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IMPLEMENTATION OF LOCAL GOVERNMENT COOPERATION AGREEMENTS WITH THE PRIVATE SECTOR WITH *THE BUILD, OPERATE AND TRANSFER* (BOT) MODEL IN INFRASTRUCTURE DEVELOPMENT

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ABSTRACT

This study aims to find out and analyze the extent of the effectiveness of the Build Operate And Transfer *(BOT) Agreement Model* between Regional Governments and the Private Sector in Infrastructure Development; and to find out how the Implementation of Regional Government Cooperation Agreements with the Private Sector with *the Build Operate and Transfer* (BOT) Model in Infrastructure Development.

The results of the study show that: The effectiveness of BOT agreements between local governments and private parties does not have a clear legal basis because the contracts made have different characteristics from private and public laws. The provisions of this BOT agreement are only based on the Civil Code regarding the conditions for the validity of the agreement, the validity of contact and achievement, Government Regulation Number 27 of 2014 concerning the Management of State/Regional Property, and Law Number 9 of 2015 concerning Regional Government, The position of the government in the BOT agreement on the development of regional assets is not the same as that of the private sector because of the inherent privileges starting from the formation stage, implementation and enforcement of laws that follow the principles of private law and are subject to public law; The implementation of the BOT cooperation agreement between the Medan City Government and the Investor has several stages, namely the tender stage, the proposal discussion stage, the approval stage, the BOT agreement making stage, and the implementation stage. The stage of implementing BOT is the handover of objects from the government to investors, then the construction stage, then management, and finally the handover of objects from investors to the Government.

Keywords: Implementation, Agreement, Cooperation, Local Government, Private Party, Model, Build Operate And Transfer (BOT), Development, Infrastructure.

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INTRODUCTION

Background

Infrastructure development is very important, meaning that in supporting and realizing the smooth and continuous implementation of national development, to accelerate infrastructure development, it is considered necessary to take comprehensive steps to create an investment climate to encourage the participation of business entities in the provision of infrastructure based on healthy business principles. However, by paying attention to the limitations and financial capabilities of the state, the issue that emerges in infrastructure financing is the availability of funding sources that are long-term. The government needs to find solutions to these problems by involving various relevant stakeholders in the implementation of development, such as the private sector, the community, non-governmental organizations, and *Non-Governmental Organizations* (NGOs), among others.

Cooperation between the Government and Business Entities used to be known as Public Private Partnership (PPP). In Indonesia, PPP is known as Government Cooperation with Business Entities (PPP) from Ministers/Heads of Institutions/Regional Heads/BUMD/BUMDs that use the company's resources partially or fully, taking into account the risks borne jointly between the Parties. The government issued Presidential Regulation Number 38 of 2015 concerning Government Cooperation with Business Entities in the Provision of Infrastructure. Previously known as PPP (Government-Private Cooperation), it is now called PPP.

PPP is carried out in 3 stages, namely planning, preparation, and transactions. At the planning stage, the Minister/Head of Institution/Regional Head/Director of SOEs/BUMD prepares the budget, identifies, issues decisions, and compiles a list of PPP plans. The output of the planning stage is a list of project priorities and preliminary study documents submitted in the Ministry of National Development Planning/BAPPENAS so that it is compiled into a PPP Plan List consisting of PPP ready to be offered and PPP in the preparation process. Furthermore, the PPP preparation stage of Ministers/Heads of Institutions/Regional Heads/directors of SOEs/BUMDs as PJPK is assisted by the Preparation Agency and accompanied by Public consultation, producing a feasibility pre-study, Government support plan and Government Guarantee, determination of procedures for returning investment of

Implementing Business Entities, and land acquisition for PPP. The transaction stage is carried out by PJPK and consists of exploring market interest, determining location, procuring the Implementing Business Entity and carrying out its procurement, signing agreements, and fulfilling costs. In article 5 of Presidential Regulation number 38 of 2015 concerning Government Cooperation with Business Entities in the Provision of Infrastructure which includes transportation infrastructure, roads, water and irrigation resources, drinking water, centralized wastewater management systems, local wastewater management systems, telecommunication and waste management, informatics, electricity, oil and gas and energy, energy conservation, urban facilities, educational facilities, sports facilities and infrastructure, regions, tourism, health, correctional institutions and public housing.

The form of cooperation between local governments and the private sector can be outlined in the form of a Built Operate and Transfer (BOT) system agreement (Marco & Djajaputra, 2018). BOT agreements between local governments and the private sector are implemented based on the principles and principles of agreements in general, namely as contained in Article 1320 concerning the conditions for the validity of agreements, Article 1338 concerning freedom of contact and Article 1234 concerning achievement (Santoso, 2008). The content of the BOT agreement contains an agreed performance where one party is entitled to the performance and the other party is obliged to fulfill the performance.

This BOT cooperation system has advantages for the government and for the private sector. Local governments in improving the development and welfare of the people no longer need a large budget because they are transferred or charged to private companies within a certain period of time to manage regional assets by carrying out development and utilization in accordance with the agreement (Hernoko, 2015). For the management of regional assets by the private sector, the ownership status remains the property of the government starting from land, buildings to infrastructure facilities on the land. In addition, the government also continues to receive income in the form of local revenue throughout the agreement period.

The BOT agreement between the government and the private sector in carrying out public infrastructure development has the purpose of increasing infrastructure growth and regional development without spending funds from the government because the private

sector has responsibilities related to the final design, financing, construction, operation and maintenance for several years according to the agreement but at the end of the agreement the assets will be handed back to the government. The agreement that has been taken by the government and the private sector creates a legal relationship, namely between the holder of land rights and the investor, so that both must carry out what is their respective obligations.

In the interests of the parties to the BOT agreement, the government has the main goal, namely to realize the welfare of the people through infrastructure development so that in its implementation it must pay attention to the public interest and applicable regulations. Therefore, legal instruments are needed to accommodate and provide protection for both parties by combining the principles of private law and public law. In addition, the BOT cooperation pattern is a form of government policy in an effort to improve infrastructure development in its regions. In this case, it is important to examine the implementation of the BOT agreement itself and the government's position in BOT contracts in the development of assets owned by local governments with private parties.

BOT (Build Operate Transfer) or the Guna Bangun Serah agreement is a model of cooperation agreement between the government and the private sector in the context of the development of a vital project for national infrastructure development (Soerodjo, 2016). Especially in this study road infrastructure. In general, this BOT is already used in many countries of the world. However, this development model is fairly new in Indonesia and is growing rapidly. This is because there are challenges for Indonesia to improve national development. Therefore, the cooperative relationship between the government and the private sector in this agreement model is increasingly in demand because of the concept of mutual benefit. Where the government, which has many development agendas but with limited funds, needs investors from the private sector. So that the need for funds will be more efficiently met.

But on the other hand, in its implementation, the road infrastructure BOT model also has several obstacles. One of them is Indonesia with a geographical area that is an archipelago, of course the development of road infrastructure in Indonesian territory will be a little difficult to connect interconnection infrastructure between islands. in contrast to the territory of a

large land country (Continental State). Such as in China and India, which will benefit more in infrastructure development with such geographical conditions.

Several "Indonesian legal regulations that regulate the BOT agreement, which are basically based on the agreement stipulated in book III of the Civil Code concerning engagement (Van Verbintenissen) Article 1338 paragraph (1) which is known as the principle of freedom of contract as the initial basis (Subekti & Tjitrosudibio, 2017) Article 1 paragraphs (12) and (13) of Government Regulation (PP) Number 38 of 2008. Meanwhile, the definition of BOT is listed in the Decree of the Minister of Finance Number 248/KMK. 04/1995 Jo SE-38/PJ.4/1995 namely:

1. Form of cooperation agreement between land rights holders and investors
2. The holder of the land rights gives the investor the right to erect the building during the term of the agreement
3. After the agreement period ends, the investor transfers ownership of the building to the land rights holder.

One of the biggest challenges of development in the infrastructure sector is the low quality of infrastructure in Indonesia. Compared to other countries in Asean, Indonesia (46) is still lagging behind Singapore (7), Malaysia (41), Thailand (32), and even Vietnam (39). Based on LPI (Logistic Performance Index) 2018. The low national infrastructure index has an impact on investors' hesitation to invest their capital in Indonesia.

BOT in its implementation also has several obstacles. Departing from these things, the author argues that the development of road infrastructure development in Indonesia is progressing and the BOT cooperation model is a new thing that is enough to provide answers to budget needs outside the government. So that the problem of budget needs faced by the government in national development, especially road infrastructure. The concept of government-private cooperation (PPP) is also expected to become a new direction in national development.

Problem Formulation

1. How Effective Is The Model *Build Operate And Transfer* (BOT) Agreement between Local Governments and Private Parties in Infrastructure Development?
2. How is the implementation of the Cooperation Agreement between the Regional Government and the Private Sector with *the Build Operate and Transfer* (BOT) Model in Infrastructure Development?

THEORETICAL FRAMEWORK

1. Legal Effectiveness Theory (Soerjono Soekanto)

Effectiveness comes from the word effective which contains the meaning of success in achieving a set goal. Effectiveness is always related to the relationship between the expected outcome and the actual outcome achieved. Effectiveness is the ability to carry out tasks, functions (operations, activities, programs, or missions) than an organization or the like, where there is no pressure or tension between its implementation.

So legal effectiveness according to the above definition means that an effectiveness indicator in the sense of achieving a predetermined goal or goal is a measurement where a target has been achieved in accordance with what has been planned.[1]

According to Hans Kelsen, If we talk about the effectiveness of the law, we also talk about the validity of the law. The validity of the law means that the norms of the legal norms are binding, that people must act as required by the norms of the law, that people must obey and apply the norms of the law. The effectiveness of the law means that people really act according to the norms of the law as they should do, that the norms of those norms are actually applied and obeyed.

The goal of the law is to achieve peace by realizing certainty and justice in society. Legal certainty requires the formulation of generally applicable legal rules,

[1] Sabian Usman, Basics of Sociology (Yogyakarta: Pustaka Belajar, 2009), p. 13

which also means that these rules must be strictly enforced or implemented. This implies that the law must be known with certainty by the citizens, since it consists of the methods established for present and future events and that the rules apply in general. Thus, in addition to the duties of certainty and justice, there is also an element of usefulness in the law. This means that every citizen of the community knows exactly what things are allowed to be done and what is prohibited to be done, in addition to that the citizens of the community are not harmed in their interests within the proper limits.[2]

The Theory of Legal Effectiveness (Soerjono Soekanto) as a rule is a benchmark for appropriate actions or behaviors. The thinking method used is a deductive-rational method, so that it gives rise to a dogmatic way of thinking. On the other hand, there are those who view the law as an attitude of action or behavior that is orderly (ajeg). The method of thinking used is empirical inductive, so that the law is seen as an action that is repeated in the same form, which has a specific purpose.[3]

The effectiveness of law in actions or legal reality can be known if a person states that a legal rule succeeds or fails to achieve its goal, then it is usually known whether its influence succeeds in regulating certain attitudes or behaviors so that they are in accordance with their goals or not. Legal effectiveness means that the effectiveness of the law will be highlighted from the goals to be achieved, namely the effectiveness of the law. The theory of legal effectiveness in the perspective of Soerjono Soekanto states that there is an attitude towards legal behavior that is considered effective if the attitude and actions of the enforcement actors are in accordance with the goals desired by laws and regulations. Laws and regulations in this case will be effective if law enforcers carry out their role as best as possible in accordance with these laws and regulations.[4]

[2] Soerjono Soekanto, Some Legal Problems in the Framework of Development in Indonesia (Jakarta: University of Indonesia, 1976), p. 40.
[3] *Ibid*, p. 45
[4] *Ibid*, p. 51

2. Legal Substance Theory – Lawrence Friedman

According to Lawrence M. Friedman, a professor of law, historian, American legal historian, and prolific writer, there are three main elements of the legal *system*, namely: 1) Legal *Structure*; 2) Legal Substance; and 3) Legal *Culture*. Lawrence M. Friedman stated that the effectiveness and success of law enforcement depends on 3 elements of the legal system, namely: 1) Legal *structure*; 2) Legal *substance*; and 3) Legal *culture*.[5] The legal structure concerns law enforcement officials, the substance of the law includes the legislative apparatus and the legal culture is a living *law* that is adopted in a society.

In Lawrence M. Friedman's theory, a substantial system determines whether or not a law can be implemented. Substance also means products produced by people who are in a legal system that includes the decisions they issue or the new rules they draft. Substance also includes living law, not just the rules in the *law books*. Indonesia, as a country that still adheres to the *Civil Law System* (Continental European system) even though some laws and regulations have also adhered to the *Common Law System* or Anglo Saxon, it is said that laws are written regulations, while unwritten regulations are not declared law. This system affects the legal system in Indonesia.[6]

The legal substance according to Friedman is:

"Another aspect of the legal system is its substance. By this is meant the actual rules, norm, and behavioral patterns of people inside the system ... the stress here is on living law, not just rules in lawbooks".

Another aspect of the legal system is its substance, which means that the substance is the rules, norms, and patterns of real human behavior that are in that system. So the substance of the law concerns the applicable laws and regulations that have binding power and become a guideline for law enforcement officials.[7]

3. Justice Theory

[5] Lawrence M. Friedman. 2011. *Legal System from a Social Science Perspective*. Bandung: Nusa Media. p. 49
[6] Leonarda Sambas. 2016. *Classical and Contemporary Legal Theories.* Jakarta: Ghalia Indonesia. Page 75
[7] Lawrence M. Friedman. *Op. Cit,* p. 57

Justice is basically a relative concept, everyone is not the same, fair according to one is not necessarily fair to another, when someone asserts that he is doing a justice, it must of course be relevant to the public order where a scale of justice is recognized. The scale of justice varies greatly from place to place, each scale is defined and fully determined by the society according to the public order of that society.[8]

In Indonesia, justice is described in Pancasila as the basis of the state, namely social justice for all Indonesian people. The five precepts contain values that are the goals of living together. The justice is based on and imbued with the essence of human justice, namely justice in the relationship between humans and themselves, humans with other humans, humans with society, nations, and states, as well as the relationship between humans and their God.[9]

These values of justice must be a basis that must be realized in living together with the state to realize the state's goals, which are to realize the welfare of all its citizens and all its territory, educating all its citizens. Likewise, the values of justice are the basis for the association between countries and nations in the world and the principles of wanting to create order of life together in a society between nations in the world based on the principle of independence for each nation, lasting peace, and justice in living together (social justice).

The term justice (*iustitia*) comes from the word "fair" which means: unbiased, impartial, in favor of the right, should, not arbitrary.[10] Justice This is an equation among members of society in a joint action. An equation is a point that lies between "more" and "less" (intermediate). So justice is a middle ground or a relative equation (*arithmetical justice*). Basis The similarities between the members of society are highly dependent on the system that lives in that society. In a democratic system, the basis of equality to obtain a middle ground is equal human freedom from birth. In the oligarchic system, the basic equation is the level of welfare or honor at birth. Whereas

[8] Mr. Agus Santoso, *Law, Morality & Justice A Study in the Philosophy of Law*, (Kencana: Jakarta, 2014), p. 85.

[9] *Ibid,* p. 86.

[10] Ministry of Education and Culture, 2001. Great Dictionary of Indonesian Language, Balai Pustaka : Jakarta p. 517

in the aristocratic system the basic equation is privilege (*Excellent*). These different bases make justice more about the meaning of equality as proportion. It is one special species of justice, which is the middle point (*Intermediate*) and proportions.[11]

Justice comes from the word fair, according to the Indonesian Dictionary fair is not arbitrary, impartial, and unbiased. Fair mainly means that a decision and action are based on objective norms. Justice is basically a relative concept, everyone is not the same, fair according to one is not necessarily fair to another, when someone asserts that he is doing a justice, it must of course be relevant to the public order where a scale of justice is recognized. The scale of justice varies greatly from place to place, each scale is defined and fully determined by the society according to the public order of that society.[12]

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Aristotle in his work entitled The Ethics of Nichomachea explains his thoughts on justice. For Aristotle, the virtue, i.e. obedience to the law (the law of the polis at

[11] Euis Amalia, 2009. Justice Distributive in Economics Islam, Raja Grafindo Persada : Jakarta p. 117
[12] Mr. Agus Santoso, *Law,Morality & Justice A Study in the Philosophy of Law*, Ctk. Second, Kencana, Jakarta, 2014, p. 85.
[13] *Ibid,* p. 86.

that time, written and unwritten) was justice. In other words, justice is a virtue and this is general. Theo Huijbers explained that justice according to Aristotle in addition to general virtues, also justice as a special moral virtue, which is related to human attitudes in certain fields, namely determining good relations between people, and the balance between two parties. The measure of this equilibrium is numerical and proportional similarity. This is because Aristotle understood justice in the sense of equality. In numerical equality, every human being is equalized in one unit. For example, everyone is equal before the law. Then proportional equality is to give everyone what is their right, according to their abilities and achievements.[14]

RESEARCH METHODOLOGY

This research will be prepared using a normative juridical research type, which is research focused on examining the application of rules or norms in positive law.[15] This type of research is normative legal research, in accordance with Soerjono Soekanto's opinion,[16] that normative legal research is research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research, in order to answer the legal problems or issues to be studied.

The paradigm used in this study is the paradigm of Post Positivism. This paradigm is a school that wants to improve the weakness of positivism that only relies on the ability to direct observation of the object being studied. Ontology, this school is *critical realism* which views the same that reality (public interest, compensation, deliberation) does exist in reality in accordance with natural laws, but it is impossible if a reality can be seen by humans (researchers). Therefore, methodologically, an experimental approach through observation is

[14] Hyronimus Rhiti, *Philosophy of Law Full Edition (From Classics to Postmodernism*), Fifth Ctk., Atma Jaya University, Yogyakarta, 2015, p. 241.

[15] Johnny Ibrahim. 2006. *Normative Law Research Theory and Methodology.* Malang: Bayumedia Publishing. p. 12

[16] Soerjono Soekanto. 1983. *Introduction to Legal Research*. Jakarta: University of Indonesia Press. p. 51.

not enough, but must use the triangulation method, namely the use of various methods, data sources, researchers and theories.[17]

Epistimmologically, the relationship between the observer or researcher and the object or reality being studied is inseparable, as proposed by the school of positivism. The relationship between the researcher and the object (reality) must be interactive, the observer must be neutral so that the level of subjectivity can be reduced.

This research uses various approaches, with the aim of obtaining information from various aspects regarding the issue being researched. Therefore, to solve the problem that is the subject of this study, the following approach is used:

a. Legislation (*statute approach*) is an approach that is carried out by examining laws and regulations related to legal issues that are being raised.[18]

b. The conceptual *approach* is an approach that moves from the views and doctrines that develop in the legal sciences.[19] Philosophically, a concept is the mental integration of two or more units isolated according to characteristics;

c. The comparative approach is used in relation to comparative law which discusses the pattern of cooperation that is in accordance with the interests of the Government and the community.

RESEARCH RESULTS

The Effectiveness of the Build *Operate and Transfer* (BOT) Agreement Model between Local Governments and the Private Sector in Infrastructure Development

[17] Lego Karjoko, "Reflection on the Paradigm of Science for the Development of Land Acquisition Law", *Journal Essay,* Vol.7 No.1, 2019, p. 7

[18] Jhonny Ibrahim. *Op. Cit*. p. 301

[19] Peter Mahmud Marzuki. 2008. *Legal Research.* Jakarta: Kencana Prenada Media Group. p. 95

The government in the development of regional assets is currently widely used in the BOT agreement system with private companies as project implementers. The BOT project in the Indonesian government initially started in 1995, namely the Paiton I project (coal-fired power project). The government implements the BOT agreement with the Build Own Operate (BOO) mechanism, where this mechanism has provisions in the form of "take or pay". The first contract was agreed for 30 years but after negotiation the contract was renewed to 40 years after the construction of the factory was completed. In this case, the BOT agreement adheres to the elements of the agreement in the form of essential elements and also the principle of freedom of contract.[20]

Cooperation between local governments and private companies in the form of BOT agreements ultimately creates legal relations between the two. The BOT agreement or regional asset development contract is included in the private contract so that it is able to bind the two parties personally to the things that have been agreed but do not violate the provisions of the law. This is as stipulated in Article 1338 paragraph (1) of the Civil Code that a valid agreement applies to the parties who make it. This shows that the agreement has a private nature because it is made by two interested parties. Therefore, BOT agreements made by local governments with the private sector are included in public law and private law.[21]

Local governments in managing government affairs use civil law instruments, especially contract law, also known as contractualization, but in practice there are private laws and public laws that accompany BOT agreements by the government and private parties. BOT agreements made by the government have different characteristics from general contracts because of the government's position as a public body but follow the principle of an agreement involving two parties so that it is binding individually (private law). The existence of contractualization in the realm of public and private law has an impact on the validity of the agreed agreement, the implementation of the contract and the enforcement of the law.

BOT agreements between Regional Governments and Private Parties in the management of regional-owned assets, there are no specific laws and regulations, so its

[20] Artadi, I. Ketut, and I. Dewa Nyoman Rai Asmara Putra. "Implementation of the Legal Provisions of the Agreement in the Drafting of the Contract." (2010).
[21] Soerodjo, I. (2016). The Practice of Cooperation with Build, Operate & Transfer (BOT) Model in Indonesia. *J.L. Pol'y & Globalization*, *49*, 56.

implementation is based on general agreements and rules on the management of state/regional assets as follows:

a) Civil Code

The BOT agreement refers to the principles of the agreement in general, namely as contained in Article 1320 concerning the conditions for the validity of the agreement, Article 1338 concerning freedom of contact and Article 1234 concerning achievement. The content of the BOT agreement contains an agreed performance where one party is entitled to the performance and the other party is obliged to fulfill the performance.[22]

b) Government Regulation Number 6 of 2006 Jo Government Regulation Number 27 of 2014 concerning the Management of State/Regional Property.

Agreements are one of the most important parts of civil law. An agreement as one of the sources of engagement is a legal relationship of wealth or property between two or more people that gives the power of rights to one party to obtain achievements and at the same time obliges the other party to fulfill achievements. The BOT agreement between local governments and private parties in the management of regional assets, although it does not have specific regulations, can be based on Government Regulation Number 27 of 2014 concerning the Management of State/Regional Property as a form of implementation of Law Number 1 of 2004 concerning the State Treasury, especially Article 49 paragraph (6) which is related to technical and administrative guidelines for the management of state or regional property regulated through government regulations that are specific.

c) Law Number 23 of 2014 jo Law Number 9 of 2015 concerning Regional Government.

The regional authority to implement BOT agreements with private parties in the management of regional assets is regulated in Law Number 9 of 2015 concerning Regional Government, especially Article 363 paragraph (1), namely

[22] Puspitasari, I., & Santoso, B. (2018). Government and Private Cooperation Agreement with Build Operate Transfer Pattern (BOT) in Toll Road Construction (Semarang-Solo Toll Road Development Study). *Law Reform*, *14*(1), 57-73.

that local governments can cooperate to improve the welfare of their residents by considering the efficiency and effectiveness of public services and mutual benefits. Cooperation carried out by the local government can be in various forms as stipulated in paragraph (2), namely cooperation with other regions, third parties and institutions from abroad in accordance with the provisions of the law. Third parties as parties chosen by the local government in carrying out regional asset management are regulated in Article 366 paragraph (1) in order to increase added value that is able to increase local original income.

The arrangement of BOT agreements between local governments and private parties does not have a clear legal basis because it is only regulated in the Civil Code, especially Article 1320 concerning the conditions for the validity of agreements, Article 1338 concerning freedom of contact and Article 1234 concerning achievements; Government Regulation No. 6 of 2006 Jo Government Regulation No. 27 of 2014 concerning the Management of State/Regional Property; and Law Number 9 of 2015 concerning Regional Government. While these provisions are still general, BOT agreements involving the government and private parties have different characteristics from private contracts in general so that there is an impact on the mixing of private and public law.

In the implementation of the BOT agreement, there are various interested parties, namely the government, private companies/project holders and sponsors, all three of which have different roles and positions. The government in this case has a position in the procurement of development projects (policy determination starting from legislative, regulatory and administrative) and provides support to private companies holding development projects. In carrying out its position, the government has companions ranging from technical, financial advisors to legal advisors.[23]

The government in implementing the BOT agreement in the development of regional assets has special advantages, namely obtaining new sources of capital from the private sector, accelerating development projects, and increasing regional revenue.[24] The BOT

[23] Yuliyanti, I., & Santoso, B. Analysis of Build Operate and Transfer (BOT) Agreements on the Development of Regionally Owned Assets. *Notary*, *16*(2), 839-849.
[24] Daulay, Rizky Abdillah, and Kamilah Kamilah. "The Implementation of PP No. 46 of 2013 and Self Assessment System in MSMEs Al-UOIS 212 Mart Labuhan Batu." *Journal of Islamic Accounting Competency* 1.1 (2021): 32-44.

agreement between local governments and the private sector shows the existence of elements of public law. The government's position as the implementer of public services in every development procurement is also aimed at the public interest, so that it will indirectly use the principles of public law in making agreements. This then causes private contracts in the BOT project to not be fully enforced by the government.

The legal relationship between the local government and the private company that holds the project in this case adheres to the system of agreements and public law. In civil law, the government will not be able to act as a ruler because it is bound by civil law relations with private parties in the management of regionally owned assets with the BOT agreement, therefore the government has the same rights attached to the people. This shows that the governing body must be subject to the ordinary judiciary like the common people.[25]

The government in this case has a special position but also results in the complexity of legal relations. This is because government contracts as part of public contracts allow the government to act as a ruler, so that the things in government contracts basically reflect only the government's unilateral will/desire. In this case, the government has prepared the terms of the contract and the private company as the contractor only has two decisions, namely to agree or disagree. In addition, although the government has a goal for the public interest in the implementation of the BOT agreement, it also reflects the existence of commercialism because the government as a party that uses the services of the private sector in development has an orientation towards the benefits of the implementation of the contract.

Implementation of Cooperation Agreements between Local Governments and the Private Sector with *the Build Operate and Transfer* (BOT) Model in Infrastructure Development

The provision of public service facilities, the local government of the district/city, in this case the government can utilize land or land that is still vacant such as the land in Merdeka Square by handing over its management and utilization to other parties, namely investors in the form of the establishment of public service facilities, both commercial and non-commercial. And it can be done by renovating buildings that are no longer feasible. All of this

[25] Hadjon, P. M. (2019, April). Failure in the Formation of Administrative Law Laws and Regulations. In the *Proceedings of the National Seminar on the Portrait of the Indonesian Legal System in the Reform Era, Fak. Law of the University of Surabaya in collaboration with the MPR-RI Review Board* (pp. 39-43).

is part of efforts to revitalize assets owned by the regency/city local government in order to provide benefits to the general public.

The construction of public service facilities in its implementation is hampered by constraints due to limited budgets owned by the district/city local government, so that the implementation of infrastructure project development is hampered or even not carried out properly. To overcome the problem of budget limitations, the participation and involvement of third parties (the community) is needed in building public service facilities and infrastructure. Local governments can collaborate with investors to participate in the construction of public service facilities and facilities on unused land owned by local government assets.

The implementation of the BOT cooperation agreement is carried out by the government and the investor, at first glance if you look at the meaning of the building and handover agreement, then the legal relationship in the BOT agreement only involves the owner of the land rights, either the government as the holder of the right to control the land, the community as the holder of customary rights, or the community as the owner of the land rights with the investor alone as the party that funds the construction of the BOT object.

If we carefully identify the characteristics of the BOT project, whose implementation consists of 3 (three) stages, namely the construction stage (Build), the operation stage (Operate), and the handover stage (Transfer), causing the BOT agreement to have distinctive characteristics when compared to other agreements, because the implementation of these stages does not only involve the landowner and the investor, but also involves other parties, such as the contractor, the bank, the insurance party, and the user or tenant of the building, so that the legal aspects of the agreement related to land use through the BOT concept, in it are related to many other agreements.[26]

The implementation of all construction of public facilities, especially public service facilities of the Regional Government that have been carried out by means of BOT cooperation, has also fulfilled the elements of the agreement, namely: The essential element is the element of the agreement that must always be present in an agreement, the element

[26] Anita is the one. 2013. Build Operate Transfer (BOT) Building Without Owning Land (Agrarian Law, Treaty Law and Public Law Perspective). Bandung: Keni Media. Page 156.

of naturalia which is essentially a complementary law, and the element of accidentalia which is the elements of the agreement added by the parties to the agreement. [27]

Based on the provisions of Article 1 number 12 of Government Regulation Number 6 of 2006, Build for Surrender and Build for Surrender are defined as follows: Build for Surrender (BGS) which is generally commonly referred to as Build, Operate and Transfer (BOT) is the use of land owned by the central/regional government by other parties by erecting buildings and/or facilities, along with their facilities, then used by the other party within a certain agreed period of time, for henceforth, the land along with buildings and or facilities and facilities will be handed back to the Goods Manager after the end of the period. In accordance with its definition, in principle, the BOT agreement is carried out to provide buildings and facilities in the context of carrying out the main tasks and functions of ministries/institutions/local governments, whose development funds are not available in the State/Regional Revenue and Expenditure Budget (APBN/D).[28]

Government-owned land use must be used properly to prosper and educate the people, for example by using land to establish business cooperation with investors for the purpose of achieving profits through the BOT agreement system. [29]

The implementation of the BOT cooperation agreement is related to the right to land rights, especially the Right of Use, according to Article 41 Paragraph (1) of the Basic Agrarian Law hereinafter referred to as the UUPA, the Right to Use is the right to use and/or collect the proceeds of land directly controlled by the State or land owned by another person, which gives the authority and obligations specified in the decision to grant it by the official authorized to grant it or in the agreement with the landowner, which is not a lease-lease agreement or a land cultivation agreement, everything as long as it does not contradict the spirit and provisions of the law.

Article 41 paragraph (1) of the UUPA occurs in the case of the right to use due to the grant by the authorized official or in agreement with the landowner. From the above

[27] National Legal Development Agency (hereinafter referred to as BPHN I). 2008. *Legal Aspects of Contracts in the Development and Operation of Infrastructure with BOT (Build, Operate, and Transfer) Pattern*. Jakarta: Department of Law and Human Rights. Page 24

[28] Ramadhanmuawad.wordpres, "Implementation of Development Agreements through the Mechanism of the Build and Hand Over Agreement/BOT" via, https://ramadhanmuawad.wordpress.com, accessed Tuesday, January 29, 2025 at 21.40 WIB.

[29] Samun Ismaya. 2013. Land Administration Law. Yogyakarta: Graha Ilmu. Pages 2-3.

description, it can be concluded that the government's agreement with the Investor is included in Article 41 paragraph (1) of the UUPA.

The right of use in practice also has a term of use, which of course is also related to the BOT cooperation agreement between the government and investors. The period of the Right to Use according to Article 41 paragraph (2) of the Right to Use Law is given a certain time or as long as the land is used.

The BOT cooperation agreement cannot be carried out solely without going through stages that are considered important, the land that is the object is usually used for the construction of projects such as toll roads, tourist attractions, shopping centers, hotels and so on.

The implementation of BOT cooperation regulates the period of implementation of BOT cooperation by local government BOT partners, which is a maximum of 30 years from the date of the agreement signed, and also regulates three provisions regarding the obligations of local government BOT Partners, namely: [30]

1. Paying contributions to the state's general cash account;
2. Not collateral, pawn and/or transfer the object of BOT's cooperation; and
3. Maintaining the object of BOT cooperation so that it remains in good condition, which is intended so that state/regional property that is BOT-kan can and always be maintained in its existence.

Related to the imposition of costs incurred in the implementation of the BOT cooperation, Government Regulation Number 6 of 2006 regulates the following:

1. All costs incurred until the determination of the BOT Cooperation partner are charged to the State Budget/D. These costs include the costs/honorarium of the team working in the context of the implementation of land assessments, auctions, and land valuation costs, as well as independent appraisal fees if necessary;

[30] Hassan Sharaffudin and Abdullah AL-Mutairi. "Success Factors for the Implementation of Build Operate Transfer (BOT) Projects in Kuwait." *International Journal of Business and Management.* Vol 10 No. 9. 2015. pp. 68–78, https://doi.org/10.5539/ijbm.v10n9p68.

2. All costs incurred after the establishment of the BOT cooperation partner until the end of the implementation of the cooperation are the burden of the BOT cooperation partner. These costs include, among others, licensing fees, supervisory consultants, legal consultant fees, and maintenance costs of the object of utilization cooperation, which are the burden of utilization cooperation partners;

After the operation period of the BOT cooperation ends, the object of the implementation of the BOT cooperation must be audited by the functional supervisory apparatus before being handed over to the Goods Manager and/or Goods User. After the utilization period ends, the building and facilities resulting from BOT's cooperation are determined by the Goods Manager.In accordance with the provisions in Government Regulation number 6 of 2006, the Building Permit (IMB) in the framework of BGS/BSG must be on behalf of the Government of the Republic of Indonesia/Regional Government, where the clause of the BOT Cooperation agreement is also appropriate.[31]

[31] Ramadhanmuawad.wordpres, "Implementation of Development Agreements Through the Mechanism of Construction and Handover Agreements/BOT" via, https://ramadhanmuawad.wordpress.com, accessed Tuesday, January 29, 2025 at 23.40 WIB.

CONCLUSION

The results of the study show that the reconstruction of the Electronic Traffic Law Enforcement policy in the field of traffic based on the value of justice is justified in the following ways;

1) The effectiveness of BOT agreements between local governments and private parties does not have a clear legal basis because the contracts made have different characteristics from private and public law. The provisions of this BOT agreement are only based on the Civil Code regarding the conditions for the validity of the agreement, the validity of contact and achievement; Government Regulation Number 27 of 2014 concerning the Management of State/Regional Property; and Law Number 9 of 2015 concerning Regional Government; and (2) The government's position in the BOT agreement on the development of regional assets is not the same as that of the private sector because of the inherent privileges starting from the stage of formation, implementation and enforcement of the law that follows the principles of private law and is positioned as a subject of public law.
2) The implementation of the BOT cooperation agreement between the Medan City Government and the Investor has several stages, namely the tender stage, the proposal discussion stage, the approval stage, the BOT agreement making stage, and the implementation stage. The stage of implementing BOT is the handover of objects from the government to investors, then the construction stage, then management, and finally the handover of objects from investors to the Government.

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