

THE EXISTENCE OF PUBLIC SERVICE ENTITY 'BADAN LAYANAN UMUM' TO UNDERTAKE GOVERNMENTAL FUNCTION

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ABSTRACT

Public Service Entity 'Badan Layanan Umum' which is governed in the Governmental Regulation concerning the Financial Management of the Public Service Entity refers to any government institution which gives services to the public in the forms of products and/or services but benefit is not the main objective. It does its activities based on the principles of efficiency and productivity. The objective is to improve the services provided to the public as an attempt to increase the public welfare and to sharpen the nation's life. Finance is flexibly managed based on the principles of economy, productivity, and the application of healthy business practice. In short, the Public Service Entity does what the government is supposed to do when undertaking its serving functions.

Keywords: Public Services, Public Service Entity, and Government Function

INTRODUCTION

The development of law as one component of the national development is interdependently related to other various developmental sectors such as economic development, political development, cultural development and defense development. Therefore, the development of law is not an autonomous process; it is a heteronymous process, meaning that the development of law cannot be separated from other sectors.

As stipulated in the Long Term Plan of National Development 'Rencana Pembangunan Jangka Panjang Nasional (RPJPN)' of 2005-2005, which is governed in the Law Number 17 of 2007 stated that law is formed through an integrated and democratic process based on the Five Principles 'Pancasila' and the Constitution of the Republic of Indonesia of 1945 'Undang-undang Dasar Republik Indonesia 1945' (hereinafter referred to as UUD NRI 1945). As a result, the products of law can be effectively applied supported with the research and development of law based on what is aimed at and needed by the community. Then the Government Regulation 'Peraturan Pemerintah (PP)' Number 23 of 2005 concerning the Financial Management of the Public Service Entity 'Badan Layanan Umum (BLU)' was issued, as entrusted in Article 68 Clause (1) of the Law Number 1 of 2004 concerning State Treasury that the objective is to give services to the public as an attempt to improve the public welfare and state life.

The Public Service Entity 'Badan Layanan Umum', which is hereinafter referred to as BLU, according to Article 1 of PP Number 23 of 2005 concerning the Financial Management of BLU, is any government institution which is established to give services to the community in preparing products and/or services but profit is not the main objective. It does its activities based on the principles of efficiency and productivity. (to improve the services provided to the public in the framework of improving the public welfare and sharpening the state life through flexible financial management based on the principles of economy, productivity, and application of healthy business practice).

INSTITUTIONAL CHARACTERISTIC OF BLU ACCORDING TO THE CONCEPT OF STATE FINANCIAL INSTITUTION

BLU, according to what is stipulated in Article 1 Clause (1) of the Government Regulation Number: 23 of 2005 concerning the Financial Management of BLU (hereinafter referred to as PP BLU) is an institution in the governmental environment established to give services to the public in the form of procurement of products and/or services but benefit is not its main objective; it does its activities based on the principles of efficiency and productivity.

Furthermore, BLU was established to improve the services provided to the public as an attempt to improve the public welfare and to sharpen the State life as what is expected in the fourth paragraph of the preamble of the Constitution of 1945.

BLU was established for the following purposes: (a) Enabling the government to improve the services provided to the public as an attempt to improve the public welfare and to sharpen the State life; (b) Allowing the government institution to be flexible in managing its finance based on the principles of economy and productivity by applying the practice of healthy business; (c) Being able to observe the State asset managed by any related institution.

To establish BLU, the governmental institution should meet the requirements already determined based on the provisions in effect in general, and PP BLU in particular, which has been renewed with the Government Regulation Number: 74 of 2012 concerning the Change in the Government Regulation Number 23 of 2005 concerning the financial management of BLU. In accordance with article 4 of PP BLU, any force unit of the government institution may be allowed to manage finance using the pattern of the financial management of BLU '*pola pengelolaan keuangan Badan Layanan Umum*' (hereinafter referred to as PPK-BLU) if it can meet the substantive, technical, and administrative requirements as described below:

1. The substantive requirement is met if the public services provided by the government institution are related to (a) procurement of products and/or public services; (b) Management of any particular territory/area as an attempt to improve the people's economy or public services and/or (c) Management of particular funds as an attempt to improve the people's economy and services to the public.
2. The technical requirement is met if: (a) The implementation of the services provided in the basic duty and function is better achieved through BLU as recommended by the Minister/Chairman of the Institution/SKPD according to the authority he has, and (b) The financial performance of any force unit of the institution is healthy as shown in the proposal for BLU.
3. The administrative requirement is met if the governmental institution can present the following documents: (a) A statement that it is committed to improving the performance of the services it provides, finance and significances to people; (b) the pattern of management; (c) business strategic planning; (d) basic financial statement; (e) the standard of public services; and (f) the final auditing report or a statement of being prepared to be independently audited.

The Pattern of Financial Management of Public Service Entity '*Pola Pengelolaan Keuangan Badan Layanan Umum*' (hereinafter referred to as PPK-BLU) refers to the pattern of financial management which gives flexibility in applying healthy business practices in order to improve the services provided to the public as an attempt to improve the public welfare and to sharpen the State life as governed in this Government Regulation, as an exception of any provision of the general financial management. (Article 1 Clause (2) of PP (BLU)

The principles of BLU, according to article 3 of PP Number 23 of 2005 are as follows:

1. BLU is run as a force unit of a state ministry/institution and local government; it is established to give public services and is managed based on the authority delegated by the state ministry/institution and local government concerned.
2. BLU is part of forces used to achieve what is aimed at by a state ministry/institution/local government; therefore, the legal status of BLU cannot be separated from the state ministry/institution/local government concerned.
3. The minister/head of the institution/governor, the regent/ mayor is responsible for undertaking the public services delegated to BLU in regard to the significances of the services provided.
4. The official appointed to manage BLU is responsible for implementing the public services delegated to him/her by the minister / governor / regent / mayor.
5. BLU does its activities without giving priority to benefit.
6. The work plan, budget, and the financial statement of BLU are formulated and presented as an integrated part of the work plan, budget, and the financial statement of the state ministry/institution/SKPD/ local government.
7. BLU manages the public services as a healthy business practice.

From the definitions, objectives, and principles of BLU described above, the characteristics of BLU can be determined as follows:

- a. It is a governmental institution which cannot be separated from the state wealth.
- b. It produces products and/or services needed by the community.
- c. Benefit is not a priority.
- d. It is autonomously managed based on the principles of efficiency, productivity as a cooperative.
- e. Its work plan, budget and responsibility are consolidated to the main institution.
- f. Any revenue and contribution can be directly used.
- g. The employees can be civil servants and non civil servants.
- h. It is not the tax subject.

The Function of the Governmental Implementation Based on the Constitution of the State of the Republic of Indonesia of 1945

TENDENCY OF THE INTERNATIONAL PRESSURE ON THE MANAGEMENT OF THE STATE FINANCE

The state objectives have been determined, and state finance which is obtained from the state revenues collected based on the regulation and legislation in effect is needed. This means that the state revenues constitute the sources of the state finance which is used for funding the implementation of the government duties in order to achieve the state objectives.

The types of the state revenues as the sources of the state finance are as follows:²

1. The state taxes which include:
 - a. Income tax
 - b. Value added tax imposed upon products and services
 - c. Sales tax imposed upon luxurious products
 - d. Revenue stamp.
2. Costumes Office which includes:

- a. Import duty based on the Law Number 10 of 1995 concerning Customs Office which has been changed into the Law Number 17 of 2006 concerning the change of the Law Number 10 of 1995 is the duty, based on this Law, which is imposed upon imported products.
 - b. Duty is a tax imposed by the state upon particular products whose characteristics are determined based on the Law Number 11 of 1995 concerning Duty.
3. Non tax state revenues, which, according to what is stipulated in article 2 of the Law Number 20 of 1997 concerning Non Tax State Revenues, include:
- a. The revenue which is gained from the management of the government funds.
 - b. The revenue which is gained from the use of the natural resources.
 - c. The revenue which is gained from the results of the management of the separated state wealth.
 - d. The revenue which is gained from the services provided by the government.
 - e. The revenue which is gained based on court decision and the imposition of administrative fines.
 - f. The revenue which is in the form of grants as the government right.
 - g. The other revenues are governed in particular laws.

The scope of the management of the state finance is as follows:

1. The Management of the State Finance

The management of the state finance which is under the responsibility of the Minister of Finance as the general treasurer is part of the management of the state finance.

The state money refers to the money which is controlled by the general treasurer and includes rupiah and foreign currencies, which are made up of the money in the state cash, the treasurer of revenues, and the treasurer of the management of the state ministries/non ministerial government institutions, and state institutions.

2. The Management of the State Claim and Debt

Being defined as the state finance, the state claim and debt cannot be separated from the management of the state finance. The state claim and debt should be managed based on the regulation and legislation in effect. In addition, the management of the state claim and debt should not inflict a loss upon the state, meaning that the policy made by those that manage the state finance should be in accordance with the provisions in the laws in effect in general, and the Law governing the state budget in particular.

3. Investment Management

The state, as a public corporate body, may do legal acts which are aimed at creating social justice for the Indonesian people as a consequence of adhering to the modern welfare state.³ The long term investment made by the government is aimed at gaining social and economic significances and /or other significances. The government investment should refer to the Government Regulation Number 1 of 2008 concerning the Government Investment.

The government investment is in the forms of shares, debt security, and direct investment in the form of capital participation and/ loan given by the government investment board for funding business activities. Capital participation means a form of investment invested by the government in a corporation for which the right of ownership including the establishment of limited liability companies, and /or expropriation of limited liability companies. Giving loan

is a form of investment made by the government in a corporation, public service entity, provincial government, reGENCY/city government and local public service entity with the right to gain repayment in the form of principal capital, interest and/or other fees.⁴

The government investment is a private legal act made by the government (Institution or the State Administration Official). The public corporate body may do private legal acts; however, the private legal acts done by individuals or corporate bodies are not the same (different). They are different in regard to their basis and interests⁵ which include infrastructure and other areas which can be done through the following:

- a. There is corporation between the government investment board and corporation and / or public service entity using the pattern of cooperation between the government and private entities.
- b. The cooperation in investment between the government investment board and corporations, public service entities, provincial/reGENCY/city government, local public service entities, and/or private legal entities.

4. The Management of Private-Owned Objects

The government-owned objects cannot be separated from the state finance. The user and/or the trustee of the user of such objects are obliged to manage and administer the state-owned objects as well as possible.

The state-owned objects needed for undertaking the governmental duties cannot be expropriated. The expropriation of the state-owned products may be done after gaining approval from the Indonesian Legislative Assembly.

The management of the state finance is part of the implementation of the state government. It refers to all the activities done by the officials managing the state finance in accordance with their positions and authorities including planning, implementation, supervision and responsibility.

The scope of the management of the state finance includes: the planning of the state finance, the implementation of the state finance, the supervision of the state finance, and the responsibility for the state finance.

The government which manages the state finance should pay attention to and apply the legal principles. This is intended to be able to improve services in the governmental implementation. The increased services are the form of devotion based on the principles of the management of the state finance.

The government which manages the state finance should pay attention to and apply the legal principles in order to be able to give services and to implement the government administration better. The better services constitute a devotion which is based on the principles of the state finance management.

Furthermore, loans or foreign debts, the charges and problems arising from them, are not new in Indonesia, meaning that they have been continuously in existence since Indonesia was independent; in other words, they have not been in existence in the last few years.

As already known, terminologically, foreign loans are sometimes referred to as foreign aid. Such a term is based on the definition that foreign loans are the capitals which come from foreign countries, which, for several reasons, are badly needed by the state. The capitals which come from foreign countries are termed as foreign aid if they have two characteristics, namely: the capitals are provided for non profit objectives or the capitals lent to the receiving state⁶.

Based on the two characteristics described above, the capitals which come from foreign countries are classified as foreign aid if the grant and loan are provided by the developed countries or international organizations which are particularly established to give such grant and aid such as the World Bank, Asia Development Bank (ADB) and so forth.⁷

The state revenues which come from any foreign grants and loans highly support the national development of the developing countries. However, the developed countries, as the donating ones, give grants and loans for the following motivations. Politically, the grants and loans are provided to avoid any influence or ideology coming from another block; economically, they are provided to extend international trade; or they are provided for humanity (there is a wish to help the developing countries to accelerate their economic development and to catch up their being left behind by the developed countries).

THE AMBIGUOUS CONTENT OF THE POSITION OF BLU IN ITS ORGANIZATION

The system of the financial management of BLU is generally applied to the institutions implementing welfare which used to be entirely funded with the state/regional budget. However, as the state budget is limited, the government is encouraged to think over and search for another system which is more rational as the answer to the dilemmatic position of the state. On one hand, the state should implement welfare; on the other hand, it is faced with limited budget.

Furthermore, if a system is defined as a regularity in which one sub system may not be opposed to another, then the legal regulations in a state basically reflects the foundations of the community's life (Indonesia). This means that the legal regulations issued by both the legislative and executive bodies constitute a legal system.²⁸

The independent institutional system which is applied to implement public welfare is one of the models designed by the World Bank. This includes: managing the system of self finance, including funding and payment of wages, having opportunity to aim at any benefit for reinvestment. Such an institutional development has caused BLU to have ambiguous position; essentially, on one hand, it is an institution which implements the services provided to the public as an attempt to improve the public welfare; on the other hand, it should fund its operation.

The limited state budget has caused the state to face various choices, one of which is developing the institutional system of undertaking the public welfare which is not fully funded by the state; therefore, the institution is provided with the opportunity to manage the system of managing finance which allows it to fund itself. The institutional system which is included is the institutional system of undertaking the public welfare using the pattern of the financial management of BLU.

Such an ambiguity is getting strongly concerned with the right of the institutions to implement welfare using the model employed in BLU. It is benefit-oriented as it is aimed at preparing reserve funds and the funds for reinvestment as an attempt to develop its style and serving capacity.

The BLU ambiguous content, as far as its organization is concerned, can be explained that such an ambiguous position results from:

1. The serving function which is supposed to be the governmental duty has become bias when BLU is formed as units of business. The reason is that commercialization

takes place in various sectors causing the community's position to be getting weaker.

2. The implementation of BLU should not have been benefit-oriented; however, as can be seen in its operation, BLU is supposed to generate revenues. In addition, it seems that nothing restricts the attempts made to gain profit.
3. The principles of enterprising the government similarly means that giving public services through BLU highly benefits the government as it is run as a business (businesslike) as it has the authority to collect fees and compensation for the services provided.
4. In relation to the existence of BLU, it basically has multiple functions; on one hand, it is a social institution as it has the mission to improve public services; on the other hand, it prepares commercial services as BLU is frequently used to increase revenues for any government institution. As an illustration, BLU RSUD is made to generate benefit as an attempt to increase the new PAD 'Pendapatan Asli Daerah' (the original regional revenues). A shift has taken place; the concept of public services has been changed into the concept of commercial services.
5. BLU tends to be used to plan the other government sins which may be made "legal". The reason is that its existence is acknowledged by the government. As stated in article 16 of clause (1) letter f: "BLU may use any short term surplus to gain additional revenues".

The opportunity to be benefit-oriented for several public welfare implementing institutions is used as the opportunity to use such institutions as the sources of new revenues. Such a vision of institutional politics has caused the orientation towards benefit to be getting stronger and the vision of public welfare services for the community to be getting weaker.²⁹ In Bali, for example, the management of the Regional General Hospital (BLUD RSUD) is required to be able to generate as much benefit as possible as a new source of the Original Regional Revenue 'Pendapatan Asli Daerah (PAD). In such a condition, BLU tends to function equally to the Region-Owned Company 'Badan Usaha Milik Daerah' which is purely intended to be a source of PAD. Such a condition has caused BLU and the institutions established by the government to be getting further from their basic functions to serve the public and to be the public welfare implementing institutions.

CONCLUSION

- 1) BLU in its function to undertake the governmental function constitutes a public legal entity which is obliged to give public services to the community. However, as far as this function is concerned, it tends to behave as a private legal entity. The reason is that it also functions commercially, especially when its operating success is determined based on the commercial target achieved by the main institution to which it belongs to.
- 2) The commercial behavior of BLU exceeds the authority given by the constitution. The authority BLU has, as an extended hand of the government, is limited to the authority to give public services and to manage its finance; commercial function is excluded. The serving position which is combined with the commercial function has caused the position of BLU to be ambiguous. This has caused what is done by BLU to be classified into the qualification of illegal behavior. The reason is that BLU also undertake commercial/private activities without obeying the provisions governing

the private legal act. In addition, as a public political institution, the regulation governing BLU only governs the financial management and excludes the organizational/institutional structure of BLU as an entity undertaking the commercial function of the government through BLU.

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