

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

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ABSTRACT

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

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

INTRODUCTION

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

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

give services to the public as an attempt to improve the public welfare and state life.

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

Based on the social, economic and legal phenomena arising from how the services provided to the public through BLU, the problems in the present study can be formulated as follows: *first*, philosophically, a nation is established based on the contract between its leaders and people; as a result, the nation is obliged to protect its people and to improve their welfare. However, the public services provided through BLU have led to several philosophical problems in the axiological level. The reason is that the justice which should have been enjoyed by the people has been disturbed

resulting from the fact that the non-profit-oriented concept of the services provided by the government has shifted to the profit-oriented one. This is one of the consequences of the public services performed through BLU; the government should have given services uncommercially rather than commercially. **Second**, theoretically, the concept of how the government is supposed to undertake the state function has shifted; the state function has been reversed (the problem of the theory of state/government function) and the theoretical problem of the welfare state, in which it is stated that BLU is formed for the people's sake and to make them welfare, meaning that the nation/government and its officials are obliged to give priority to what they need; **third**, the juridical problem; there is inconsistency in regard to how the state non-tax revenues should be managed according to what is stipulated in article 4 of the Law Number 20 of 1997 concerning the Non-tax Revenues 'Penerimaan Negara Bukan Pajak' (hereinafter referred to as UU PNBP) and the provision of how PNBP should be managed by BLU as governed in Article 69 Number 1 of 2004 concerning the State Treasury leading to the deviation of the principle of universality. In addition, BLU, which is governed through PP Number 23 of 2005 jo PP Number 74 of 2012, refers to how the state finance should be managed; it

does not refer to any provision which governs any public legal entity which gives services to the public based on the principles of corporation and commercialization. Therefore, there has been an ambiguity in regard to the existence of BLU, as far as how the governmental functions are undertaken is concerned.

Based on the phenomena described above and the fact that many deviations have taken place, as far as how BLU is managed is concerned, the problems of the present study are: what is the existence of BLU as part of the government functions like?; and how BLU is managed to undertake the governmental functions?

This present study was aimed at identifying, analyzing, and mapping the existence of BLU when giving public services. In particular, the study was aimed at (a) analyzing and discovering the legal principles based on which services are provided to the public through BLU; (b) analyzing and mapping the concept of change in the substance of legal norms and principles employed to give services to the public through BLU so that the significances theoretically and practically obtained may be used as the material for developing the legal science in general and the State Administrative Law in particular employed to govern BLU. In addition, it was hoped that the finding of the present study may give

practical contribution to understanding the substance of the norms and construction in the forms of regulation and legislation used by the government and the implementer to govern BLU.

Several basic theories used to analyze the problems explored are: the Theory of Welfare State, the Theory of State and Governmental Function, and the Theory of Authority.

METHODOLOGY

This present study is a normative legal one; it is a study which was conducted based on the legal materials which are used as the basis for performing public services by the government through the pattern of BLU in Indonesia. This legal study also criticizes the concepts of law used in the treasury of the library of law as normative law, meaning that the present study is a legal study using normative juridical approach; in other words, the present study is a legal one which is doctrine and theoretical rational deductive in nature; it criticizes the legal norms the legislation and regulation contain (*ius constitution*). Furthermore, the theoretical method was used to criticize the application of legal norms the legislation and regulation contain (*ius operation*). All results of analysis were finally used as input for improving the laws and related

regulations in the form of the law which is aimed at (*ius constituendum*).

RESULTS AND DISCUSSION

A. Institutional Characteristic of BLU according to the Concept of State Financial Institution

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

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

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

(c) Being able to observe the State asset managed by any related institution.

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

1. The substantive requirement is met if the public services provided by the government institution are related to (a) procurement of products and/or public services; (b) Management of any particular territory/area as an attempt to improve the people's economy or public services and/or (c) Management of particular funds as an attempt to improve the people's economy and services to the public.

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

The Pattern of Financial Management of Public Service Entity '*Pola Pengelolaan Keuangan Badan Layanan Umum*' (hereinafter referred to as PPK-BLU) refers to the pattern of financial management which gives flexibility in applying healthy business practices in order to improve the services provided to the public as an attempt to improve the

public welfare and to sharpen the State life as governed in this Government Regulation, as an exception of any provision of the general financial management. (Article 1 Clause (2) of PP (BLU).

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

1. BLU is run as a force unit of a state ministry/institution and local government; it is established to give public services and is managed based on the authority delegated by the state ministry/institution and local government concerned.
2. BLU is part of forces used to achieve what is aimed at by a state ministry/institution/local government; therefore, the legal status of BLU cannot be separated from the state ministry/institution/local government concerned.
3. The minister/head of the institution/governor, the regent/ mayor is responsible for undertaking the public services delegated to BLU in regard to the significances of the services provided.
4. The official appointed to manage BLU is responsible for implementing the public

services delegated to him/her by the minister / governor / regent / mayor.

5. BLU does its activities without giving priority to benefit.
6. The work plan, budget, and the financial statement of BLU are formulated and presented as an integrated part of the work plan, budget, and the financial statement of the state ministry/institution/SKPD/ local government.
7. BLU manages the public services as a healthy business practice.

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

- 1) It is a governmental institution which cannot be separated from the state wealth.
- 2) It produces products and/or services needed by the community.
- 3) Benefit is not a priority.
- 4) It is autonomously managed based on the principles of efficiency, productivity as a cooperative.
- 5) Its work plan, budget and responsibility are consolidated to the main institution.

- 6) Any revenue and contribution can be directly used.
- 7) The employees can be civil servants and non civil servants.
- 8) It is not the tax subject.

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

The background of the Indonesia's history is highly determined by the objectives completely formulated in the four paragraphs of the preamble of the Constitution of 1945 such as: (1) entirely protecting the nation and motherland of Indonesia, (2) showing the public welfare, (3) sharpening the state life, (4) participating in creating the world's orderliness based on independence, eternal peace and social justice. To achieve such objectives, everything should be based on and measured using the values the *Pancasila* contains.

From the legal point of view, *Pancasila* is what is referred to as *cita hukum* (rechtside) which should be referred to as the basis and objective of every law in Indonesia. Therefore, every law created in Indonesia should be hierarchically and consistently based on *Pancasila*. Every law in Indonesia should also be aimed at achieving the state objectives as poured in the preamble of the Constitution of 1945, namely, constructing the entire nation and

motherland of Indonesia, sharpening the state life, improving the public welfare, and participating in the world's orderliness. The development should be oriented towards such objectives in accordance with the stages of the community's development.

In addition to containing the state objectives, the fourth paragraph of the preamble of the Constitution of 1945 also identifies that Indonesia is a constitutional state which adheres to the concept of welfare state. As a constitutional state which aims at improving the public welfare, every activity, apart from being oriented towards what is aimed at, should also be based on the law in effect as the regulation governing the state, government and community activities.

The interference of the state with the community's social life means that the work scope of the government is getting wider; furthermore, not everything related to the community's life is governed by the provisions in legislation, meaning that the state, which is, in this case, the government has particular consequence. As stated in the preamble of the Constitution of 1945, to make the state welfare, it is entrusted that:

- (1) The state is obliged to give protection to all Indonesian citizens and the entire territory of Indonesia, (2) the state is obliged to improve the public welfare, (3) the state is obliged to sharpen the nation's life.

The classical (original) function and objective of the state can be distinguished from the modern function and objective of the state. The classical function and objective of the state only include maintaining orderliness and the community's security; in other words, the state is only the night guard. The modern function and objective of the state also includes improving welfare for all its citizens in its wide sense in addition to maintaining orderliness and security.¹

Based on article 33 clause (4) of the Constitution of 1945, it is stated that the national economy is undertaken based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, being environmentally-oriented, independence, and keeping the gain in national economy balanced.

Therefore, the State, as a public service entity, is obliged to do what is supposed to be done as stated in the preamble of the Constitution of 1945. Although an amendment has been made, it turns out that the preamble of the Constitution of 1945 is still maintained as it contains the provisions which are *groundnorm* in nature as the national way of life of Indonesia. Being a way of life, it also affects the state objectives stated in the fourth paragraph of the preamble of the Constitution of 1945 such as: (1) protecting all Indonesian citizens and entire motherland of Indonesia, (2)

improving the public welfare, (3) sharpening the state life, (4) participating in implementing the world's orderliness based on independence, eternal peace and social justice. Such objectives cannot be implemented if not supported by the state finance as the source of its funding. This means that the state finance plays an important role in implementing the state duties and that this is the responsibility of the government.

C. Tendency of the International Pressure on the Management of the State Finance.

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

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

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

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

the imposition of administrative fines.

- f. The revenue which is in the form of grants as the government right.
- g. The other revenues are governed in particular laws.

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

1. The management of the state finance

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

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

2. The management of the state claim and debt

Being defined as the state finance, the state claim and debt cannot be separated from the management of the state finance. The state claim and debt should be

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

3. Investment Management

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

The government investment is in the forms of shares, debt security, and direct investment in the form of capital participation and/ loan given by the government investment board for funding business activities. Capital

participation means a form of investment invested by the government in a corporation for which the right of ownership including the establishment of limited liability companies, and /or expropriation of limited liability companies. Giving loan is a form of investment made by the government in a corporation, public service entity, provincial government, regency/city government and local public service entity with the right to gain repayment in the form of principal capital, interest and/or other fees.⁴

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

- a. There is corporation between the government investment board and corporation and / or public service entity using the

pattern of cooperation between the government and private entities.

- b. The cooperation in investment between the government investment board and corporations, public service entities, provincial/regency/city government, local public service entities, and/or private legal entities.

4. The Management of Private-Owned Objects

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

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

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

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

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

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

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

As already known, terminologically, foreign loans are sometimes referred to as foreign aid. Such a term is based on the definition that foreign loans are the capitals which come from foreign countries, which, for

several reasons, are badly needed by the state. The capitals which come from foreign countries are termed as foreign aid if they have two characteristics, namely: the capitals are provided for non profit objectives or the capitals lent to the receiving state⁶.

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

The state revenues which come from any foreign grants and loans highly support the national development of the developing countries. However, the developed countries, as the donating ones, give grants and loans for the following motivations. Politically, the grants and loans are provided to avoid any influence or ideology coming from another block; economically, they are provided to extend international trade; or they are provided for humanity (there is a wish to help the developing countries to accelerate their economic development and to catch up their being left behind by the developed countries.⁸

Furthermore, there are three basic reasons why the developing countries are still prepared, even highly motivated to receive foreign loans, although they are

binding and restrictive in form, namely, economic motivation, political motivation and moral motivation⁹ as described below:

a. Economic motivation

This is the main and most essential motivation. The developing countries which are in the process of developing their economy or which are having economic difficulty sometimes badly need foreign loans as the funds for bridging the gap between their amount of national saving available and their economic plans or urgent expenditures.

b. Political motivation

There are many arguments proposed to explain why the government comes into an agreement with the World Bank/IMF. The conventional policy clarifies that the government turns to the World Bank/IMF as it needs the loans from the World Bank/IMF. The other argument is that the government wishes the requirements provided by the World Bank/IMF to motivate the implementation of economic reformation. The reason is that the political leader considers that

the bad national economic performance frequently causes them to lose their power. In that context, the fall in economy the state is suffering from, for which they are responsible for, can be avoided by coming into an agreement with the World Bank/IMF. In addition, the loans given may also politically strengthen the political leaders holding the power to suppress opposition and to maintain their positions.

c. Moral Motivation

Apart from what is stated by the philosophers that the developed countries are morally obliged to improve the welfare of the underdeveloped countries for humanity reasons. It is also believed that actually the developed countries depend on the developing countries which they used to colonize; therefore, they should give a sum of money as the compensation for the exploitation they did in the past. In addition, the developed countries are morally obliged to help social and economic development in the developing countries.

Based on the motivations described above, it can be stated

that, basically, the foreign aid and the revenue gained from it refer to two patterns, namely, political motivation and economic motivation.¹⁰

The foreign aid or loan is frequently used by the donating countries as a means of catching up particular interests; as a result, the funds coming from such aid or loan easily changes following how the donating country politically views the international situation which keeps changing. This means that the foreign aid provided does not follow what is relatively needed by the receiving country; in other words, the foreign aid provided tends to refer to particular interests (political or economic) of the donating country.

The World Bank and IMF, for example, frequently apply restrictive requirements. It is the conditionality, as the requirement determined by the World Bank and IMF, which should be met by the borrowing country. Why the World Bank and IMF can apply various restrictive loan requirements is described as follows:

a. Legal Factor

Historically, the loan conditionality was not

determined when the World Bank and IMF were established. In addition, from the juridical point of view, the word *conditionality* does not have any exact legal meaning; in other words, it does not have any strict definition; the scope of its material is not fixed, allowing them to make highly flexible requirements, which tend to be restrictive merely based on any interpretation and interest. This also causes the receiving country, which is getting weaker and sensitive to the intervention in its national policies, to have weak bargaining position.

b. Political Factor

There are several points from the political factor which allow the World Bank and IMF to apply various restrictive requirements; they are: 1) the political elites give more priority to their self interests and groups than what is needed by the community; 2) the agreement made by the government is not merely to meet what is needed from the loan but to have an outside partner to implement the autonomous reformation which

is domestically challenged. 3) Such restrictive requirements are used as a means of anticipating the negative consequence possibly arising from the policies of reformation.

c. Economic factor

The need for funds has caused the government to be powerless to negotiate the loan requirements which are deemed too restrictive. Finally, the government will search for the requirements provided. The government and economists frequently welcome the opinion given by the economists from the developed countries; in other words, they are more dominated or influenced by the economic perception of the officials of the developed countries. Finally, what is required is accepted, although it is recognized that it will negatively affect the national life such as education, health, employment and so forth. In addition, it is recognized that these should be faced.

D. Ambiguous Position of the Public Service Entity: there is an ambiguity between the Order of the State

Government Function Based on the Constitution of State of the Republic of Indonesia of 1945 and the Order of the Government Function as the Party Managing the State Finance.

1. The State as the Government Implementer

As a nation which binds itself in the form of the Unitary State of the Republic of Indonesia, it is necessary for all the layers of the nation without any exception to achieve the national objectives. The government, as the state implementer, activates and facilitates in such a way that the developed and independent Indonesia, which is based on justice and piety toward Almighty God, will come true. As stated in the fourth paragraph of the preamble of the Constitution of 1945, the essence of the national development includes sharpening the state life, creating the public welfare, protecting all the Indonesian citizens, and helping the creation of the world orderliness and eternal peace.

In implementing the development, the government represents all layers of the nation. The government, as the activator, functions to help people implement their development. In this case, the empowerment of people means siding with, preparing and protecting.

The commencement of the era of reformation requires that the way in which the government should be implemented be changed. The executive, legislative and judicative bodies, as the

governmental organizations which are corrupt, should be changed in such a way that they will get back to the identities attached to them when they were established, namely, protecting and meeting the people's rights and interests, and achieving the national objectives. The principles of the constitutional state and democratic government have mainly caused the governmental implementation to be reformed and this has led to a new paradigm better known as good governance.

The governmental duties and functions are redefined to avoid the centralization of power on the state by separating the duties which are supposed to be done by the state and those which are supposed to be given to the market and civil community. This attempt is made to:

- a. Position the roles played by the government as the catalyst, regulator, facilitator, motivator, supervisor and controller of the implementation of the government affairs.
- b. Protect the human rights and the implementation of democracy.
- c. Equalize income and cope with poverty, and
- d. Implement the government which gives legal certainty, openness, professionalism and accountability.¹¹

According to Ryaas Rasyid¹², as far as the government context is concerned, ethics is the moral foundation for implementing the government. The basic government duties can be summarized into three, namely, service, empowerment and development of service will lead to justice, empowerment will lead to independence and development creates welfare in the community; therefore, the ethics of the government should be developed to maximize the implementation of such functions.

By quoting Franklin D. Roosevelt, Ryaas Rasyid¹³ stated that to identify a community, its development should be paid attention to, meaning that the government functions undertaken at any time will reflect the quality of such a government. If the government can do its duties well, the next basic duty, according to him, is serving.

Government can be viewed from a number of important aspects such as its activities, functional structure, duties and authority. The governmental activities are related to every organized activity with sovereignty as its source and which is based on the state foundation. The functional structure is related to the government as a set of the state functions which are functionally related to one another. Each function is implemented based on particular objectives contributing to the state

objectives. Each duty and authority is related to all duties and authorities of the government performed by the government.

Government is also defined as a set of state equipment or the governmental institutions functioning as a means of achieving the state objectives.¹⁴ The main objective why government is formed is to maintain a system of orderliness in which people can live their lives properly. Basically, modern government means serving the community.¹⁵

2. The State as the Implementer of People's Welfare

The welfare state, according to Robert E. Goodin, is frequently associated with the process of distribution of the resources available to the public both in cash and in other particular forms (*each benefits or benefits in kind*). The concept of welfare is also closely related to the policy of socio-economy which generally attempts to create welfare. The problems which are the most urgent to pay attention to are those which are related to education, health, and job opportunity creation.¹⁶

According to Nicholas Barr,¹⁷ the economic development carried out by the welfare state should be correlated to the use and welfare of people. This principle is the main duty which should be made to

come true in a welfare state. According to him, there are two things which are directly related to the attempts made to develop economy. First, the creation of the welfare state is not separated from economic development. The economic development should make people more welfare, not the opposite. Second, the welfare state is not established for the reason of equality only but also for the reason of efficiency in the process of economy, meaning that the reason for equality or the reason for even distribution is not contrary to the objective of efficiency in economy. These two things are part of the objective of the welfare state.

In line with what is entrusted in the Preamble of the Constitution of the Unitary State of the Republic of Indonesia of 1945, one of the state objectives is to improve welfare (welfare state) and therefore, the state law is constructed and made to protect and give welfare and happiness to all its people.¹⁸

Being convinced of the fact that the state of the Republic of Indonesia is based on the Constitution of the Unitary State of the Republic of Indonesia of 1945 is a welfare state, in accordance with the fourth paragraph of the preamble of the Constitution of the Unitary State of the Republic of Indonesia of 1945, the functions of the state of the Republic of Indonesia can be described as follows:¹⁹

- a. The first function includes security, defense and orderliness including protecting life, right of ownership and other rights as governed in the regulation and legislation.
- b. The second function includes the welfare function including social service and social welfare, which are the activities done to achieve welfare and social justice for all Indonesian citizens.
- c. The third function refers to educational function including, for example, giving general information, nation and character building, cultural enhancement and so forth.
- d. The fourth function refers to the duties to create orderliness and welfare for the world; the state of the Republic of Indonesia takes part in creating eternal peace for human life in general.

The fact in Indonesia shows that the state, as the welfare implementer, has not been able to create welfare as it has not been able to meet what is primarily needed by its people; the government has not been able to prepare food and clothing, education and health as the primary forms of welfare.

3. The State as the Implementer of Public Services

It is entrusted in the Constitution of 1945 that the state is obliged to serve every citizen and population to meet their primary needs in the framework of improving the community's welfare. All the public interests should be carried out by the government as the state implementer. Every sector of services, especially the sectors which are related to the fulfillment of the people's civil rights²⁰ and primary needs.²¹

The government is still faced with the ineffective and inefficient system of undertaking public services and the inadequate quality of human resources. This can be seen from the fact that there are many direct and indirect complaints from the community through mass media. In this case, it is necessary to see the serving function as an attempt to meet the people's needs and basic rights.

It is common to the people as the receivers of services in Indonesia that the public services are extremely bad. This can be seen from the fact that the civil rights are frequently deviated when licenses for any particular objectives are attended to. In addition, illegal retributions indicate that the quality of public services is low. This is also made worse by the unfair services received by the poor people; in other words, the poor people will find it difficult to receive services. However,

those who have "money" will find it so easy to obtain what they desire. If such inequality and injustice keep taking place, then such partial services will potentially endanger the nation's life.²²

In theory, a state is established as a social contract among its citizens. Several citizens are elected to implement the state/government to make the governmental operation fluent. Both citizens and the government have their own rights and obligations; the citizens are obliged to obey the regulations made by the government and are entitled to receiving maximum services from the government. On the other hand, the government is obliged to be able to formulate regulations which can contribute to orderliness and comfort for its citizens; therefore, the government should serve its citizens optimally.

In Indonesia the pattern of communication constructed between the citizens and the government is not developed based on the equality of position of the citizens. The pattern of communication constructed between the government and its people is the culture-based one. The reality shows that the bureaucracy which is an extended hand of the government in Indonesia with its paradigm "people are the ruler's servants" frequently makes us feel comfortable.

An accountable government has the same mission to achieve what is dreamed of through a respected and procedural mechanism referred to as being constitutional. Public services reflect that the state potentials are maximized to meet the needs for products, services and administration. The fact that public services are important is based on the understanding that citizens have the right to be served with what they primarily need. Being served should be understood as the state constitutional obligation and responsibility for protecting and satisfying what the citizens need.

The Constitution of 1945, as the realization of the people's sovereignty, is basically aimed at: ²⁴

- a. Enhancing the nation's dignity and status.
- b. Instructing that the government is obliged to give as much welfare as possible to its people.
- c. Improving the public welfare.
- d. Sharpening the nation's life and participating in the world orderliness.
- e. Being transparent in implementing the government.
- f. Creating a good and responsible government.
- g. Realizing the implementation of public services.

In line with what is instructed above, the government should always

improve the quality of the services provided to its citizens; in addition, it should always attempt to give excellent, transparent, and useful services to the community, and what is achieved is accountable. This means that based on the state constitutional obligation, at least there are two important elements, namely, ²⁵ (a) the obligation to conduct; (b) the obligation to result.

The enactment of the Law Number 25 of 2009 concerning Public Services 'Pelayanan Publik (PP)' is a significant step as it can be used as the legal foundation for giving public services. Public services are what the government is obliged to do. The government position as the party which is mainly responsible for protecting and fulfilling what the citizens need is urgent. As stated in article 1 clause (1) of the Law Number 25 of 2009 that public services are the activities or a set of activities done in the framework of meeting the need for services in accordance with the regulation and legislation in effect for all the citizens and population in the forms of products, services and / or administrative service prepared by the implementers of public services.

The implementers of public services include every government institution, corporation, independent institutions established based on the law governing public services and the other corporate bodies which are only

established to give public services (article 1 clause (2)). The law governing Public Services also instructs the presence of and role played by *ombudsman*, namely, a state institution which has the authority to control the public services provided. It is an independent state institution based on the Law Number 37 of 2008 concerning *Ombudsman Republik Indonesia*. It plays a strategic role in supervising and encouraging the clean and responsible implementation of public services.

Thus, as far as the fulfillment of what is needed by the community is concerned, the government plays an important and determining role. The existence of the services provided to the community is a need as well as a must for the reason that people are the highest holder of power or sovereignty over the state; therefore, the state, as the implementer of the public services is obliged to fulfill the basic form of the people's welfare by implementing the public welfare in the forms of education, health and fulfillment of the primary needs by guarantying that subsidy is prepared and provided by the government.

The nonprofit principle applied by the institution implementing public services should be realized in the form of the activities which are not oriented towards profit. So far the community considers that the implementtion of the

services provided by the government are relatively less satisfactory and less efficient compared to that provided by the private institution.

In the implementation of the nonprofit governmental functions, there are four problems arising; they are: ²⁶

- a. Ineffectiveness in carrying out the organization arising as the implementer fails to perform their social missions.
- b. The ineffectiveness arises as a result of the degree of the ratio of what is gained and collected from the community to what is returned in the form of public facilities is still low.
- c. What is referred to as *privat inurement* takes place as those that supervise the government still give priority to particular groups.
- d. What is referred to as *ecassive risk* takes place in the event that the government institution spends the state funds on the activities with high risk or which are not in accordance with what is stated in what is proposed for the budget.

In line with the nonprofit institution, the basic mission of the government is "doing something good" rather than generating money. The various facts of the calculation of costs and benefit in business are changed into moral obligations

and governmental sector to meet the rights every citizen has. Ideally, the government should treat every citizen justly, without considering whether they will be able to pay for the claim they make for services.

According to Osbiorn and Ted Gaebler, the government cannot be undertaken as a business for the following reasons:

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1. A business leader is always motivated by the motive of gaining profit, whereas a government leader is always motivated by the wish to be reelected.
2. A business gains most of its money from its customers, whereas a government gains its money from the tax and non tax payers.
3. A company is usually motivated by a competition; however, a government is motivated by a monopoly.
4. A government earns its income mainly from taxes; however, a company will earn its income if the customer buys the product and service it sells.
5. A government is democratic and open in nature; as a result, there is an impression that it is slower than a

business which usually makes decisions more quickly.

Thus, the role played by the government in giving public services is more like the community's servant that does not aim at gaining profit, meaning that what should be important to the government is meeting the customer satisfaction rather than meeting what is desired by the bureaucracy (meeting needs of the customer, not the bureaucracy).

In order to be able to do what the government is obliged to and responsible for, all the activities done by it should be measured as objectively as possible. The measurement is not merely based on the input only but more on the output, process and impact of the government program for the public welfare.

E. The Ambiguous Content of the Position of BLU in Its Organization

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

implement welfare; on the other hand, it is faced with limited budget.

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

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

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

institutional system of undertaking the public welfare using the pattern of the financial management of BLU.

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

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

1. The serving function which is supposed to be the governmental duty has become bias when BLU is formed as units of business. The reason is that commercialization takes place in various sectors causing the community's position to be getting weaker.
2. The implementation of BLU should not have been benefit-oriented; however, as can be seen in its operation, BLU is supposed to generate revenues. In addition, it seems that nothing restricts the attempts made to gain profit.
3. The principles of enterprising the government similarly means that giving public services through BLU highly benefits the government as it is run as a business (businesslike) as it has the

authority to collect fees and compensation for the services provided.

4. In relation to the existence of BLU, it basically has multiple functions; on one hand, it is a social institution as it has the mission to improve public services; on the other hand, it prepares commercial services as BLU is frequently used to increase revenues for any government institution. As an illustration, BLU RSUD is made to generate benefit as an attempt to increase the new PAD 'Pendapatan Asli Daerah' (the original regional revenues). A shift has taken place; the concept of public services has been changed into the concept of commercial services.
5. BLU tends to be used to plan the other government sins which may be made "legal". The reason is that its existence is acknowledged by the government. As stated in article 16 of clause (1) letter f: "BLU may use any short term surplus to gain additional revenues".

The opportunity to be benefit-oriented for several public welfare implementing institutions is used as the opportunity to use such institutions as the sources of new revenues. Such a vision of

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

CONCLUSION

- 1) BLU in its function to undertake the governmental function constitutes a public legal entity which is obliged to give public services to the community. However, as far as this function is concerned, it tends to behave as a private legal entity. The reason is that it also functions commercially,

especially when its operating success is determined based on the commercial target achieved by the main institution to which it belongs to.

- 2) The commercial behavior of BLU exceeds the authority given by the constitution. The authority BLU has, as an extended hand of the government, is limited to the authority to give public services and to manage its finance; commercial function is excluded. The serving position which is combined with the commercial function has caused the position of BLU to be ambiguous. This has caused what is done by BLU to be classified into the qualification of illegal behavior. The reason is that BLU also undertake commercial/private activities without obeying the provisions governing the private legal act. In addition, as a public political institution, the regulation governing BLU only governs the financial management and excludes the organizational/institutional structure of BLU as an entity undertaking the commercial

function of the government through BLU.

RECOMMENDATION

- 1) The organization of the institutional status of a work unit of the government in using BLU to give public services should be based on its orientation spectrum. In the event that the public services provided by a work unit is more oriented towards profit, then the status given to it should be the Government-Owned Company. However, in the event that the services given by a work unit is more oriented towards public services, in spite of having to apply the self-finance system, then it may be provided with the status of BLU.
- 2) The government should immediately reconstruct the BLU which gives freedom to deviate from the principle of universality and the principle

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