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Indonesian BUILD OPERATES TRANSFER (BOT) performing in partnership

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Abstract

The purpose of this study is to find out the obstacles that arise during financing cooperation with the Cooperation through Build Operate Transfer (BOT) partnership model in the management of traditional government-owned markets via a qualitative descriptive study. The results of the study showed that the implementation of this collaboration is a mutually beneficial agreement. In conclusion, the agreement does not regulate much about third parties, namely traders, even though there should be adequate rights and obligations for traders.

Keyword: BOT, Partnership, Traditional market

**La Build Operate Transfer (BOT) Indonesia actuando en
sociedad**

Resumen

El propósito de este estudio es descubrir los obstáculos que surgen durante la cooperación financiera con el modelo de asociación Cooperación a través de Operar Transferencia (BOT) en la gestión de los

mercados tradicionales propiedad del gobierno a través de un estudio descriptivo cualitativo. Los resultados del estudio mostraron que la implementación de esta colaboración es un acuerdo de beneficio mutuo. En conclusión, el acuerdo no regula mucho sobre terceros, es decir, comerciantes, a pesar de que debe haber derechos y obligaciones adecuados para los comerciantes.

Palabra clave: BOT, Asociación, Mercado tradicional.

1. INTRODUCTION

Along the times, the needs of the community in terms of public services are also increasing. This prompted the government to develop facilities and infrastructure to improve service quality. But one of the factors that are often a constraint in development is the financing factor. With budget limitations, it is not possible to fully finance infrastructure development using government funds sourced from the State Budget (APBN) or Regional Expenditure Budget (APBD). This causes the government to be unable to work alone so that cooperation with the private sector is needed. Therefore, the concept of Public-Private Partnership (PPP) emerged which is an alternative financing mechanism in the procurement of public services that have been widely used in various countries, especially developed countries (ROSADIN, 2011). By involving the private sector in government projects, raises cooperation contracts between the government and the private sector, in hopes of improving the service quality. But from this cooperation problems often arise due to the different interests between the government and the private sector. One example is the construction of the Andir Traditional Market in the City of Bandung (WANG, ROBERT & TING, 2010).

In the construction of Andir Traditional Market, the city government is looking for other funding alternatives, namely establishing partnerships with the private sector through the Build Operate Transfer (BOT) agreement. This type of BOT contract is a contract model that involves two parties where the city government is a service user and the private sector as a service provider. Service users authorize service providers to build infrastructure and operate it for a certain period of time (concession period), and service providers will hand over to the users of the infrastructure services when the concession period has ended. In a partnership, the contract is very important and fundamental, allows it to be used, is used as state facilities, and uses facilities, instruments that are sufficiently needed in accommodating and providing benefits to the parties involved in the cooperation (AHMAD & AHMAD, 2018; SEKRETARIAT, 2012).

The BOT contract pattern has been recognized in Indonesian law because philosophically this BOT agreement is part of the management of state or regional assets. The technical provisions are regulated in LIANTO (2008) concerning Management of State and Regional Property, concerning the Management of State and Regional Property, in stage 20, the forms of utilization of state and regional property can be in the form of rent, loan use, joint use, and BOT and Build Transfer Operate (BTO). Government Regulation has been amended by (Government Regulation Number 38, 2008) and has been amended by (RINI & SANJAY, 2012). Markets, roads, buildings, bridges etc. are one of the state assets categorized in State / Regional Property. If the BOT pattern is chosen as a form of cooperation, then

sufficient knowledge is needed for the city government to run it, because the wrong implementation will bring harm to both the city government and the private sector as investors.

So far, on one side to build the Andir Traditional Market which is carried out by private parties through the BOT model is sufficient because in this case, the government does not need to spend a lot of money carrying out projects. This is a basic asset controlled by the private sector, after the concession period will be given to the city government. But on the other hand, the implementation of contract agreements using the BOT model does not rule out the possibility of creating a problem, including the lack of transparency from the private sector and poor communication between the city government and the private sector. This study discusses the obstacles that arise in the construction of Andir Traditional Market in Bandung City through public and private partnerships with the BOT model (SHARAFFUDIN & MUTAIRI, 2015; AHMAD & AHMAD, 2019).

2. METHODOLOGY

This study uses descriptive qualitative methods based on surveys through in-depth interviews with informants involved in partnerships, and questionnaires with respondents. The data collection techniques are carried out through literature study and data collection in the field.

3. RESULTS

The Build, Operate, and Transfer (BOT) agreement is a form of cooperation agreement made between land rights holders and investors, which states that the holder of the land rights gives investors the right to construct buildings during the BOT agreement and transfer ownership of the building to the right holders on land after the term of the agreement ends (OKTORINA, 2010). According to the United Nations Industrial Development Organizations SOETOMO (2009) concerning the Guidelines for Infrastructure Development Through BOT, there are three main parties that play a role in the BOT project, namely:

1. Host Government

The host government is the local government that has an interest in procuring the project (legislative, regulatory, administrative) that supports the project company from the beginning to the end of the procurement of the project. Generally accompanied by legal, technical and financial advisors.

2. Project Company

Project Company is a consortium of several private companies that form new projects. Its role is to build and operate the project in the concession, then transfer the project to the Government Host. Previously the Project Company submitted a

proposal, prepared a feasibility study, and submitted a project offer.

3. Sponsor

Sponsors are those who play a role in project financing

GUIDO & MARCO (2017) concerning the *junto*, Regional Government (Law Number 2, 2015) concerning the Election of Regional Heads mandates that in order to improve people's welfare, the region can establish cooperation based on consideration of efficiency and effectiveness of public services and mutual benefits. According to concerning Procedures for Implementation of Regional Cooperation, what is meant by regional cooperation is an agreement between the governor and the governor or governor with regents/mayors or between regents/mayors with other regents/mayors; and or governors, regents/mayors with third parties, which can be made in writing and give rise to rights and obligations. In addition, the parties who are subject to regional cooperation are the Governor, Regent, Mayor, and third parties, and the object of regional cooperation is all governmental affairs that have become regional authorities and can be in the form of public services. Cooperation with the BOT model in Indonesia is known as *Bangun Serah Guna* (Build, Operate, and Transfer).

This has been regulated in (Government Regulation Number 38, 2008) concerning Amendments to (Government Regulation Number 6, 2006) concerning the Management of State or Regional Property that explains that Build, Operate, and Transfer is the use of land or land in the form of land by another party by establishing buildings and/or facilities and facilities, then utilized by the other party within a certain period agreed upon, to be subsequently returned to the land and the

building and/or facilities and facilities thereof after the expiration of the period.

The BOT agreement arises because of several interrelated things, namely:

1. The insufficient infrastructure needed by the public, especially in developing countries.
2. Lack of funds led to a policy to limit the use of funds to build the infrastructure.
3. Reluctance to fund the infrastructure through lending to financial organizations such as the IMF. Therefore the idea arises to use private parties to build the infrastructure with the funds they provide (KHAN, JAMIL & SATTAS, 2008).

KHAN, JAMIL & SATTAS (2008) suggests that the BOT agreement is a form of agreement in the framework of providing infrastructure that transfers responsibility for costs, development, and operations to the private sector. At the end of the project the government will receive a return on the deed that has been used by the private sector including the infrastructure that has been built and operationalized for a certain period of time. The BOT agreement is a contract between government agencies and private companies (special purpose companies) in building public infrastructure that aims to increase infrastructure growth without spending funds from the

government, where the private sector (Business Entity) is responsible for the final design, financing, construction, operation and maintenance of an investment project in the infrastructure sector for several years, usually by transfer of assets at the end of the contract period (PERATURAN, 2014).

The private sector receives revenue from the operation of infrastructure facilities during the concession period. Generally, the contract period is between 10-30 years. From the various meanings above, it can be seen that in the BOT agreement there are several elements as follows:

1. The parties that make agreements, in this case, are the investors (private) and the landowners (the government).
2. The object of the BOT agreement, in the form of land and certain project buildings.
3. There is a concession period in which investors are given the right to operate the building and take the expected benefits during this period.
4. The process of handing over the building along with the facilities attached to it, from the investor to the landowner at the end of the concession period.

The legal requirements for the BOT agreement are:

1. There is an agreement between the investor and the landowner.

2. The ability of both investors and landowners.

3. The existence of clear objects, in the form of land and building projects, agreed upon by the parties (AHMAD & SAHAR, 2019).

4. There is a lawful cause, in the sense that the purpose of the agreement does not conflict with the Law of decency and public order.

The public facilities that experienced development by cooperating using the BOT model are traditional markets, where the City of Bandung has 37 traditional markets managed by the city government and some of them have experienced development which is cooperated with the private sector with the BOT model, one of which is Andir Traditional Market. Although they have to compete in the midst of the presence of modern markets, the position of traditional markets still remains important and integrated into people's lives because many people still need traditional markets in search of income and also need in buying and selling transactions. In addition, traditional markets are also one of the economic heart of the community, and one of the efforts to optimize these economic facilities is to rebuild the market. This is done to provide convenience to the public in the sale and purchase of goods, both consumptive and

productive goods. Besides that, the construction of traditional markets provides employment opportunities and increased income for the community so that the development will contribute, both to the community and the City Government.

(Presidential Regulation Number 112, 2007) states that what is meant by traditional markets are markets that are built and managed by the Government, Regional Government, Private, State-Owned Enterprises and Regionally-Owned Enterprises including cooperation with the private sector in the form of shops, kiosks, booths and tents owned/managed by small, medium, self-help or cooperative traders with small-scale businesses, small capital, with the process of buying and selling merchandise through bargaining. The majority of traditional markets in Indonesia are controlled and managed by the local government and are usually under the control of P.D. Pasar Bermartabat. Some of them are developed through cooperation between local governments and private companies, generally using build operate transfer (BOT) schemes, wherein then private companies pay annually to the local government a number of agreed funds.

Although normatively BOT contracts are not specifically regulated in the Act, to implement agreements or cooperation contracts held by the government can be found in several rules, namely:

1. The judgment of the Indonesian Republic's finance minister Number 248 / kmk.04 / 1995 concerning Income Tax

Treatment for Parties that Perform Cooperation in the Form of Build, Use, Build Operate and Transfer.

2. Government Regulation Number 6 of 2006 concerning Management of State / Regional Property Article 20.

Some of the main provisions that must be adhered to in the BOT are a period of no later than 30 years from the date the agreement is signed, the determination of the BOT partner is carried out through a tender by participating in at least 5 participants / interested parties, and the designated partners have an obligation to pay contributions to the cash account Countries/regions at the beginning of each year, do not guarantee or transfer BOT projects and maintain BOT objects to remain in good condition. With the implementation of this contract, the private sector finances, designs, builds, operates, and maintains infrastructure facilities within certain concession periods and ends with the delivery of facilities to the government without any compensation. The private sector receives revenue from the operation of infrastructure facilities during the concession period. The biggest advantage of BOT for the government is to move the risk to the private sector in the construction of government facilities. At the end of the concession period, the government will inherit a project that has been proven to be operationalized well without investing public funds. This is very appropriate if the government budget is limited.

In addition, there are several other benefits that the government has obtained in development projects with the BOT pattern, namely:

1. Obtain new sources of capital from the private sector in order to reduce government loans and direct expenditures, which are likely to improve the value of government debt.
2. Accelerate the construction of projects without having to wait for the acquisition of substantial funds.
3. Use the expertise of the private sector to reduce construction costs, shorten the schedule and efficiency of operating the project.
4. Allocation of risks and project costs to the private sector.

4. DISCUSSION

Traditional markets are meeting places for sellers and buyers to make transactions. However, the traditional market conditions in Bandung still leave many problems with poor stigmatization, including conditions that are poorly organized with the characteristics of scattered garbage, muddy, slum, stinging odors, and minimal security systems. It is done with a less attractive physical appearance, coupled with the reality of modern market growth that is growing rapidly, making the existence of traditional markets in the city of Bandung increasingly marginalized and experiencing a decline in competitiveness. Almost all traditional markets in Bandung are still struggling with internal market problems such as poor management,

minimal facilities, and infrastructure, being targeted for receipt of retribution, mushrooming street vendors (PKL), and lack of capital assistance.

According to GUIDO & MARCO (2017) common problems faced by traditional markets are :

1. The number of traders who are not accommodated in the market;
2. The traditional market stigma that has a slum impression;
3. Fast food merchandise has a less hygienic impression;
4. Modern markets that are widely grown and developed are serious competitors in traditional markets;

With the existing problems, are making traditional markets have to struggle to maintain their existence in the midst of a modern market that promises better service, with a clean and comfortable atmosphere, and merchandise that is not much different from what is traded in traditional markets. But in addition, besides the weaknesses they have, the existence of traditional markets is still needed by the community and is expected to be able to provide benefits to buyers, traders, market managers, and the city government. One of the demands of the public for public services at the present time is an increase in service quality,

therefore market managers are required to be able to manage the market well and provide services as expected by the community.

With good market management, market managers, buyers, traders, and the community will get a benefit. For market and city government managers, the benefits of developing and promoting local traditional products, managing market waste, optimizing and efficiency in market management, opportunities to get appreciation from individuals, government institutions or other institutions, increasing buyers and increasing Regional Budget Revenues (PAD). For buyers, they will get convenience in obtaining clean and healthy needs and raw materials, obtain comfort and security guarantees, and get protection for their rights. For traders, it is expected that they will get better facility services, get comfort and security, get protection for their rights, increase the number of buyers and increase revenue. The benefits for the community around the market are by channeling local products, absorbing local resources, managing the impact of pollution on market activities and managing transportation access.

In order to compete with the modern market, traditional markets must do development and expansion, one way is by renovating the market building so that its impression is no longer seedy, chaotic and muddy. The importance of developing traditional markets is because of the growing need for community needs and the inadequate conditions of traditional markets so that arrangements are needed to improve urban spatial planning and increase revenue for the regions. The importance of developing traditional markets is because more of

community needs and the inadequate conditions of traditional markets so that arrangements are needed to improve urban spatial planning and increase revenue for the regions. In addition, the construction of traditional markets is one of the ways to save traditional markets which have been an economic diver of regional economies so that consumers will not abandon them because of the proliferation of modern markets in recent years.

But with limited funds, it is not possible to build traditional markets by using funds from the Regional Budget (APBD), so that new patterns are needed as alternative funding that involves the private sector in infrastructure development. The cooperation is manifested in the form of an agreement. The form of cooperation that exists between the City Government of Bandung and the private sector is through the Build Operate Transfer (BOT) agreement.

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