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The construction of indonesian maritime infrastructure through public private partnerships

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Abstract

The study aims to investigate the construction of Indonesian maritime infrastructure through Public Private Partnerships via conceptual, statute and comparative approaches. As a result, the Implementation stage involves the project implementation including establishing the Project Company by the Project Sponsors, and the financing, construction, commissioning and operation of the project. In conclusion, the adoption of a maritime infrastructure specific PPP regime would also allow Indonesia to develop the human resource expertise that can assist with further construction of PPP management for the country.

Keywords: Maritime, Economic, Development, Public, Private.

La construcción de infraestructura marítima indonesia a través de asociaciones público-privadas

Resumen

El estudio tiene como objetivo investigar la construcción de infraestructura marítima de Indonesia a través de asociaciones público-privadas a través de enfoques conceptuales, legales y comparativos. Como resultado, la etapa de Implementación involucra la implementación del proyecto, incluyendo el establecimiento de la

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Compañía del Proyecto por parte de los Patrocinadores del Proyecto, y el financiamiento, construcción, puesta en marcha y operación del proyecto. En conclusión, la adopción de un régimen de APP específico de infraestructura marítima también permitiría a Indonesia desarrollar la experiencia en recursos humanos que puede ayudar con la construcción adicional de la gestión de APP para el país.

Palabras clave: Marítimo, Económico, Desarrollo, Público, Privado.

1. INTRODUCTION

Indonesia has a road network of 523,974 kilometers of which 1,851.4 kilometers are expressways. The country ranks 15th in the world in terms of its road network infrastructure and comes second in ASEAN after Thailand. As an archipelagic state comprising some 17,000 islands and 6 million square kilometers of water, Indonesia has equal, if not more need for maritime transport infrastructure to ensure economic connectivity. However, the country's maritime infrastructure is underdeveloped.

In 2014, with the election of a new government, President Joko Widodo announced major policy changes concerning infrastructure construction for the country including turning Indonesia into the epicentre of Indo-Pacific maritime activity, and boosting national economic productivity in the process. In what was called Poros Maritim Duni (Global Maritime Fulcrum Master Plan), President Widodo announced plans to transform the Indonesian maritime sector into an infrastructural powerhouse that can contribute up to 25% of country's GDP compared to the current figure of just 11%. To accelerate maritime infrastructure construction, the Widodo government launched the toll laut project in 2015 to enhance national connectivity to support economic development.

The GMF with the Sea Toll Road project is an ambitious undertaking that requires significant resources. Initial estimates put the cost of the Sea Toll Road project at IDR 700 trillion (US$53 billion). This includes the construction of 24 commercial seaports, 1481 non-commercial seaports, 15 industrial areas, and the acquisition of new vessels. The Indonesia National Development Master Plan 2011-2025 estimates that Indonesia will need 4,012 trillion rupiahs ($440 billion) of investment, with 1,786 trillion rupiahs assigned to related projects such as highways, harbors and power plants.

The reality for Indonesia is that the funding for maritime infrastructure construction is unlikely to be matched by its annual budget. The Indonesian National Development Planning Agency (Bappenas) estimates that IDR 2,877 trillion (60% of total infrastructure funding needs) is required to fill the gap of total infrastructure funding if the country is to realize its ambitions for maritime infrastructure development. The challenge is how to secure funding to make the GMF and the Sea Toll Project a reality. One source of funding to fill the gap is to make investment attractive to private investors through Private Public Project schemes. While PPP schemes have been used in Indonesia since 1998, the schemes have not been applied in the maritime sector. Given Indonesia's size and the significance of maritime infrastructure to connect to markets and communities in the thousands of islands in the country, the potential for good returns on investments in maritime infrastructure cannot be overstated. What is needed is a new approach to looking at the old problem of funding. The objective of this article to examine new approaches to raise funding to develop Indonesia's maritime infrastructure through the PPP regime (AGOES, 2017).

2. METHODOLOGY

This paper is legal research to analyse the construction of maritime infrastructure under PPP regime along with the challenges and initiatives to overcome. To achieve the goal, this paper uses conceptual, statute and comparative approaches. This paper includes both the primary legal materials (all applicable legislation), and the secondary legal sources are in the form of literature and related materials (WYRASTI ET AL., 2019).

3. RESULTS

A. Indonesia Maritime Doctrine and Global Maritime Fulcrum (GMF)

Indonesia is the world's largest archipelago with a total landmass of 1,826,440 square kilometers and 2.8 million square kilometers of water that includes 92,877 square kilometers of internal waters. Maritime infrastructure plays a vital role in supporting commerce and facilitating trade, thereby extending the nation's global reach. In spite of its significance to Indonesia, the current state of Indonesia's maritime infrastructure is poor. This contributes to higher costs for consumers in the country and impedes economic development (COORDINATING, 2010). Adopting national policies to improve maritime infrastructure is, therefore, a matter of national importance. This factor underpins the new approach in recent times in what has been called the Indonesian Maritime Doctrine.

B. Public Private Partnership (PPP) as a Catalyst for Economic Development

There is no generally recognized definition of PPP. However, in a broad sense, PPP describes the interaction or partnership between the private and the public sectors in developing a project. In a narrower sense, PPP refers to a particular set of risk-sharing and financial relationships between the public sector and given private enterprises aimed at service delivery (GINDARSAH & PRIAMARIZKI, 2015). Public–private partnership (PPP) can thus be loosely defined as a cooperative institutional arrangement between public and private sector actors; such arrangements for cooperation being expressed through the establishment of new organizational units (ARIYANTI, 2017).

C. PPP in the Indonesian Context

Under the National Medium Term Development Plan 2015-2019 (RPJMN 2015-2019) infrastructure construction in the country has several priority objectives. It is aimed at strengthening national connectivity, equitable development, acceleration of the provision of basic infrastructure to guarantee water, food, and energy security and the support for national defense and urban mass transportation systems. Significantly for the purposes of this article, the Plan envisages leveraging PPP as the main source of funding for these projects (ERWIN, 2017A; 2017b). The Government of Indonesia (GoI) has committed to expanding PPP schemes as the basis for cross-sector infrastructure construction, including maritime infrastructure (CARRUTHERS, 2016).

D. The Challenges of PPP Arrangements in Indonesia

´While PPP has proven to be popular in several countries, they are not without problems. In the context of developing countries, several authors have noted a number of systemic difficulties that hinder the success of PP schemes. For instance, in their thorough research on PPP on Malaysia, Ismail and Harris identified and discussed no less than 14 possible constraints on the successful implementation of PPP. Of the 14 constraints, the authors ranked the following as being of the highest concern among the respondent companies that were surveyed:

a.- Lack of government guidelines and procedures on PPP.

b.- Lengthy delays in negotiation.

c.- Higher charge to the direct users.

d.- Lengthy delays because of political debate.

e.- Confusion over government objectives and evaluation criteria.

We consider the conclusion by Ismail and Harris that out of the five factors, one factor, lack of government guidelines and procedures on PPP, was perceived as the most important factor that impedes the implementation of a project via PPP quite important. This is because the lack of government guidelines and procedures on PPP potentially cover a broad range of issues that were also identified in Jamali's research on Lebanon. Accordingly, we rate a lack of government guidelines and procedures on PPP as a vital cross-cutting element in the PPP discourse, particularly in the Indonesian context.

D.2. Lack of clarity

In spite of the many regulations for PPP, Indonesia's current regulatory framework is far from ideal for PPP schemes. The PPP regime has several of the challenges noted in earlier studies on PPP in Malaysia identified in the study by Ismail and Harris above, Indonesia lacks clear guidelines and procedures on PPP, and has poorly drafted regulatory and legal framework as noted by Jamali in the case of Lebanon. It also lacks human resources (experience) as in the case of Malaysia.

The current PPP regulatory framework is governed primarily by three general categories of regulations:

a. General PPP key regulations: PR 38/2015, PR 78/2010, PR 3/2016, MFR 260/2010, MRNDP 3/2012;

b. Sector-specific regulations such as Law No. 17 of 2008 on Water Transportation, Government Regulation No. 61 of 2009 on Port Affairs, Government Regulation No. 20 of 2010 Water Transportation, Law No. 7 of 2004 on Water Resources, etc.;

c. General Indonesian business regulations governing Indonesian corporate entities.

There are no clear guidelines for the relationship between these sets of regulations. There are also no guidelines for implementation arrangements. For instance, Government Regulation No. 50 of 2007 on Procedure for Regional Cooperation prescribes the pre-requisites for cooperation between a regional government and a business entity if the cooperation involves the use of the regional government's assets. However, there are no implementation rules or a model cooperation agreement for such cooperation arrangements.

Another issue that persists in the PPP regime in the country is the lack of coordination between coordinating agencies in the country. In the current regime, there are three central agencies: The Ministry of Finance (MoF), Bappenas (National Planning Agency) and Government Contracting Agencies (GCAs) (ad hoc agencies established from time to time to negotiate and deal with specific PPP projects). An OEDC report succinctly notes as follows:

The GCAs develop project proposals in isolation. This means that very often project proposals and feasibility studies fall short of the requirements of the MoF and subsequently may not qualify for government (fiscal) support and a government guarantee. The projects are then abandoned or delayed as more work is done on the proposal. While the MoF through its various organizations such as the Risk Management Unit (RMU) and the Indonesian Investment Guarantee Fund (IIGF) evaluates the financial and technical feasibility of projects, it does not assist the GCAs in putting together the feasibility studies (HAM, H., & KOPPENJAN, J. 2001: 20).

The OEDC report also notes that the Bappenas and MoF have different institutional cultures that impact adversely on the PPP regime in the country. The latter focuses on broad economic planning while the MoF has a stricter fiscal and financial focus. They, therefore, tend to approach PPPs from different perspectives that result in conflicting assessments of projects.

D.3. Weak legal and regulatory institutions

Indonesia's legal and regulatory framework is weak and does not always inspire confidence in foreign investors. There have been problems in the past with the legal framework being applied in a manner that is not transparent, consistent or predictable. This led in some instances to cases being submitted to international arbitration with questions being raised in the country on the enforcement of the international arbitration decisions that went against the state.

D.4. Complicated Procedures

The procedures for PPP projects in Indonesia are complex. The PPP project cycle consists of three main phases: planning, project preparation, and the transactional phase. These phases can be further broken down into 9 stages: project screening, public consultation, feasibility study, risk assessment, a form of cooperation, government support, procurement, and implementation and monitoring. Project

Screening is the process by which the GCA identifies and prioritizes potential PPP infrastructure projects. Public Consultation entails efforts by the GCA to obtain inputs from the general public as well as potential developers and lenders to help shape design of the project. The Feasibility Study stage involves the technical, commercial and contractual design of PPP project. The risk assessment phase includes the risk identification and potential mitigation measures throughout the project lifecycle, including risk allocation among the various parties.

Form of Cooperation is the structuring PPP partnership to optimize value to the public and ensure attractiveness to private partners. Government Support concerns the determination of the amount and nature of government contribution to the project, in terms of mechanisms such as tax incentives, land acquisition, contingent support or guarantees, direct financial support, etc, aiming to ensure the viability of the project. The Procurement stage is the construction of a tender package and the entire tender process from prequalification through contract signature. The Implementation stage involves the project implementation including establishing the Project Company by the Project Sponsors, and the financing, construction, commissioning and operation of the project. Monitoring involves the supervision of the Project Company performance by the GCA as stipulated in the cooperation agreement.

The PPP process is complicated because private investors have to meet a series of requirements and documentation for each stage.

Firstly, a private investor must initiate an unsolicited infrastructure proposal for the GCA. The proposal must be submitted because the award of infrastructure projects based on the direct appointment is no longer permitted in Indonesia, and competitive tendering is required for all PPP projects.

If the GCA accepts the proposed project concept and associated documentation, it then commences a procurement process by calling for tenders in much the same way as for a solicited project, except that the project initiator will receive one of the forms of compensation as stipulated in PR 38/2015. Under that regulation, the project initiator receives either additional points in the evaluation, a right to match the offer of the first-ranked bidder or financial compensation for the work and intellectual property resulting from the Feasibility Study.

The requirement for private investors to submit unsolicited proposals to the GCA only to then enter into the open public competitive tendering process does not appeal to private investors in spite of the forms of compensation as stipulated in PR 38/2015.

D.5 Lack of Experience

PPP projects require high-level negotiation skills. Accordingly, the OECD recommends that "governments should establish a clear, predictable and legitimate institutional framework supported by competent and well-resourced authorities" (HAM & KOPPENJAN, 2001: 19). The country currently lacks experience human resources to deal with complex PPP projects. This brings a little comfort to private investors considering other areas for PPP.

Under the current PPP regime, Bappenas has an embedded Central Unit dedicated to PPP. The PPP Central Unit (3P CU) is meant to be a specialist body that advises the GCAs with respect to project proposals, however the 3PCU has limited resources and for the most part unable to do its job effectively. The OECD report notes that the lack of resources means that the 3PCU is effectively barred from hiring good advisers. This impacts adversely on the ability of the Unit to work on PPP projects.

4. CONCLUSION

As an archipelagic state, the construction of effective maritime infrastructure is an essential but ambitious program that requires significant financial resources. PPP presents a good option for Indonesia to generate funding to develop the country's maritime infrastructure. While PPP is not new in Indonesia, it is rarely used in maritime infrastructure construction. This is understandable since investment in the maritime infrastructure requires significant capital commitments with delayed returns on investment. If Indonesia wants to attract investors through PPP for maritime infrastructure construction, then it must reassess its current PPP regime.

In particular, it must adopt a new regime tailored for maritime infrastructure construction. The new regime would need to be based on a Hybrid Financing system that ensures guaranteed government commitment in feasibility studies for projects and subsequent construction. More importantly, it would need to foster an enabling environment that inspires confidence in private investors. The adoption of a maritime infrastructure specific PPP regime would also allow Indonesia to develop the human resource expertise that can assist with further construction of PPP management for the country.

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