, if seen from these regulations. In addition, there are regulations that give PTNBH the authority to be given the right to manage state assets as regulated in [1] Article 13 of Government Regulation Number 26 of 2015 concerning Forms and Mechanisms of Legal Entity State Higher Education Funding. Seeing the freedom for

PTNBH in carrying out autonomy, the research focuses on point number one, namely initial wealth in the form of state assets which are separated except for land.

Surabaya State University as PTNBH is obliged to follow the rules for separating initial assets as regulated in Minister of Finance Regulation Number 108/PMK.06/2017 concerning Procedures for Determining Initial Asset Value Legal Entity State Universities (PMK 108/2017). However, these regulations clearly exclude land assets, the question that arises is how is land regulated as a separate PTNBH asset? Of course, [1] Article 19 PMK 108/2017 regulates the determination of the initial asset value for PTNBH. Where the Minister of Finance in this case determines the initial wealth value by decree. Then, in this regulation, the handover of assets is carried out which is stated in the handover minutes which are signed by the relevant echelon I officials at the Technical Ministry and the PTNBH leadership. The handover becomes PTNBH's initial assets, but in this case land is excluded. This means that land remains state property whose management authority remains with the Ministry of Finance.

The land that is separated in this case falls under the authority of the Ministry of Finance, so the status or rights to land managed by central government agencies are Management Rights as regulated in Government Regulation Number 18 of 2021 concerning Management Rights for Land Rights, Flats and Land Registration. The Ministry of Finance as one of the subjects is regulated in [1] Article 5 paragraph (1) PP Number 18 of 2021. This regulation is supported by [1] Article 88 PP UNESA Statutes where land is state property which is administered by the Minister who handles government affairs in the financial sector.

Management Rights as regulated in PP Number 18 of 2021 are control rights from the state whose implementation authority is partly delegated to the management rights holder, where in accordance with [1] Article 7, the management rights holder is given the authority to: (1) Prepare a plan for the allocation, use and use of land in accordance with the spatial plan; (2) Use and utilize all or part of the management rights land for your own use or in collaboration with other parties; And (3) Determine rates and/or annual mandatory fees from other parties in accordance with the agreement.

The authority is limited only to utilization in the form of cooperation, as evidenced by [1] Article 12 PP Number 18 of 2021 where management rights cannot be used as collateral for debts burdened with mortgage rights and cannot be transferred to other parties [7]. This is in line with [1] Article 90 paragraph (1) PP UNESA Statutes where land assets become separate assets that cannot be transferred and cannot be used as collateral to other parties.

### **3.2 Utilization and management of land assets at Surabaya State University with PTNBH status.**

Indonesia's legal system is an inheritance of the Netherlands colonial era. During colonial, the legal system that followed civil law is applied in Indonesia based on the principle of concordance. But Indonesia also adheres to two other legal systems, namely the customary law system and Law. No. 5 of 1960 as an example.

In law number 5 of 1960 about agrarian principles (UUPA), there are eleven principles as basic which must automatically animate from the implementation of UUPA and all its implementing regulations [2]:

1. Nationality Principle, found in [1] Article 1 paragraph (1), (2), (3).
2. Principle that at highest level, earth, water, space and natural resources contained therein are controlled by state is found in [1] Article 2 paragraph (1).
3. Prioritizing Principle for national and state interests, is found in [1] Article 3.
4. Principle that all land rights have a social function is found in [1] Article 6.
5. Principle that only Indonesian citizens have holders' rights to land, is found in [1] Article 9
6. Principle of equality for every Indonesian citizen is found in [1] Article 9 paragraph (2).
7. Principle that agricultural land must be actively worked by holder himself, is found in [1] Article 10 paragraph (1).
8. Principle of land use by planned is found in [1] Article 2 paragraph (2) letter a.
9. Principle of legal unity is found in words repeal Dutch land law since UUPA applies
10. Principle of guarantee legal certainty and legal protection, is found in [1] Article 19 paragraph (1)
11. Horizontal separation principle, found in [1] Article 44 paragraph (1)

Important to notice, that infrastructure is essential to an operational organization, society including university. Assets are of relevance in the day to providing substantial social, economic and environmental impacts in terms of investment, quality of life, resources, and energy. Assets have been designed and built with independent purposes that are combined with specific business and user needs, including the land assets.

The horizontal separation principle is one of the principles sense in UUPA [8]. The horizontal separation principle in land law indicates that the land holder is different or separate from the objects that stand on it. Understanding of "control" can be used in both physical and juridical sense [9]. Juridical control-based on rights, which are protected by law and generally give rights holders authority to control land that is owned physically, for example, the land holder uses or takes advantage of land that is owned, not handed over to another party [10]. However, there is also juridical control which, even though it gives authority to physically control land that is owned, in reality physical control is carried out by another party, for example landholder who does not use his own land but rents it to another party, in this case that land is legally owned by landholder but physically controlled by the land tenant. In this case, the landholder based on his legal control rights, has right to take back that land from a tenant under certain conditions. There is also juridical control which does not give authority to physically control that land, for example, a creditor holding guarantee rights to land has juridical control rights over land used as collateral, but physical control remains with landholder.

The horizontal separation principle is found in [1] Article 44 paragraph (1) of UUPA, namely a person or corporation has the right to lease land, if he has the right to use others' land for building purposes, by paying the holder a certain amount of money as rent. Implementation of the horizontal separation principle is the rights to rent a building, that is a person or corporation rents land belonging to another person which is not being used

or has no building by paying a certain amount of money as rent, the amount of which is determined on the basis from an agreement, for a certain period of time, and tenant is given right to construct a building to be used for a certain period of time agreed by both parties [11]. It can be concluded that in rental rights for buildings, there is a horizontal separation between the holder of land and the building above it, namely land belongs to landholder, while the building belongs to the land tenant. The horizontal separation principle is not clearly explained in UUPA, this legal principle is hidden vaguely in several [1] Articles found such as [1] Article 44 of UUPA which is explained above, in [1] Article 46. Paragraph (2): "By exploit right to legally collect forest products, do not automatically obtained holder right to that land."

It can be concluded from words [1] Article 46 paragraph (2) above, that if someone obtains by right to legally collect forest products, this does not automatically mean that land used becomes property from forest product collectors. Forest products belong to the person who obtains these rights, while land belongs to the state. The horizontal separation principle originates from customary law, where this principle is applied to land law in Indonesia, so that buildings and/or plants located on them do not automatically become part of land, this condition is excluded if: (a) Building and or plants are physically an integral part of relevant land, meaning that building and or plants are based on perennials; (b) Building and or plants belong to land holder; and (c) This intention is stated expressly in deed prove commission through relevant legal act.

With this horizontal separation principle, the subject of the land rights holder can be different from the subject of the building holder, so that land and buildings will be submitted to different laws, land will be subject to land law, while building will be subject to debt law which regulates the power of rights over non-land objects [12]. Principles currently applied in National Land Law, override the principle of attachment found in [1] Articles 500, 571 and 601 BW. In the horizontal separation principle, buildings and plants on land are not part of the land so buildings and plants holder on a plot of land does not necessarily fall to landholder. Legal acts regarding land do not necessarily cover buildings and plants belonging to the holder of land on it. If legal actions regarding land are intended to include buildings and plants, then this must be explicitly stated in a deed that proves the implementation of relevant legal action.

PTNBH's initial assets as regulated in PMK 108/2017, land assets are included in State Property (BMN). In the case of land assets that become BMN, there is Minister of Finance Regulation Number 115/PMK.06/2020 concerning the Utilization of State Property, hereinafter referred to as PMK on the Utilization of BMN. So, from the previous information, there are differences in the status of land assets in these Legal Entity Universities. The first status for land assets that have been separated from the initial assets of a PTNBH falls under the authority of the Ministry of Finance by entering it as BMN. The second status is obtained from PTNBH's own assets, so its management is not included in PTNBH, this is in accordance with [1] Article 91 PP UNESA Statute.

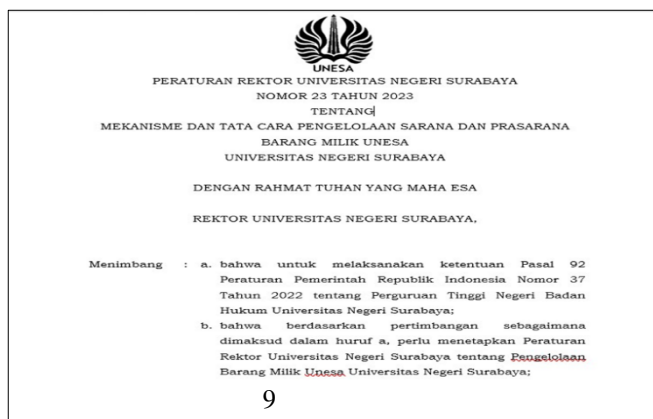
Differences in regulations regarding land assets result in different rights to the land, and also different types of use of the land. However, in principle, the profits from this utilization are entirely the income of PTNBH itself. 12 In answering problems related to the utilization and management of land assets, they are divided into two which will be explained as follows.



1. Utilization and management of land assets whose assets have been separated

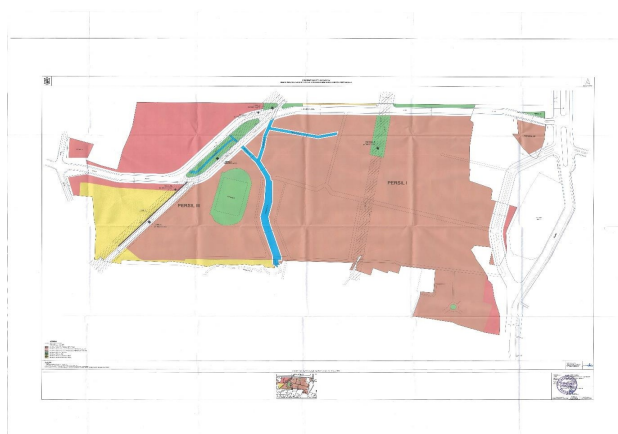
It is often mentioned that land assets that have been separated from PTNBH's assets have become BMN whose management is under the Ministry of Finance. So, the right rule to answer this research is PMK on BMN Utilization. In accordance with [1] Article 8 there are forms of BMN utilization in the form of:

- a. Rental, is the use of BMN by another party for a certain period of time and receives compensation in the form of cash;
- b. Borrow and Use, is the utilization of BMN through handing over the use of BMN from the Central Government to the Regional Government or Village Government within a certain period of time without receiving compensation and after the certain period ends it is handed back to the BMN manager/User;
- c. Utilization Cooperation (KSP) is the utilization of BMN by other parties within a certain period of time in order to increase non-tax state revenues and other financing;
- d. Built, Operate, Transerv (BOT) is the use of BMN in the form of land by another party by constructing buildings and/or facilities and facilities, then utilized by the other party within a certain agreed period of time, to then be handed back the land and buildings and/or facilities and facilities after the period ends;
- e. Built, Transerv, Operate (BTO) is the utilization of BMN in the form of land by another party by constructing buildings and/or facilities and their facilities and after completion of the construction they are handed over for use by the other party within the agreed period of time;
- f. Infrastructure Provision Cooperation (KSPI), is the utilization of BMN through cooperation between the government and business entities in infrastructure provision activities in accordance with the provisions of statutory regulations;
- g. Limited Cooperation for Infrastructure Financing (KETUPI), is the utilization of BMN through optimization in improving BMN's operational functions in order to obtain funding to finance the provision of other infrastructure.
- h. That from these forms of utilization of BMN, Surabaya State University as one of the PNTBH has accommodated the PMK on BMN Utilization through the Chancellor's Regulation as its technical implementing regulation. These technical regulations are still in the design process and will soon be published and implemented at Surabaya State University [13]. The regulation is the Chancellor's Regulation concerning Mechanisms and Procedures for Management of UNESA Property, as stated in the picture below.



**Fig. 1.** Chancellor's regulations regarding the mechanism for using facilities and infrastructure

Starting from the PMK on the Utilization of BMN to the Regulation of the Chancellor of Surabaya State University, it has been explained that the use of land assets whose assets are separated must obtain approval from The Ministry of Finance comes. These land assets are under the authority of the Ministry of Finance as the manager of BMN, while UNESA as PTNBH is only the manager of BMN. This has been carried out by UNESA in relation to the mapping of the land assets that will be used, which will be described in a City Plan Certificate issued by the Surabaya City Public Housing and Settlement Area and Land Service.



**Fig. 2.** Source: Department of Public Housing and Settlement Areas and Land City of Surabaya

The description of the image consists of zones and subzones that are used in their designation for carrying out activities. Zones are used in carrying out activities consisting of, Trade and Services Zones, Local Protection Zones, Green Open Space Zones, and Public Service Facilities Zones. Then these zones are further divided into sub zones, namely, Regional Service Scale Trade and Services, Local Service Scale Trade and Services, SUTT/SUTET Opportunities, Low Density Housing, Green Open Spaces, and Public Service Canters-Education.

The distribution of the use of land assets helps in managing which can be used as BMN which adds to UNESA's own income, and this use can be carried out according to the mechanisms and forms in the laws and regulations mentioned previously. Apart from land assets that have been separated, the use and management of land assets after becoming PTNBH is different from what is described above, as explained as follows.

### **3.3 Utilization and management of Surabaya State University land assets which have become PTNBH**

UNESA as PTNBH certainly in its development has not only received funding sources other than the State Revenue and Expenditure Budget. In accordance with [1] Article 11 of Government Regulation Number 8 of 2020 Jo. 26 of 2015 concerning Forms and Mechanisms of Funding for State Universities as Legal Entities, UNESA has the right to funding sourced from the community, education costs, endowment fund management, PTN Legal Entity business, cooperation with the Tridharma of Higher Education, Management of PTN Legal Entity assets, budget regional income and expenditure, and loans.

The flexibility of PTNBH funding has been proven by the collaboration between UNESA and the Magetan Regency Government regarding the Opening of the Study Program Outside the Main Campus (PSDKU), in this case, the Magetan Regency Government provided a grant in the form of land to be used by UNESA.

## **4 Conclusion**

The focus of this research is that land grants made on the basis of cooperation must be managed and utilized well by UNESA. Talking about UNESA as PTNBH, of course, the land assets obtained after the assets are separated will be the profits obtained. As expressly regulated in [1] Article 91 PP UNESA Statute which stipulates that:

1. Wealth in the form of land sourced from the development of UNESA funds after the initial determination of wealth is UNESA property.
2. (2) Land as referred to in paragraph (1) is recorded as wealth in UNESA's balance sheet and administered by UNESA.
3. (3) Land acquired and owned by UNESA after the determination of UNESA's initial assets can be transferred to other parties after obtaining approval from the Council of Trustees (MWA).

The land assets obtained by UNESA after becoming PTNBH can be managed and utilized as widely as possible for the benefit of the Tridharma of Higher Education, because PTNBH's freedom as regulated in statutory regulations extends to management rights over state assets. It is necessary to pay further attention, that the legal entity form of PTNBH is still a question. Of course, this influences the extent of PTNBH's authority in managing assets as a form of autonomy in education. So, this research does not just stop here, considering that PTNBH's large authority also includes the right to manage state assets.

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