

RECONSTRUCTION OF THE TRACK ACCESS CHARGE POLICY IN THE INDONESIAN RAILWAY REGULATIONS AS A PUBLIC SERVICE BASED ON THE PRINCIPLE OF JUSTICE

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ABSTRACT

This study aims to determine the reconstruction of railroad policy in Indonesia related to PSO (Public Service Obligation), IMO (Infrastructure, Maintenance and Operation), and TAC (Track Access Charge) based on justice. The research method used is normative research using primary, secondary, and tertiary legal materials. The results obtained from this study are that the implementation of the railroad transportation mode has not provided welfare for the community because ticket prices tend to be expensive. This is because the TAC imposed on PT KAI is 75% so that the amount is reconstructed to become TAC 10%

Key words: Track Access Charge, Railways, Public Service, Justice

INTRODUCTION

The restructuring of railway companies in Indonesia has undergone several changes, starting in 1946, the form of Indonesian railway companies is the Republic of Indonesia Railway Service (DKA-RI); in 1950 changed to Djawatan Kereta Api (DKA); in 1963 changed to the National Railway Company (PNKA); in 1971 changed to the Railway Bureau Company (PJKA). The consequence that was born from the form of the railway company is that PJKA should carry out public service activities of rail transportation services. Because the financing of business activities organized by PJKA is budgeted in the State Budget (APBN).

In 1990 the railway company changed its form again, PJKA then changed to the Railway Public Company (PERUMKA). This change resulted in the railroad business activities which are funded by the state being separated from the obligations of public service, meaning that PERUMKA in the framework of providing public services is no longer burdened to get profit from its business activities. However, this restructuring policy did not produce results, the expected public service did not materialize optimally. For this reason, in 1998, through Government Regulation Number 19 of 1998, PERUMKA was changed to a Limited Liability Company (Persero), or commonly known as PT Kereta Api Indonesia (hereinafter abbreviated as PT KAI).

Starting from a railroad company in Indonesia called PJKA, PERUMKA, and later changing to PT KAI until 2015, there is a mechanism for charging infrastructure maintenance costs from the state to PT KAI. This happens because the calculation of IMO and TAC is carried out in a comparable scheme, namely Operation (IMO) is the same as (=) Track Access Charge (TAC). IMO is a cost that must be borne by the government for the maintenance and operation of railway infrastructure. Meanwhile, TAC is a fee that must be paid by railway facility operators for the use of railway infrastructure operated by railway infrastructure operators.

The IMO = TAC scheme carried out before 2015 resulted in the absence of an IMO fund budget post from the State Revenue and Expenditure Budget (APBN). The impact is that there is no TAC payment for Non-Tax State Income (PNBP). This ultimately has implications for what train passenger ticket prices are relatively expensive or inappropriate. This is because the need for railway infrastructure maintenance (IMO) costs are borne by users of rail transport services to cover missing budget items.

The State Revenue and Expenditure Budget (APBN) should provide funding for railway infrastructure, which infrastructure is state property. However, what happens is that the entire cost of maintenance and operation of railway infrastructure (IMO) comes from and PT KAI itself as a Railway Facility Business Entity. For this reason, PT KAI must pay the rent for the maintenance and operation of the railway infrastructure (TAC) as Non-Tax State Revenue (PNBP). PNBP is an instrument for the Ministry of Transportation in its position as a powerful organization to obtain State Revenue. If the Government has not been able to fund 100% of the maintenance and operation costs of the railway infrastructure, then the maintenance and operation cost of the railway infrastructure requires other funding from Non-APBN sources. This fund is very important to ensure the safety of the Train Travel Chart (GAPEKA) operation because it is related to the maintenance and operation costs of railway infrastructure.

Currently, the source of funds for the maintenance and operation of railroad infrastructure or the Non-APBN Infrastructure Maintenance and Operation (IMO) that must be fulfilled comes from the Railway Facility Providing Business Entity, namely PT KAI itself. However, in 2015 a ministerial regulation was issued regarding the amount of TAC against IMO. Where through the Minister of Transportation Regulation Number PM.122 of 2015 concerning Amendments to the Regulation of the Minister of Transportation Number PM.62 of 2013 concerning Guidelines for Calculating the Cost of Using Railway Infrastructure (TAC) is set at 75% X IMO. Given that PT KAI is then burdened with lease fees for the use of railway infrastructure in the form of 75% Track Access Charge (TAC) for Infrastructure Maintenance and Operation (IMO).

The TAC amount of 75% of the IMO is a very large, as a result of PT KAI only receives a relatively small amount of Public Service Obligation (PSO). Then, the TAC policy in implementing railways through PT KAI is still not consistent with implementation in the field. Although the Regulation of the Minister of Transportation PM 122/2015 stipulates that the TAC Priority Factor for IMO is a maximum of 75%, in its implementation from 2015 to 2018 PT KAI has always been burdened with

the 75% IMO TAC scheme. Whereas in this case, the amount of PT KAI's Track Access Charge is one of the components of the train ticket price.

The bigger the TAC, the higher the ticket price charged to the public as users of the rail transportation mode. In addition to affordable ticket prices, basically, the government to provide public services should ensure the security, safety and availability of rail transportation modes (Karjoko et al., 2017). In the results of the transportation assessment in Indonesia by the Asian Development Bank, it is stated that rail transportation in Indonesia is still lacking in system maintenance, which causes delays, passenger dissatisfaction and accidents (Leung, 2016).

Referring to the formulation of the state's goals in the preamble to the 1945 Constitution of the Republic of Indonesia, it will be found that the objectives of the state are to advance the general welfare. Azhary and Hamid S. Attamimi argued that this characterizes that Indonesia is a welfare state (H.R., 2014). Talking about the concept of the welfare state, welfare which is the main thing is the welfare of the people. This means that people's welfare is the basis and objective of the state in running the state, or in essence is social justice (Azhary, 1995). Mustamin argues that the welfare state is a combination of classical and modern rule of law. Where there is a combination of individualism and collectivism so that humans are seen as individuals and also as members of a collectivity. In terms of the rights of individuals and also members of society, the state has a big share in ensuring the fulfillment of these rights (Thamrin, 2013).

Cheap and reasonable ticket prices are a form of welfare that should be felt by the community in using the rail transportation mode. But unfortunately, the 75% TAC scheme from IMO has eroded ticket prices that are more affordable for the public. In this case, of course, the government has a big share in improving the existing TAC and IMO schemes. For this reason, this study aims to determine the reconstruction of TAC and IMO policies that can provide welfare for the community so that social justice can be realized.

RESEARCH METHODS

This type of research uses normative legal research. The author uses a qualitative approach to understand or understand the symptoms under study (Soekanto, 2004). In addition, this study uses a statutory approach (statute approach) (Marzuki, 2017). Secondary data, namely data obtained from a library research in the form of legal materials. (Soekanto, 1986) dividing legal materials as objects of literature study into 3 (three) groups, namely primary legal materials, secondary legal materials, and tertiary legal materials. To obtain answers to research problems, induction-deduction and interpretation syllogisms are used.

RESULT AND DISCUSSION

In Law Number 23 of 2007, it is stated that the railway is a mode of transportation that has special characteristics and advantages, especially in its ability to transport people and goods in bulk. Therefore, the operation of railways starting from the procurement, operation, maintenance and operation needs to be properly regulated. The aim is none other than to provide rail transportation that ensures safety, safe, comfortable, fast, precise, orderly, efficient, and integrated with other modes of transportation. In this study, in particular the aspects of the price of affordable modal services for the community.

The government must ensure that railway services can provide services to the community fairly and equitably. Without prejudice to the benefits received by all parties for operators and users of train services. Balance in the public interest emphasizes that railway services not only pay attention to commercial interests (seek profit), or only serve certain groups/strata of society, but also public services for all groups of society. For that, the government needs to "intervene" by establishing schemes that can reduce train ticket prices (Nugrahini, 2012). This is because the existing scheme results in calculating the price of train tickets that are expensive to pay for maintenance and operation, which should have been the responsibility of the government (Sarjiyati et al., 2017).

The railway funding scheme in Indonesia has begun to restructure again due to the existence of the Railway Efficiency Project or what is called the "Railway Efficiency Project" (REP). In this project, one of the programs that must be implemented is the restructuring of railroad funding through the PSO (Public Service Obligation), IMO (Infrastructure, Maintenance and Operation) and TAC (Track Access Charge) funding scheme. In the implementation of rail public transport, especially passenger transportation in economy class, the Government has assigned PT KAI to carry out public service obligations. In the assignment of public service obligations (PSO). On the other hand, this is difficult to realize because of the high price of purchasing tickets due to the unfair railway funding scheme.

The main root of this problem is at TAC 75% IMO. IMO itself is regulated in Presidential Regulation No. 53/2012. Through this regulation, it is stated that the financing of national railways is stipulated in Public Service Obligations and Railroad Pioneer Transportation Subsidies, namely (PSO); State-Owned Railway Infrastructure Usage Fee, namely (TAC); and Maintenance and Operation Costs of State Railways Infrastructure, namely (IMO). In this regulation, it is stipulated that every railway facility operator that uses railway infrastructure is obliged to pay it is called Track Access Charge (TAC). The TAC mechanism is further regulated in the Government of the Republic of Indonesia Number 11 of 2015.

Talking about welfare in providing transportation mode services, this has become a fundamental goal for a welfare state. (Briggs, 1961) put forward the definition of a welfare state as a state whose power is deliberately used in order to change market forces to at least ensure minimum income, narrow the gap, and provide various social services for all its citizens. Meanwhile (Sinn, 1995) argues that the welfare state is a set of guarantees that guarantee a lifelong career, increase risk-taking, and reduce the effects of moral harm. In the implementation of the rail transportation mode, the welfare guaranteed by the state should be realized in policies that reflect the welfare itself (Ismoyo et al., 2018).

The policies taken by the government can be divided into two, namely substantive and procedural policies. Substantive policies are what the government should do while procedural policies are who and how the policies are implemented. This means, public policies are policies developed by government agencies and officials (Anderson, 1997). The concept of the reconstruction philosophy of the Public Service Obligation (PSO) Track Access Charge and Infrastructure Maintenance and Operations that the writer means can provide welfare to realize justice is as follows:

- a. Based on the principle of State control over the fulfillment of the lives of many people as mandated in Article 33 paragraph (3) of the 1945 Constitution, Law Number 19 of 2003, Law no. 23 of 2007, Law No. 40 of 2007 on the stages of the Public Service Obligation (PSO), mandates that railroad transportation services must be able to protect the interests of train passengers through several stages, namely as follows:
 - 1) Inventory of all PSO implementation activities from the planning, implementation and control processes, so that the inventory obtains valid, measurable and accountable data.
 - 2) To study PSO regulations, regulators and operators conduct studies on PSO regulations and implementation, so that there is synchronization and harmonization of all stages of the PSO mechanism.
 - 3) Compile legal materials in the form of legal drafting to compile the concept of reconstructing PSO regulations, so as to produce regulations that are rigid, valid and have legal certainty by prioritizing fair public services.
- b. IMO scheme arrangement, in which PT KAI has a function as a director, engineer, and equitable Infrastructure Maintenance and Operation (IMO) scheme designer. PT KAI also operates and maintains railroad infrastructure, through:
 - 1) Preparation of systematic directions and guidelines in carrying out railroad infrastructure maintenance tasks, so that the quality of railway infrastructure is getting better and the quality increases so that there is an assurance of the quality of train operation that is safe, smooth and controlled.
 - 2) PT KAI as a railway operator who also maintains railway infrastructure is given railway infrastructure maintenance costs with fairness and proper value, there is no difference between the realization of IMO issued by PT KAI and the cost of replacing IMO from the government, so that PT KAI becomes a healthy company based on good corporate principles. governance (GCG).
 - 3) The Directorate General of Railways as the regulator must be able to regulate its role as a government representative that applies the principles of Good Governance in addition to its duty to provide IMO fees following the principles of fairness.

Meanwhile, in particular, to realize a just policy according to John Rawls, the TAC orientation indicator needs to pay attention to the principle of justice (Rawls, 2006), which is as follows:

- a. Everyone should have the same rights to the broadest basic freedoms, as wide as the same freedoms for all.
- b. Social and economic inequality must be structured in such a way that it becomes the greatest value for the most disadvantaged and that everyone is given equal opportunity.

The participatory TAC scheme arrangement for PT KAI is expected to be able to reduce the TAC percentage by 75% IMO. When comparing the amount of TAC with other countries, countries in Europe have an average Track Access Charge (TAC) scheme of 10% Infrastructure Maintenance and Operation (IMO) (Nash, 2005). Even for the Netherlands and Norway Track Access Charge (TAC) is 5% Infrastructure Maintenance and Operation (IMO) only (Ronai, 2008). The difference between Indonesia's TAC and other countries stands at 65-70%. This certainly raises questions about the rationalization of the TAC calculation.

Judging by the principle of justice put forward by Philips (1997) that whenever a person or group of people voluntarily receives benefits from a mutually beneficial cooperation scheme, which in that scheme requires sacrifice or contribution from each party but there is the possibility of a 'free ride', the obligation of justice made among participants in a cooperative scheme, that is, in proportion to the benefits received. Therefore, the TAC and IMO contract schemes at least fulfill the principles of fair contracts, mutual benefits, cooperation, sacrifice, free-rider responsibility, and voluntary acceptance of the benefits of cooperative schemes (Buren, 2001).

Therefore, to restructure the current TAC and IMO, it is necessary to reconstruct the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM.122 of 2015. It is not enough just to reconstruct the existing policies, but also the governance of their implementation, so that the implementation of railways in Indonesia is capable of providing maximum public services, in terms of affordable prices, security, services, availability. Where the policy is expected to provide maximum benefit to the community for the realization of justice (Gultom et al., 2015).

The principle of justice is actually a bridge between Pancasila, which must be crystallized in the policies taken by policy makers. Therefore, this research boils down to the formulation of the 75% Track Access Charge policy from Infrastructure Maintenance and Operation being changed to Track Access Charge (TAC) to 10% Infrastructure Maintenance and Operation (IMO). With the 10% formulation, it is hoped that the realization of the harmonization of the substance system between the railway operator and the users of rail transportation services. In addition, it also creates a structure, climate and culture of services that are effective, efficient, transparent, accountable, cheap, affordable.

CONCLUSION

The Track Access Charge (TAC) policy regulation of PT Kereta Api Indonesia (Persero) is not yet fair because based on the legal structure of the TAC regulation in PM 122/2015 it is stipulated that the TAC coefficient factor for IMO is at a maximum 75%, but in its implementation, it is based on the Decree of the Minister of Transportation Number 244 In 2015, from 2015 to 2019 PT KAI was always subject to the 75% IMO TAC Priority Factor for Non-Tax State Revenue (PNBP). Even though PT KAI is a public service BUMN. Therefore, policy reconstruction needs to be carried out on basic things first, namely reconstructing the legal structure of public services where PT Kereta Api Indonesia (Persero) has a function as a director, engineer, and designer of the TAC scheme for an equitable IMO, then outlined in regulations legislation/policy.

Next is to change the scheme to regulate the TAC Priority Factor of 75% IMO to a TAC of 10% IMO. This will directly have implications for ticket prices circulating in the community to be more affordable. The community will get the best public service based on the principle of justice and provide equal business opportunities and protection to all parties involved in the railway.

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