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NATIONAL INTEREST AS A BASIS OF THE GOVERNMENT COOPERATION WITH PRIVATE COMPANIES IN PROVIDING THE PALAPA RING INFRASTRUCTURE

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ABSTRACT

The purpose of this study to analyze the criteria of national interest that become the basis of the cooperation agreement between the Indonesian Government and private companies as well as the characteristics of the deal in providing the Palapa Ring infrastructure. This study is normative research that applies the statute approach and conceptual approach. The legal materials used comprise both primary and secondary materials. The results show that the national interest in Public-Private Partnership (PPP) has several criteria. First, the production branch, which involves people's lives is undoubtedly the object of the cooperation between the Government and private companies. Second, there are mandatory rules that are closely related to the public order in the infrastructure provision with private companies. The Indonesian Government attempts to meet the public needs in the telecommunication sector by establishing the Palapa Ring project to prosper the Indonesian people with technological capabilities. The infrastructure provision is made by building partnerships with private companies within an agreement. National interest in Public-Private Partnership (PPP) is merely to avoid losses that Indonesia may go through. Thus, the economic and social welfare regulations in Article 33 of the 1945 Constitution of the Republic of Indonesia are to be further studied. Moreover, private companies are interested in building cooperation with the Indonesian Government in providing telecommunication infrastructure in Indonesia.

INTRODUCTION

Social development, along with the attempts to secure reliable, affordable, and sustainable energy infrastructure, is one of the significant challenges for both developing and developed countries (Lee, 2019). In building infrastructure, the Government can carry out many ways, and one of them is through Public-Private Partnership (hereafter, PPP) projects (Danendra, 2010). PPP is one endeavour to accelerate infrastructure development, which aims are to maintain, build, and operate facilities and infrastructure like public services (BPKP, 2011). In this project, the Government plans to build Palapa Ring, a ring-shaped wide-band optical fibre network. The ring, furthermore, will surround seven islands in Indonesia, namely Sumatera, Java, Borneo, Nusa Tenggara, Sulawesi, Maluku, and Papua. The ring will be complemented with eight connecting networks and one large ring surrounding Indonesia either through the seabed or through the land.

The cooperation of Palapa Ring project is stated in an agreement signed by the parties that are based on Article 1313 of the *Burgerlijk Wetboek* (BW): “an agreement is an act pursuant to which one or more individuals commit themselves to one another” (Santoso, 2016). The agreement is valid if it fulfils four clauses stated in Article 1320 of the BW, that is the consent of the parties, the capacity of the parties, a specific subject, and an admissible cause. The first two conditions are subjective since they are related to the parties or matters conducting the agreement. The last two terms, on the other hand, are objective, given they are associated with the object of the contract. Regarding the content of the agreement, the treaty law gives freedom to the parties without any limitations as long as it does not violate the law, public order, and decency (Subekti, 1992).

Other than that, PPP must be done under the substance of the agreement between the Government and the private companies, so that disputes that can cause harm to the Indonesian people will not occur. The telecommunication infrastructure provision in the Palapa Ring project involves private elements that can lead to a clear propitiation. In other words, the implementation of the infrastructure development, if not done correctly, is feared to lead to policies that override nationality. Therefore, the agreement between the Government and private companies in providing the Palapa Ring infrastructure must be based on public interest as the foundation and must not violate the law, public order, and decency. Even though PPP involves private sectors that tend to gain as much profit, it is still expected that infrastructure development is in line with the signed agreement that put above the Indonesian people interests.

LITERATURE REVIEW

General Concept of National Interest

National interest is divided into several kinds. The first kind is core/basic/vital interest, which value is the highest that can cause a country to go to war, for

example, the fight for the sovereign territory. The next kind is secondary interest, which comprises everything that a country wants to achieve but to realise it is only to negotiate (Hans, 2016). Thus, in practice, national interest is processed and formed by each country's policymakers. In brief, national interest refers to how a country can achieve its prosperity in the international realm by respecting political independence, territorial integrity, and the goals of national interest of each country to prosper its people so that the country's sovereignty is protected from external and internal threats that can interfere with national security and stability (Oppenheo, 1987).

Characteristics of the PPP Agreement in the Palapa Ring Infrastructure Development

The attributes in the Palapa Ring agreement include the making of optical fibre networks that guarantee the fulfilment of public interests, which certainly have several aspects to be met. Additionally, the agreement between the Government and private sectors has a distinct characteristic from other types of contract. Furthermore, national interest in PPP has several criteria. First, the production branch related to the public interest is indeed the object of the cooperation. Second, the listing of mandatory rules. National interest is also referred to as the meaning of public order. Then, national interest in the PPP must have the principles of national security protection, solidarity, and non-discrimination treatments as stipulated in the laws in the Presidential Regulation Number 38/2015. Also, the PPP must prioritize fundamental human values and public interests as a guideline for realizing national interests and fundamental rights that have been listed in the 1945 Constitution of the Republic of Indonesia. These requirements are due to the missions of the Indonesian Government to protect the public interest and national interest while providing the telecommunication infrastructure (Sklarew, 2018). The agreement, however, needs particular attention, especially regarding the strong influence from the public law concept to the commercial contracts. In other words, even though the deal is made to protect public or national interests, it is still considered commercial (Simamora, 2013).

The Government's involvement in this cooperation agreement causes the agreement not to be purely a private legal act, but there is also an element of public law in it (Kurniawan, 2016). The deal made by the Government is a legal relationship that arises in the practice of civil law, although in the agreement also includes public law conditions. Next, the crucial aspect of an agreement with the Government's involvement is that one of the parties is about the Government's immunity when sued in court (Simamora, 2013). When a country wants to have a cooperation agreement with another party, the state must not be in loss. The principle is not merely a national principle but also a universal policy to protect a country's assets (Nasarudin, 2014). The principle, furthermore, is under the article 50 of the Law Number 1 of 2004 on State Treasury, which stipulated that "any parties are prohibited from conducting the confiscation of money or securities

owned by the state/region, either in the Government institutions of third parties." This article implies that in courts, the Government is immune to any charges.

Public Interest in the PPP of Palapa Ring

The cooperation between the Government and private sectors is based on public interest; thus, the PPP agreement that is aimed to develop the national economy must be based on the public interest principles. A lease is an instrument in civil law that includes the Government as one party that can result in a mixture of public and private elements in the formed contractual relationship (Adha, 2011). The combination is what makes the public interest principles as one aspect of the validity of the agreement. Therefore, with the presence of public issues, the agreements made by the Government have limits on the law and public interests that must not be violated.

The Palapa Ring project is one of the infrastructure development projects carried out by building a collaboration between the Indonesian Government and private companies through the PPP. The Minister of Finance of the Republic of Indonesia, Sri Mulyani, affirmed that the PPP must be transparent. In other words, the agreement must not be profitable only to one party, which is the private sector. Moreover, the PPP in the Palapa Ring project must be carried out fairly and not cause losses, including losses suffered by the public (Hns, 2016). The areas of the project, furthermore, are not the exciting areas if seen from the business sector (Muslim, 2017). Thus, it can be seen that in providing the infrastructure of the project, the Government builds it in every region in Indonesia intending to increase the service quality for the public.

RESEARCH METHODOLOGY

This study is a normative study that applies the statute approach and conceptual approach. The primary and secondary legal sources in this study were inventoried and systematized in the form of chapters and sub-chapters following the subject. Then, the results of the analysis were descriptively elucidated.

DATA ANALYSIS

Criteria of national interest in the cooperation between the government and private companies

The requirements of national interest in the cooperation between the Government and private companies are better thoroughly described, providing the broad scope of the agreement and concerning the life of the whole community. The first criterion is that the branch production concerning the community becomes the object of the cooperation (Kurniawan, 2016). In the second criterion, the rule categorized as national interest is the mandatory rules (Kurniawan, 2016). These rules can be identified through the norm characteristics, that is its transparency and predictability that can be seen from the existing structure and terminology

(Kurniawan, 2016). However, the negligence of the drafting of the law in using norms in the regulation is undoubtedly the leading cause of the unstructured statutes and rules (Kurniawan, 2016). The third criterion comprises the principle of competing in cooperation between the Government and private sectors, which further explains that the procurement of cooperative partners between the two parties is through a fair, open, and transparent selection phase as well as focusing on the principle of fair business competition (Santoso B., 2018).

Furthermore, the control and risk management principles of the infrastructure provision are carried out by completing risk assessments, strategy development, and risk control and mitigation (Santoso B., 2018). Effective and efficient principles are the principles where cooperation can accelerate developments and increase service quality at ⁵nce. The infrastructure management and maintenance, additionally, are expected to meet the needs of the funding on an ongoing basis in the provision of infrastructure through the support of private funds (Santoso B., 2018).

Not only through rules and regulations, but those principles must also be carried out in every process of cooperation so that the sustainability of legal ideals can be achieved (Kurniawan, 2016). Based on the above explanation, the national interest itself can be said as the foundation of the PPP besides as the anticipation for a national loss. Also, national interest is to increase the national economy since basically, every fund owned by a state is for the people's welfare and prosperity.

Characteristics of the cooperation agreement between the government and private companies in the palapa ring infrastructure development

The PPP Scheme Employed in the Palapa Ring Project

The PPP of the Palapa Ring project has been through the procedure of pra agreement by signing a cooperation agreement between the Project Manager and the Implementing Business Entity. The signing of the cooperation agreement on the west package is done with PT. Palapa Ring Barat (West Palapa Ring) and spent Rp 3.4 trillion. After passing through the financing fulfilment and preliminary requirements, the West Palapa Ring project through a statement signed by the Project Manager that is then submitted to PT Palapa Ring Barat is declared valid, and the Implementing Business Entity is obliged to carry out the construction process for 18 months (Informatika K. K., 2016). As for the Central Palapa Ring project, the signing of the agreement is done by the Project Manager, which is the Ministry of Communication and Informatics of the Republic of Indonesia and the PT. Len Telekomunikasi Indonesia (Konsorsium Pandawa Lima) as the Implementing Business Entity. The project value is as much as Rp 3.5 trillion and is expected to finish in 2019 (Informatika, 2017).

The signing of the cooperation agreement on the east package, moreover, is done by the Ministry of Communication and Informatics as the Project Manager and PT.

Palapa Timur Telematika (PT. PTT) as the Implementing Business Entity formed by the Consortium Moratelindo, IBS, and Smart Telecom. This package is estimated to spend Rp 14 trillion, and the signing of the agreement is considered proof that the Government is serious in fulfilling the need of infrastructure, particularly in the telecommunication sector. Besides, the deal is a step to accelerate the national strategic project as stipulated in the Presidential Regulations Number 3 of 2016. The project, furthermore, is a form of the Build-Operate-Own-Transfer (hereafter, BOOT) project (Informatika, 2017). BOOT is an extension of the PPP scheme established by the parties, where the BOOT scheme has a period of 25 years. After the expiry of the period, the object of the Palapa Ring project will become the Government's property (Hasan, 2016).

Fulfilment of the Aspects of Public or National Interest Principles in Some Forms of PPP Cooperation

The Government in building cooperation in providing the infrastructure needs a calculation on several aspects that need to be fulfilled, especially on the elements of public interest or national interest that cannot be violated. Other than that, there are some other elements to be calculated in determining the form of PPP used in agreeing. Build-Operate-Transfer (hereafter, BOT) and BOOT are the alike PPP schemes. Hence, the differences are displayed in the table below (Istianto, 2011):

Tables 1. Fulfilment of the Aspects of Public or National Interest Principles in Some Forms of PPP Cooperation

PPP Form	Asset Ownership	Operation and Maintenance	Capital Investment	Commercial Risk	Period of PPP
BOT	Public	Private	Private	Private	25-30 years
BOOT	Private	Private	Private	Private	20-30 years

Source: Sasi Kumar and C. Jayasankar Prasad (2004)

The significant difference between BOT and BOOT is the 'Own' element in BOOT, which influences the work management status owned by the private sector (Board, 2011). During the BOOT cooperation period, the private sector holds and manages the infrastructure that aims to cover the spent budget on investment and maintenance when the industry seeks higher profits on the project. In BOT cooperation period, that is 25-30 years; the assets are owned by the Government and turned over when the term of the agreement expires. The private sector carries out modal investment, maintenance, and operation so that the commercial risks occurred are borne by the private sector. Therefore, if the application of the PPP scheme is suitable, the infrastructure provision has the potential to succeed and can then be developed and used as a reference for the implementation of infrastructure provision with the next PPP scheme.

The private sector under the BOOT cooperation form, on the other hand, is required to be more active in overcoming problems regarding the needs in the upcoming infrastructure development, for example, by getting a new modal source from new private companies to decrease the lending from the Government as well as the direct expenditure (Adha, 2011). Thus, since the infrastructure development in the Palapa Ring project needs a significant amount of funds, the Government's step to building cooperation with private companies can be said as the correct step to make.

CONCLUSION

The national interest in the PPP has two criteria, namely (1) the branch production related to the lives of the public is the object of the cooperation and (2) the establishment of mandatory rules that are associated with the public order. In the provision of infrastructure with private sectors, national interest in the PPP is mostly to avoid losses that can be suffered by the country. Therefore, the economic and social welfare regulations as stipulated in Article 33 of the 1945 Constitution of the Republic of Indonesia need to be taken into a serious account. Furthermore, private sectors are found interested in building cooperation with the Indonesian Government in the infrastructure procurement, particularly in the telecommunication sector.

Limitation And Suggestions

Limitations of this study are about criteria for national interest that form the basis of the Public Private Partnership agreement, and the characteristics of the government cooperation Agreement with Business Entity (KPBU) in the development of the Palapa Ring Infrastructure. The criteria for national interest in Government and Private cooperation should be explained in detail and carried out socialization not only to the government, but also to the private sector, given the very important national interest because it is the basis of cooperation and the scope of Public-Private Cooperation is so broad and concerning the lives of the people. The PPP Agreement for the Provision of Palapa Ring Infrastructure should be made public and related to various forms of cooperation at this PPP should be regulated in legislation so that there is legal certainty and is transparent so that the public can participate in monitoring the appropriateness of the PPP project being carried out with the PPP agreement which has been made.

The Implications Of This Study And Findings

Implications the result of this study show that the national interest in Public-Private Partnership (PPP) has several criteria. First, the production branch, which involves people's lives is undoubtedly the object of the cooperation between the Government and private companies. Second, there are mandatory rules that are closely related to the public order in the infrastructure provision with private companies. National interest in Public-Private Partnership (PPP) is merely to avoid losses that Indonesia may go through. Thus, the economic and social welfare regulations in Article 33 of the 1945 Constitution of the Republic of Indonesia are to be further studied.

Moreover, private companies are interested in building cooperation with the Indonesian Government in providing telecommunication infrastructure in Indonesia.

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