

IDEAL PATTERN OF COOPERATION BETWEEN CITY/DISTRICT GOVERNMENTS AND BUSINESS ENTITIES IN INFRASTRUCTURE DEVELOPMENT

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ABSTRACT

This research aims to find out and analyze the concept of Government Cooperation with Private Enterprises (PPP) in the provision of infrastructure; To find out the arrangement of the pattern of cooperation between the Government and Public Private Partnership in infrastructure development carried out at the Regency or City level; To find out and analyze the ideal pattern in cooperation between local governments and the private sector in infrastructure development at the district/city level.

The results of the study show that: Government Cooperation with Public Private Partnerships (PPP) in infrastructure development at the city/district level is a strategy that is increasingly being implemented, but in practice there are a number of realities that reflect both the potential and challenges of its implementation. The reality of cooperation between city/district governments and the private sector in infrastructure development shows that despite its great potential and high urgency, its implementation is still faced with various technical, regulatory, and fiscal obstacles; The regulation of the pattern of cooperation between local governments and private business entities in infrastructure development at the district/city level is actually quite clear normatively, but it still faces various challenges in its implementation, including: Presidential Regulation (Perpres) No. 38 of 2015 concerning Government Cooperation with Business Entities in the Provision of Infrastructure, Regulation of the Minister of Home Affairs (Permendagri) No. 96 of 2016 concerning Guidelines for Regional Cooperation with Business Entities in Infrastructure Provision, Government Regulation No. 27 of 2014 concerning the Management of State/Regional Property, Law No. 23 of 2014 concerning Regional Government; The ideal pattern in cooperation between local governments and the private sector in infrastructure development at the district/city level, especially Salatiga City is the BOT model. BOT is a financial agreement approach, and performs according to a unique form of financing method called project finance, with two main participants, namely the host government and private sponsor. The host government is the public regulator responsible for issuing permits, authorizations and licenses or concessions to projects. This may have an impact on rates, tolls, costs, and other vital aspects of the project. Private sponsors are described by the investor board or private entity in charge of designing, constructing, supporting and operating the facility after an agreed period of time called the concession period and arrangements to finance the life cycle stages of the project.

Keywords: *Pattern, Ideal, Cooperation, City/Regency Government, Business Entities, Development, Infrastructure.*

INTRODUCTION

Background

During Pelita VI in the period 1994-1999, the funds needed for infrastructure procurement reached more than US\$ 50 billion and during Pelita VII funds were needed for US\$ 132 *billion*. Such a large fund will certainly feel very heavy if it has to be charged only to the state budget. The need for funds for infrastructure development until 2009 is estimated to cost around Rp. 700 trillion – Rp. 1,030 trillion. Around Rp. 200 trillion can be funded by the state budget, meaning that the government is only able to finance around 20%, while around Rp 600 trillion or around 80% is expected to be local or international private participation. In the electricity sector, until 2010 it is estimated that funds of up to 30 billion US dollars will be needed. Of this total, only 40% is able to be fulfilled by the government, the rest is handed over to the national or foreign private sector. The Semarang-Solo Toll Road plan alone is estimated to cost around 427 million US dollars or around Rp. 3.6 trillion.

In fact, until 2014, funds of Rp.1,900 trillion are needed for infrastructure development in Indonesia. However, the government's ability through the State Budget only ranges from Rp. 550 to Rp.600 trillion, from SOE capital expenditure can be supplemented with funding of around Rp. 1,300 to Rp.1,400 trillion, so private funds are urgently needed.¹ Seeing the government's limitations through the State Budget in providing funds for infrastructure development, it is required that there be new models or patterns as an alternative to financing development projects. In the region, infrastructure development financing by relying on APBD funds is also felt to be increasingly limited, for this reason new patterns are needed as an alternative to funding that often involves the private sector (National-Foreign) in government projects. Private participation in the procurement of infrastructure projects is certainly a fairly new phenomenon in Indonesia. Patterns such as the issuance of regional bonds, BOT (*Build Operate Transfer*), BOO (*Build Operate Own*), BROT (*Build Rent Operate Transfer*), KSO (*Joint Operation*), joint ventures, *ruislag*, are new phenomena not only for academics, but also practitioners, government agencies, *lawyers*, and financial institutions.

¹ Statement by Hata Rajasa in signing the Memorandum of Understanding on Coordination of Facilitation and Support for the Implementation of the Acceleration of the Realization of Government Cooperation Projects with Business Entities in the Provision of Infrastructure, Jakarta 2011

Private participation in infrastructure development can be directed to projects that require large funds, such as: toll roads, oil and gas, dams, power plants, airport expansion and *mall* construction. However, it can also be used in infrastructure projects that do not require large funds, such as renovation of markets, terminals, truck bases, *rest areas* and resorts. Thus, the important thing is that the project can provide *income* or economic income for the contractor (*fast revenue*).

The economic crisis that has hit this country since the beginning of 1998 is very much felt in the decline of the government's ability to fund scheduled development projects, the decline in the government's ability to provide budgets for the procurement of facilities and infrastructure is very felt by the local government (regency/city) in realizing development projects that are urgently needed by the people. For local governments, relying on APBD funds to finance development projects is also very limited. In short, the economic crisis has resulted in the limited ability of the central or regional governments to realize infrastructure development projects. For this reason, it is necessary to find other project financing alternatives besides relying on state budget or regional budget funds. One alternative project financing that can be done is to invite the private sector to participate in the procurement of government projects with the BOT (*Build, Operate and Transfer*) system. This model offers many advantages for the parties involved (government or contractors), in addition to other ways that are often done by *the Ruislak² method*.

Project financing with this BOT model will include feasibility studies, procurement of goods, financing, to operations. Instead, the contractor is given concession rights for a certain period of time to benefit its economy and ultimately return all these assets to the government at the end of the concession period.

However, in reality, a BOT project is certainly not as beautiful and easy as it appears. Problem after problem can arise in the implementation of the project. For this reason, it needs to be designed in such a way that the BOT project can run as planned and provide benefits to the relevant parties. Several problems around the calculation of profit and loss need to be

² *Ruilap* Generally it is a transaction of exchanging land with or without a building (government-owned) to be released, which is called "goods to be handed over", with a substitute in the form of land only or a new building or land with a replacement new building (usually called a "substitute goods") in another place that is worth the price of the goods handed over which will be received without harm to the state and there is no compensation in the form of money.

carefully prepared, both for the project owner, in this case the Government or the contractor as the project implementer. More than that, BOT projects require a contract (maybe more than one contract), so they need to be carefully designed so that each one's interests can be well protected.

No less interesting is how to estimate the risks that will occur and be anticipated in the implementation of the project. What risks are potential, how to secure them, who bears them. A good BOT is not a BOT where all risks are borne by one party but a good BOT is a BOT that can share risks evenly between the parties. In addition, in a project BOT will usually not be able to run smoothly without support from the government as the project owner. The support that can be provided by the Government is in many varieties and forms, from technical and non-technical, both material and non-material. For this reason, it is also necessary to study what assistance the government can provide, how to overcome it if the government cannot provide it.

The funding aspect of the BOT project is no less interesting to discuss. The contractor may also need a source of funding for the implementation of the project. How to embrace financial institutions to participate in BOT projects, How do banks view BOT projects, considering that BOT projects are generally still relatively new and have their own specifics to be financed.

As long as the BOT project runs according to plan, it will be able to bring benefits to various parties. The government can realize the procurement of infrastructure that is very beneficial for the community without spending significant funds because everything has been borne by the contractor, thus it can also open up job opportunities. For contractors, the existence of a BOT project generally means providing an opportunity to take part in the handling and operation of projects that have the potential to bring profits that have usually been monopolized by the government itself. Similarly, other related parties such as Legal Consultants, Engineers, Banks, Notaries, will be able to gain new experience in assisting the parties involved in a BOT project in their efforts to manage the implementation of the project until the completion of the project, in terms of the contract or agreement that is the basis for the implementation of the BOT project in question.

The BOT model in project financing *is only a general scheme*. In many cases, the scheme can be adjusted to each field, for example in the telecommunications sector, it is familiar with the *Joint Operation Scheme model or often known as KSO*. Meanwhile, in the field of electric power, *the BOO (Build Own and Operate) model is often used*. In fact, the model can be adjusted to your needs, for example with *the BTO (Build-Transfer-Operate) model*, it can also be done with *the BROT (Build-Rent-Operate-Transfer) model* or by *BOOT (Build-Own-Operate-Transfer)*. Thus, it depends on the needs of the parties in a project.

The BOT models developed in the Philippines are quite diverse;

*"Build operate and transfer, build and transfer, build, lease and transfer, build transfer and operate, contract add and operate, develop operate and transfer, rehabilitate operate and transfer, rehabilitate own and operate."*³

In the Philippines, in Republic Act No.7718 which regulates *An Act Amending Certain of Republic Act No.6957, Entitled :*

"An Act Authorizing The Financing, Construction, Operation and Maintenance of Infrastructure Project By Private Sector, and for Maintenance of Infrastructure Project by Private Sector, and for Others Purposes", states that Build-operate-and-transfer is A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it allowed to charge facility users appropriate tolls, fees, rentals, and charge not exceeding these proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years :

By understanding the meaning of BOT well, it will be possible to consider the advantages and disadvantages of holding an infrastructure development project with the BOT system compared to other development models, such as *Ruislag*.

³ Section 2 of Republic Act No.7718 in the Philippines

In the era after the second world war ended, almost all infrastructure projects in many developing countries were built under the supervision of their own governments and financed from state budgets or foreign loans. Around the 1970s and early 1980s, several ways were used to find a way out of the financing of the project which was quite urgent at that time. This is in connection with the population that continues to increase in line with the economic growth of third world countries, which results in an increasing need for infrastructure projects. However, not a few third world countries have experienced economic crises that have resulted in a decline in their ability to self-finance various infrastructure projects that result in dependence on foreign loans. Around the 1980s, this situation fostered the concept of "*privatization*" which was the embryo of private entry into infrastructure projects that had been handled by the government itself. This model is often known as the BOT pattern.

The concept of BOT became widely known around 1985 in Turkey, as the concept of privatization of Prime Minister Turgut Ozal. This concept is also known as "*Turgut's Formula*". On May 11, 1987, a cooperation agreement was signed between Kumagai Kigumi⁴ from Japan and Yuksel Insaat from Turkey for the construction and management of dams on the Syehan river. The project is worth 231.5 million US dollars. The construction period is five years and the management period is 26 years, to be handed over to the Turkish government (*Turkish Electronical Authority*). This cooperation agreement is the beginning of the BOT concept in infrastructure projects in Turkey which was later imitated by many developing countries, including Indonesia. At the district and city levels, there has been a lot of cooperation between the district government and the City Government with swsata partners in infrastructure development that is needed by the community.

Private involvement in infrastructure development cooperation certainly requires an adequate legal umbrella, for that this study emphasizes the problem of the availability of regulations that underlie the legal relationship between these parties.

⁴ In Indonesia, especially in Central Java, some time ago Kumagai Kigumi was also the contractor for the repair of highways in Central Java under the flag "*Java Road Improvement Project*".

Problem Formulation

1. What is the reality of cooperation between the city/district government and private business entities in infrastructure development?
2. To what extent is the arrangement of the Government Cooperation Pattern with *Public Private Partnerships* in infrastructure development carried out at the Regency or City level?
3. What is the ideal pattern in cooperation between local governments and the private sector in infrastructure development at the district/city level, especially the city of Salatiga?

THEORETICAL FRAMEWORK

1. Classical sociological theories (Durkheim, Weber, and Marx), Marxist views, modernization by Rostow

Every science, let alone social science, is the result of the construction of its time. In other words, every field of science developed and was shaped by the social environment of its time. Sociology as a branch of social science was born as a result of several social developments in its time.⁵ The beginning of the emergence in the 19th century sociological theory is called classical sociological theory. William C. Cockerham stated that *Classical sociology is the systematic study of human society and social life in its earliest period that led to its establishment as a scientific discipline*. This study then led to the formation of a scientific discipline.⁶

Classical sociological theory focuses its analysis on the thoughts of sociological figures at the beginning of the development of sociology. At the beginning of its development, sociology was dominated by individual famous theorists, such as Comte, Marx, Durkheim, Weber, or Simmel. But in later times sociological analysis was more directed towards the currents of sociology or became modern sociology.⁷

⁵ Bernard Raho. 2021. *Modern Sociology*, 2nd Edition, Maumere: Ledalero Publishers. p. 28

⁶ William C. Cockerham. "Classical Sociology". USA: University of Alabama at Birmingham. <https://onlinelibrary.wiley.com/doi/pdf/10.1002/9781118410868.wbehibs575>

⁷ Bernard Raho. *Op.cit.* p. 1

Sociology as a social science has various views in various different paradigms. The social *fact* paradigm emphasizes that social facts are something real or at least as real just like individual facts. He has a reality of his own. He is the object of something that is outside the individual. Broadly speaking, social facts consist of social *structure* and social *institutions*. In detail, social facts consist of groups, certain social units, social systems, positions, roles, values, families, governance and so on. This paradigm was represented by Durkheim during the stages of the development of classical sociology and structural functionalism and conflict theory in modern sociological theory.⁸

Durkheim developed the concept of the main problem of sociology through empirical studies. In *The Rule of Sociological Method*, Durkheim emphasized that the task of sociology is to study what are referred to as social facts. He imagines social facts as *forces* and structures that are external and coercive to the individual.⁹

According to Durkheim, the task of sociology is to study what he calls "social facts", i.e. forces and structures that are external, but capable of influencing individual behavior. In other words, social facts are ways of acting, thinking, and feeling, which are outside the individual, and have a coercive power that controls them. The social facts referred to here are not only material, but also non-material, such as culture, religion, or social institutions.¹⁰

The social definition paradigm emphasizes the nature of social reality that is subjective more than its existence that is independent of the individual. The paradigm of social definition defines sociology as the science that seeks to interpret and understand (*interpretative understanding*) social actions. Thus, this paradigm strongly emphasizes the subjective meaning of social action. This paradigm was represented by Max Weber in action theory which was later developed by Talcott Parsons at the beginning of his career development during the development stages of classical sociological theory. While in modern sociological theory, this paradigm is represented by social action theory, symbolic interactionism, phenomenology, ethnomethodology,

⁸ Bernard Raho. *Op.cit.* pp. 24-25

⁹ Emile Durkheim. 1985. *The Rules of Sociological Method*. New York: Free Press. See also. George Ritzer and Douglas J. Goodman. 2007. *Modern Sociological Theory*. Jakarta: Kencana Prenada Media. Page 21

¹⁰ J. Dwi Narwoko and Bagong Suyanto. 2007. *Sociology: Introductory and Applied Texts*, Cet. 3. Jakarta: Kencana Prenada Media. p. 6.

and ethnomethodological theory. These different theories have the same view, namely that social reality is based on the subjective definition of the individual.¹¹

According to Weber, the study of sociological concepts is very important in reviewing ideas related to social action and not in empirical concepts. The concept does not emphasize to a person what to do but says what can be done under certain circumstances. Weber has a great interest in social action theory related to the problems of motivation, intention and behavior.¹² Weber also included his sociological problems which were emphasized on the sociological type that characterized his rational and positivist approach to understanding.¹³

Max Weber defined sociology as the science of social institutions. Weber's sociology is the science of social behavior. According to him, there is a shift in pressure towards beliefs, motivations, and goals in the members of the community, all of which give content and form to their behavior. The word behavior is used by Weber for actions that for the perpetrator have a subjective meaning. The perpetrator wants to achieve a goal or he is driven by motivation. According to Weber, behavior becomes social only if and to what extent the meaning of the subjective intent of behavior makes individuals think and show a more or less constant uniformity.¹⁴

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*.¹⁵ The legal structure concerns law enforcement officials, the substance

¹¹ Bernard Raho. *Op.cit*, p. 25

¹² Muhammad Supraja. "Alfred Schutz: Reconstruction of Max Weber's Theory of Action," *Journal of Sociological Thought*. Vol 1 No. 2. 2012, p. 84

¹³ Vivin Devi Prahesti. "Analysis of Max Weber's Social Action in the Habit of Reading Asmaul Husna of MI/SD Students". *An-Nur: Journal of Islamic Studies*. Vol. 13 No. 2. 2021. p. 138

¹⁴ I.B Wirawan. 1975. *Social Theories in Three Paradigms*. Jakarta: Kencana Prenadamedia Group. p. 79

¹⁵ Lawrence M. Friedman. 2011. *Legal System from a Social Science Perspective*. Bandung: Nusa Media. p. 49

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.¹⁶

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.¹⁷

3. Hollow State Theory

The Hollow State *theory* is a form change that involves a third party, sometimes a non-profit entity, to provide public services and general actions on behalf of the state. This concept was put forward by Provan and Milward in 1994 by revealing the dimensions of the mechanism, namely the financing mechanism, the contract determination mechanism, and the evaluation mechanism. The position of the government as the core *agency* in controlling the cooperation mechanism is seen from the perspective of *the Hollow State* being integrated with cooperation that can be achieved well. It is preferable that when the mechanism in the

¹⁶ Leonarda Sambas. 2016. *Classical and Contemporary Legal Theories*. Jakarta: Ghalia Indonesia. Page 75

¹⁷ Lawrence M. Friedman. *Op. Cit*, p. 57

partnership/cooperation process is separated, and the government is not seen in its role as the core of the agency, then the mechanism *is fragmented*.¹⁸

In the concept of *the hollow state*, there are three main things that are the focus in the partnership relationship between the government and the private sector:¹⁹

- 1) Mechanism Mechanism in *the hollow state* that differs from government in general is the bureaucratic mechanism, where in this concept there are few orders and control mechanisms. There is a lot of potential flexibility to change that. The mechanism in the government includes financial assistance, agreements and contracts, and is not based on authority and sanctions from the government. When the government is able to be the core agency in controlling the partnership mechanism, then the process in the partnership can be seen from the perspective of *the Hollow State* being integrated or non-fragmented, where the effectiveness of cooperation can be achieved well. On the other hand, the three mechanisms in the partnership/cooperation process are separate, and the role of the government as the core of the agency is not visible, so the mechanisms in the process are fragmented.
- 2) Structure The second dimension contained in the theory of *the hollow state* concept is the focus on the type of structure of a partnership carried out by the government to the private sector. The discussion of structure in the concept of the hollow state is not a conventional understanding of the organizational/work structure of a partnership, but discusses the duties and roles of actors who will later be involved in cooperation activities. The type of structure in the hollow *state* concept states that the structure works best when the network of actors is integrated, where when this integration is centralized through a single agency core. The integrated actors in question are local and private governments. This structure facilitates the creation of coordination and integration and is relatively more efficient. In this discussion of the concept,

¹⁸ Provan, Keith G. and Milward H. Brinton. "Governing the Hollow State". *Journal of Public Administration Research and Theory*. No. 364 J. 1994. p.10

¹⁹ *Ibid.*

the mainstream network is separated from the weakness because of its need to coordinate in joint production so that the conditions are unstable. Leaders (managers) are often met in problems that lead to coordination, supervision, and negotiation instability to keep third parties responsible. Shared power will make an institution more effective. The government and the private sector cooperate in the implementation of public services, besides that the government continues to maintain the function of the integration system by being responsible in terms of negotiation, monitoring and evaluation of contracts. Rules oriented matters are not the focus and are not too highlighted in the implementation of public services.

- 3) The third type in the concept of *hollow state* is incentives. The definition of incentive based on this perspective is something that is given by the government or the employer to the private sector to carry out cooperation programs in the partnership process so that it can take place effectively. The effectiveness of a partnership is also greatly influenced by integrated incentives. This theory explains that good funding will result in better performance or performance than minimal funding systems. When the level of reasonableness of the funding is combined with the design of the appropriate partnership or institution, the stability of the relationship between the agents also has an effect, a stable system will increase the price. A stable system, even if it is minimally designed or not sufficiently funded, allows the individuals or institutions contained in it to be able to solve a problem and agree on the division of labor in the system. Stability provides confidence that cooperation will have good results because it acts like a tangible property for investors which means that if they invest for the long term will have the opportunity to make a profit, not putting a service system up for bidding every three years is a way to prevent individual behavior that may be rational in the short term but will collectively be destructive in the long run. This offers an incentive for providers to clarify the issue of collective action being theirs.

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.²⁰ This type of research is normative legal research, in accordance with Soerjono Soekanto's opinion,²¹ 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 not enough, but must use the triangulation method, namely the use of various methods, data sources, researchers and theories.²²

Epistimologically, 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:

²⁰ Johnny Ibrahim. 2006. *Normative Law Research Theory and Methodology*. Malang: Bayumedia Publishing. p. 12

²¹ Soerjono Soekanto. 1983. *Introduction to Legal Research*. Jakarta: University of Indonesia Press. p. 51.

²² Lego Karjoko, "Reflection on the Paradigm of Science for the Development of Land Acquisition Law", *Journal Essay*, Vol.7 No.1, 2019, p. 7

- a. Legislation (*statute approach*) is an approach that is carried out by examining laws and regulations related to legal issues that are being raised.²³
- b. The conceptual *approach* is an approach that moves from the views and doctrines that develop in the legal sciences.²⁴ 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 Reality of City/Regency Government Cooperation with Private Business Entities in Infrastructure Development

Government cooperation with Public Private Partnerships (PPP) in infrastructure development at the city/district level is a strategy that is increasingly being implemented, but in practice there are a number of realities that reflect both the potential and the challenges of its implementation.

Cooperation between local governments and the private sector in infrastructure development is not only expected to advance regional infrastructure but is also expected to increase job creation and utilization of various local Indonesian products.²⁵ Moreover, during the pandemic and after the current Covid-19 pandemic, the Government even issued one of the regional infrastructure financing schemes due to the Covid-19 pandemic as mandated in the Minister of Finance Regulation Number 105 of 2020 concerning the Management of PEN Loans for Regional Governments is through Regional PEN Loans which are distributed through

²³ Jhonny Ibrahim. *Op. Cit.* p. 301

²⁴ Peter Mahmud Marzuki. 2008. *Legal Research*. Jakarta: Kencana Prenada Media Group. p. 95

²⁵ Minister Basuki: The Role of the Private Sector in Infrastructure Development, <https://putr.bulelengkab.go.id/informasi/detail/artikel/menteri-basuki-peran-swasta-sangat-diperlukan-pada-pembangunan-infrastruktur-81>, accessed on August 29, 2022

the *Special Vehicle Mission* Ministry of Finance PT Sarana Multi Infrastruktur (Persero) (PT SMI). Regional PEN loans can be an alternative source of funding support for regions, especially for regions that have eligibility and are experiencing a relatively severe impact of Covid-19 in order to be able to finance various priority expenditures in their regions.²⁶

The reality of cooperation between city/district governments and the private sector in infrastructure development shows that despite its great potential and high urgency, its implementation is still faced with various technical, regulatory, and fiscal obstacles. Supportive policies, regional capacity building, and attractive incentives for the private sector are needed to make PPP the main instrument of sustainable regional development.

Cooperation between local governments and business entities in the provision of infrastructure (PPP) through the PPP scheme is part of the regional development funding policy through creative financing in addition to other financing policies such as regional loans, regional bonds, and non-budget investment financing.²⁷ The role of PPP in encouraging infrastructure development at the local government level is realized through schemes applied to PPP, among others through:

a) Utilization of Private Resources

The limited budget owned by the regions makes development not optimal in all fields, especially in areas that require high costs such as infrastructure. Based on data from the Ministry of National Development Planning, the projected need for infrastructure financing in Indonesia in 2015-2019 reached Rp 4,796.2 trillion. Of the total funding needs, 36.5% is expected to come from private sector participation.²⁸ Seeing the high need for funding from the private sector, a breakthrough is needed which is expected to be able to be an alternative to infrastructure funding, one of which is through the PPP scheme. Article 1 number 6 of the PPP Presidential Regulation stipulates that PPP cooperation in the provision of infrastructure using resources wholly or partially owned by business entities is a basic form of the principle of mutual cooperation between the government, SOEs/BUMDs and the

²⁶ Government Pays Special Attention to Regional Infrastructure Development to Be a Jumpstart for Economic Recovery, <https://www.djkn.kemenkeu.go.id/berita/baca/21671/Pemerintah-Berikan-Perhatian-Khusus-Pembangunan-Infrastruktur-Daerah-untuk-Jadi-Jumpstart-Pemulihan-Ekonomi.html>, accessed on August 29, 2022

²⁷ Regional Financing and PPP Policy, <http://www.djpk.kemenkeu.go.id/wpcontent/uploads/2018/07/Kebijakan-Pembiayaan-Daerah-dan-KPBU.pdf>, accessed August 2022

²⁸ Suhendra's mother. *Op. Cit.* p. 42.

private sector to jointly finance infrastructure development.²⁹ This mutual cooperation will encourage the acceleration of infrastructure provision in the midst of budget limitations, especially in the budget at the regional level (APBD) which still has a high dependence (80.1%) on the allocation of funds from the state budget.³⁰

b) Value for Money Analysis

In KPDBU cooperation, one of the important aspects that underlies the realization of the participation of business entities in KPDBU cooperation is the value *for money*, which is a measurement of the performance of a KPDBU based on economic value, efficiency, and effectiveness of expenditure as well as the quality of services that meet the needs of the community. The analysis of the value of monetary benefits is carried out at the KPDBU preparation stage and is one of the determining aspects whether the KPDBU plan will be continued or not. The criteria for determining the value of monetary benefits in the participation of business entities include: the private sector has advantages in the implementation of PPP, including in risk management; ensuring the effectiveness, accountability and equitable distribution of public services in the long term; knowledge and technology transfer; and ensuring healthy competition, transparency, and efficiency in the procurement process. The analysis of the value of money benefits aims to improve the effectiveness and quality of public services as well as expenditure allocations that are more oriented towards the public interest and public accountability.³¹

c) Risk Management and Sharing

In the PPP scheme, the risks that arise in the process of infrastructure development are allocated to the parties, namely the government and implementing business entities. Risk allocation is contained in the PPP agreement as stipulated in Article 32

²⁹ PPP's success in building infrastructure. <http://kpsrb.bappenas.go.id/data/filemajalah/Edisi%207%20Sukses%20KPBU%20Dalam%20Memban%20Infrastruktur.pdf>, accessed August 2022

³⁰ Yoga Nurdiana Nugraha. "Regional Fiscal Dependence in the Implementation of Indonesia's Fiscal Decentralization", <https://www.kemenkeu.go.id/publikasi/artikel-dan-opini/ketergantungan-fiskal-daerahdalam-pelaksanaan-desentralisasi-fiskal-di-indonesia/>, accessed August 2022

³¹ Value For Money, <http://kpsrb.bappenas.go.id/ppptoolkit/value-for-money/>, accessed August 2022

paragraph (2) letter e of the PPP Presidential Regulation which states that the PPP Agreement at least contains provisions regarding rights and obligations, including risk allocation. In the PPP scheme, there are at least ten main risks that must be allocated correctly, including:³²

- 1) Operational and financial risks;
- 2) Design and construction risks;
- 3) Operational and maintenance risks;
- 4) Political risk;
- 5) Force *majeure* risk;
- 6) Legal and policy risks;
- 7) Income risk;
- 8) Environmental risks;
- 9) Risk of project/contract failure; and
- 10) Land acquisition risks.

Of the 10 risks, the risks allocated to the government include political risks, legal risks, and land acquisition risks. The private sector bears the design and construction risks, operational and maintenance risks, and revenue risks. Risks that must be borne jointly between the government and the private sector include financial risks, *force majeure* risks, environmental risks, and the risk of project/contract failure.³³ The risk of land acquisition lies with the government, because the process of land acquisition in PPP is carried out by the government in accordance with the provisions of laws and regulations regarding land acquisition for development for the public interest as stipulated in Article 10 of the PPP Presidential Regulation.

d) Certainty of Return on Investment

Article 11 of the PPP Presidential Regulation provides certainty of return on investment of business entities which includes the closure of capital costs, operational costs, and profits of the implementing business entity in the form of

³² Yudhitya Maharani Risitian Palupie & Hari Agung Yuniarto. "Risk Allocation of Infrastructure Projects with Government and Business Entity Cooperation Schemes (PPP): A Literature Review". *National Seminar on Industrial Engineering, Gadjah Mada University*. 2016. p. 101.

³³ Ibid

payments by users in the form of tariffs, availability *payments*; and/or other forms as long as they do not conflict with laws and regulations. This condition will provide certainty in investing, thereby encouraging the interest of business entities to participate in building infrastructure through the PPP scheme.³⁴

e) Government Support and Government Guarantees.

In the implementation of the PPP project, the government provides government feasibility support. At the regional level, the feasibility support provided is the feasibility support of the local government in the form of financial fiscal contributions provided by the local government to the regional cooperation project in the form and procedures as stipulated in the regional regulations of the local government concerned, the content of which does not conflict with the regulation of the minister of finance which regulates the provision of feasibility support for part of the construction costs of the cooperation project. In addition, the government also provides guarantees in the form of infrastructure guarantees in the form of guarantees for the obligation to pay financial compensation to business entities for the occurrence of infrastructure risks that are the responsibility of PJP in accordance with the risk allocation as agreed in the cooperation agreement. The existence of support and guarantees from the government is a form of investment certainty that will encourage business entities to participate in building infrastructure through the PPP scheme.³⁵

Regulation of Government Cooperation Patterns with Private Business Entities (*Public Private Partnership*) in Infrastructure Development Carried Out at the Regency or City Level

Government cooperation with Business Entities in the infrastructure sector is regulated through various regulations, including:

- Presidential Regulation (Perpres) No. 38 of 2015 concerning Government Cooperation with Business Entities in the Provision of Infrastructure.

³⁴ <https://aceh.bpk.go.id/wp-content/uploads/2019/11/Kerjasama-Pemerintah-dengan-Badan-Usaha-Sebagai-Upaya-Mendorong-Pembangunan-Infrastruktur-di-Daerah-Revisi-Binbangkum-1-3.pdf>. Posted August 2022

³⁵ Ibid

- Regulation of the Minister of Home Affairs (Permendagri) No. 96 of 2016 concerning Guidelines for Regional Cooperation with Business Entities in the Provision of Infrastructure.
- Government Regulation No. 27 of 2014 concerning the Management of State/Regional Property.
- Law No. 23 of 2014 concerning Regional Government.

Infrastructure development in development by the government that is issued in the form of a policy in the form of a decree of the minister of finance which provides the imposition of income tax on parties who cooperate in the form of a build, operate and transfer agreement with the promulgation of the Decree of the Minister of Finance Number 248/KMK.04/1995 introducing build and surrender as a form of cooperation agreement between land rights holders and investors who declare that the holder of the land rights gives the right to the investor to establish a building for surrender (BOT) by transferring the ownership of the building to the holder of the right to land during the period of the construction for surrender ends. The content of this Decree of the Minister of Finance is related to taxes carried out by investors, it does not discuss the rules for building for handover in its entirety. Furthermore, in 1998, the issuance of the Presidential Decree of the Republic of Indonesia Number 7 of 1998 concerning Cooperation between the Government and Private Enterprises in Infrastructure Development or Management is also not specifically regulating construction and handover financing cooperation.

The building and handover scheme still depends on the policies of each related institution. The application of the concept of public private partnership (PPP) or called public private partnership (PPP) has been applied through Presidential Regulation No. 67 of 2005 so that the availability, adequacy, suitability and sustainability of infrastructure for national development and community welfare have been implemented. Then in 2014 the ratification of Government Regulation No, 27 of 2014 concerning the Management of State/Regional Property, contained in Article 1 number 14 provides the definition of building for handover is the use of state/regional property with land by other parties by erecting buildings and/or facilities and facilities, to then be used by other parties within a certain period of time that has been agreed to then hand over the land along with buildings and/or facilities and facilities after the end of the term.

The use of the build-to-hand scheme is carried out when the user of goods needs buildings and facilities for the implementation of the state/regional government for the benefit of public services in the context of carrying out duties and functions when the state budget / APBD is not available for the provision of buildings and facilities. The period of build-up to handover is a maximum of thirty years since the cooperation agreement was signed.

Ideal pattern in cooperation between local governments and the private sector in infrastructure development at the district/city level, especially Salatiga City

The BOT model is a financial agreement approach, and performs according to a unique form of financing method called *project finance*, with two main participants, namely the host government and the private sponsor. The host government is the public regulator responsible for issuing permits, authorizations and licenses or concessions to projects. This may have an impact on rates, tolls, costs, and other vital aspects of the project. Private sponsors are described by the investor board or private entity in charge of designing, constructing, supporting and operating the facility after an agreed period of time called the concession period and arrangements to finance the life cycle stages of the project. Both budget constraints and public sector complexities to meet today's requirements as well as encouraging the BOT model to be adopted in developing countries.³⁶

PPP is known as *Build Operate Transfer* (BOT). In BOT (build for handover), the private sector is responsible for building, operating, and after completion the facilities will be handed over back to the government sector. In addition to BOT, there is *Build, Own, Operate, Transfer* (BOOT) which is a variation of BOT, but in BOOT the ownership of facilities will belong to the private party during the contract period. At the end of the contract period, facilities or projects built under PPP will be transferred back to the government.³⁷

³⁶ 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>.

³⁷ Shukla, Nirali, et.al. "Built-Own-Lease-Transfer (BOLT): A Public-Private Partnership Model that Bridges Gap of Infrastructure in Urban Areas". *International Journal of Civil Engineering Research*. Vol 5, No. 2. 2014. p. 137.

BOT is generally applied to large-scale government projects. The pattern of BOT cooperation is carried out by agreement. The BOT agreement is based on the existence of two parties cooperating, where one party owns land and the other party has funds or technology. The use of the BOT system in PPP is that the government provides opportunities for the private sector to build a project, then the private sector is given the exclusive right to manage and take advantage of the project it manages in lieu of the costs that have been used. At the operational stage, the private sector has the right to operate the project without providing fees (fees) to the government. After a certain period of time during the handover stage, the private party hands over the land and commercial buildings to the government, at this stage the BOT agreement ends.³⁸

Cooperation made by the government as a public legal entity that must be responsible as a policy taken to the community. This public interest limits contracts made by the government with private parties. If a contract that does not involve the government can be made freely as long as it does not contradict the law, then a contract involving the government in it does not apply to it. We know that there are procedures that must be passed by both parties to hold cooperation that must be known by the public to be accountable in the future. Any type of contract carried out by the government must involve state finances, both revenues and expenditures. If it involves state finance, it must refer to the State Revenue and Expenditure Budget (APBN). In the 1945 Constitution in article 23 paragraph (1) it is stated that:

"The state revenue and expenditure budget as a form of state financial management is determined every year by law and is carried out openly and responsibly for the greatest possible prosperity of the people".

Cooperation between the government and the private sector in the economy can increase the mobilization of private capital in supporting the public interest. One of the efforts to improve people's welfare through industrialization requires various supporting infrastructure. The increase in population is a factor in supporting infrastructure. In line with population growth and urbanization flows, adequate infrastructure is needed. Improvement

³⁸ Suparji. 2018. *Development of Infrastructure Investment in Public-Private Cooperation and Special Economic Zones*. Jakarta: Al-Azhar University Indonesia. pp. 20-21

of the quality and quantity of supporting infrastructure. The government is expected to be able to encourage capacity and carry out infrastructure development and maintenance, therefore it is embraced by cooperation between the public and the private sector.

The guarantee of profitability that will be obtained by the private sector in cooperation with the government because this can motivate the private sector by thinking about how to get profitability from investments made in cooperation with the government. The cooperation is by providing capital for the private sector. Efficiency in the management of public facilities by avoiding corruption, slow administrative and internal supervision problems. In managing public services, private involvement is expected to be able to use the optimism of the private sector which is also involved in carrying out the inspection, there is openness in the management of public services.

Private involvement in infrastructure development is due to budget constraints by the government, it is expected that private involvement will give the government the freedom to focus budget allocation on projects that are oriented to public services, but are not profitable from a business point of view.

The advantage of using the BOT system for the government is that it can reduce the use of the state budget and loans, so a feasibility study is not an obligation for the government to be held. Projects are funded, built, and operated at the risk of others. The advantage for the private sector in the BOT system is that the private sector can expand its business to other fields because it is related to government-owned business fields. For banks or fund providers, the profit can be in the form of developing business fields in the field of project financing.³⁹

The advantage of the BOT system is that there is a risk of loss, the loss during *the build and operation* takes place the government relinquishes its exclusive rights and gives it to the private sector. One of the losses for the private sector is a project that has risks because there must be careful consideration and preparation for funding in the BOT system, especially if it is difficult to get a loan from the bank as a result of being not *feasible*.⁴⁰ In supporting economic

³⁹ Azzahra Salsabila Novriany and I Ketut Westra. "Patterns of Government-Private Sector Cooperation in Infrastructure Development". *Kertha Negara Journal*. Vol 8 No 5. 2020. p. 37

⁴⁰ 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

growth, infrastructure is one of the important factors for adequate infrastructure not only in terms of quality but also in terms of quantity.⁴¹ By using the PPP system with a BOT pattern, the government can separate the tasks between infrastructure operators and the private sector, so that the government focuses more on the tasks of other countries that have a higher urgency, but still fulfills infrastructure development for public services or services to its citizens.

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) Government cooperation with Public Private Partnerships (PPP) in infrastructure development at the city/district level is a strategy that is increasingly being implemented, but in practice there are a number of realities that reflect both the potential and the challenges of its implementation. The reality of cooperation between city/district governments and the private sector in infrastructure development shows that despite its great potential and high urgency, its implementation is still faced with various technical, regulatory, and fiscal obstacles. Supportive policies, regional capacity building, and attractive incentives for the private sector are needed to make PPP the main instrument of sustainable regional development.
- 2) The arrangement of the pattern of cooperation between local governments and private business entities in infrastructure development at the district/city level is actually quite clear normatively, but it still faces various challenges in its implementation. Government cooperation with Business Entities in the infrastructure sector is regulated through various regulations, including:
 - a) Presidential Regulation (Perpres) No. 38 of 2015 concerning Government Cooperation with Business Entities in the Provision of Infrastructure.

⁴¹ Suhendra's mother. "Provision of Infrastructure with *Public-Private Partnership* Scheme in Indonesia." *Journal of Public Financial Management*. Vol. 1 No. 1. 2017. pp. 41-46.

- b) Regulation of the Minister of Home Affairs (Permendagri) No. 96 of 2016 concerning Guidelines for Regional Cooperation with Business Entities in the Provision of Infrastructure.
 - c) Government Regulation No. 27 of 2014 concerning the Management of State/Regional Property.
 - d) Law No. 23 of 2014 concerning Regional Government.
- 3) The ideal pattern in cooperation between local governments and the private sector in infrastructure development at the district/city level, especially Salatiga City is the BOT model. BOT is a financial agreement approach, and performs according to a unique form of financing method called *project finance*, with two main participants, namely the host government and private sponsor. The host government is the public regulator responsible for issuing permits, authorizations and licenses or concessions to projects. This may have an impact on rates, tolls, costs, and other vital aspects of the project. Private sponsors are described by the investor board or private entity in charge of designing, constructing, supporting and operating the facility after an agreed period of time called the concession period and arrangements to finance the life cycle stages of the project. Both budget constraints and public sector complexities to meet today's requirements as well as encouraging the BOT model to be adopted in developing countries.

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