

CONDITIONS of COLLABORATIVE NEGOTIATION within PUBLIC PRIVATE PARTNERSHIP in INDONESIA

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Abstracts:

The capability of Indonesia's budget to fulfill the need of infrastructure development are only one third from the need of annual infrastructure budget. Coping with such budget deficiencies, the role of private sector are substantively inevitable. Central government already anticipated it by submit the Presidential Decree No. 67/2005 to regulate the Infrastructure Development through Public Private Partnership and further revised by the New Presidential Decree No. 13/2010. This is the milestone of Infrastructure Development in Indonesia. Through this regulation 'the mind set' of government officials to prepare the infrastructure development are now shifting from the 'state welfare' to the 'open market'. Negotiation Approach to interact among actors in 'State welfare' are shifting from forcing and adversarial negotiation to collaborative negotiation at an 'open market' era. Changing the role of government officials to negotiate from adversarial to collaborative are intriguingly very interesting to be explored. Conventional infrastructure procurement system which has an orientation in short term (by project) will be shifting to the long term partnership. From eleven project of public private partnership in Indonesia during the last five year (after 2005) mostly in status of delay. Only five PPP projects are ready to offer such as Tanah Ampo Cruise Terminal Bali, Medan to Kualanamu Toll Road North Sumatra, Sukarno Hatta International Airport Railway Jakarta, Umbulan Spring Water East Java, Central Jawa Coal Fired Steam Power Plant Pemasang will be signed for this coming 2011-2012 term year. Some causes of why the project in delay are not because of the common condition only, but also caused by some specific condition. Some common condition influence the effectiveness of negotiation are culture and interpersonal valence, while the specific conditions influence the effectiveness of negotiation are attention, endurance and sense of crisis.

***Keywords:** Public Private Partnership, Infrastructure Development, Collaborative Negotiation,*

INTRODUCTION

1. Backgrounds

The milestone of Infrastructure development in Indonesia were marked when in the year of 2005 Central Government through Presidential decree no 67/2005 regulate the Infrastructure Development through Public Private Partnership. The mind set of infrastructure development in Indonesia can be divided by the conventional style (before the presidential decree 2005) and the new alternative (after the presidential decree 2005). The new alternative for infrastructure development are initiated when the central government introduced the regulation of public private partnership for infrastructure development.

The old Infrastructure Development in Indonesia (before the regulation of 2005):

- a. The orientation of Infrastructure Development are short term and quick yielding (one year budgeting time cycle)
- b. Kind of development: project orientation or physical or construction project.
- c. Source of fund are supported by the public budget which can be national budget, provincial project and district or city/town budget. If there are some kind of loan and grant from other sources it should be proceed by formal government procedural budgeting system also.
- d. The procurement system generally output-oriented target system.
- e. The payment executed based on the physical output target term (availability of payment) which are already negotiated before the agreement contract signed by both side (government versus contractor).
- f. The responsibility of partner are to the government (where the contract signed) not to the public or to the society where the infrastructure used (attach to the user).

The new alternative Infrastructure Development (after the regulation of 2005):

- a. The orientation of Infrastructure Development are for long term (20 years or it can be 30 years) depend on how significance the project is to be utilized in society according to the kind of characters of infrastructure in term of life-cycle, risk factors, investment design, political perspectives, environmental perspectives and also the social disputes tension or people resistance to the project.
- b. The kind of development: long term in collaboration which is not only for the construction of the project but also for the long term of usage of the project used by the user (people and society) although the contract by the government on behalf of the people.
- c. Not only supported by the government budget but also by the other side of investor (bond) or lender (bank), which can opened to the kind of capital but also by the kind of partnership (with the private sectors). Kind of capital can be by obligation or by bond (people can chose which obligation in infrastructure they prefer to buy) , capital sharing (like in one province of West Java the local government share the capital for infrastructure development by initiated the local company for infrastructure development).
- d. The procurement system are not only based on output of the project but also based on the performance or the quality of the project.
- e. The payment are also based on the quality given by the project in the long term contract.

- f. The risk of the project are distributed to the private company which already binding legally in the long term contract.

What the significant changing needed after the presidential decree 67/2005 for the new alternative of infrastructure development through the public private partnership in Indonesia are some of the significant thing in the kind of payment structure and in the kind service-fee mechanism. Payment structure will be executed based on the service fee mechanism received by the society who used the facility developed or constructed by the private. When the society or people received the service from the infrastructure (the private built) they will account the value of money they give or they pay to receive the service from the quality they received. It was fair for business but it wasn't fair for public administration. There should be mutual understanding among all parties or among all actors involved directly or indirectly to the project. Collaborative negotiation should be play in significant role for infrastructure development during the new style of presidential decree.

How much money the user should pay for the quality of services they received are can be: directly pay (by the user) or can be indirectly pay (by the government) through the shadow price (the government pay for the private services). But such payment mechanism are still not decided yet by some government regulation. Usage-based payment are should be negotiated after some kind of guideline (as yard stick) already held by all parties in negotiation. If there is no kind of understanding among actors to be involved in the project there are still will be some probability of fail in negotiation to be. Interest among actor in negotiation should be understandable and for that kind negotiation, the approach of BATNA (Best Alternative to the Negotiation Agreement) can be one alternative for the Negotiation. But how about if there is one among actor in negotiation stay in NYMBY (Not in my back yard) paradigm to interact among them. There should be any interest of collaboration among them to find the best way to decide the agreement for the quality of service they make to be agreed.

2. Changing the Outcomes of Services Quality for Public Facilities

There are seven doctrinal components inside of Reinventing Government quoted by Osborne (1992) if we talk about 'New Public Management' such as (1) professional & proactive management (2) explicitly measureable performance praxis (3) toward 'outcomes' than 'inputs' (4) disaggregation of large units (5) very competitive (6) tend to adoption of private sector management style (7) financially rigor. Public services as mention before in what Osborne quoted in New Public Management is still far beyond of it if traditionally the government keep depend on the conventional style in bureaucratic on administration and management. From the conventional paradigm to the new public management in the year of 2005, the government launched the presidential decree no 67/2005 & presidential decree no

13/2010 to boost the public services (facilities development) by regulate the public private partnership in infrastructure development. On such decree, the government still prioritizing for only certain kind of infrastructure such as toll way road, telecommunication infrastructure, energy & electrical, oil & gas infrastructure, port & harbor, airport and water resources.

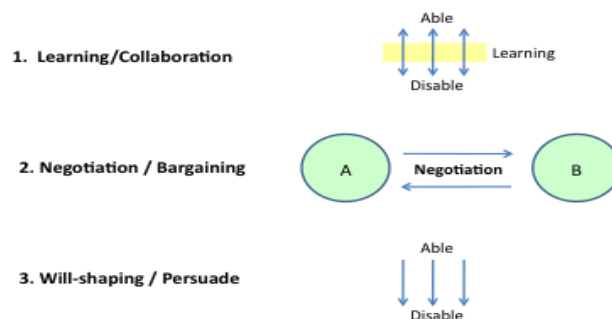
What the changes happened when the regulation introduce, are in the kind of position between public versus private which is eventually became interdependence among them in the kind of condition such as (1) changes in interaction (2) changes in interest (3) changes in communication (4) changes in dialogue and one of the intriguing condition is (5) changes in pattern of negotiation. Public and private both become interdependence but in fact because it was the long time lasting before the regulation submit the mind set of public & private are still influences by the old mind style . The government (or public) are still as regulator and the private are still as an actuator. Transitionally the position, interest and trust are stay in up and down and also go and forth arise in relation among public and private. Both parties sitting in the same position to decide the agreement, but both parties are look awkward and look very careful to understand each other what the interests of other parties is. The decision making process are become the lasting time need for the sake of how to understand each other interest. For this reason the partnership are take an extra time to decide but for that reason also this could be understandable as an responsibility of awareness. For that reason also partnership can be defined as the way how to get the best quality and as the way how to make a long-term agreement between public and private to provide services for the public facilities and interest.

For that kind of reason also why negotiation become the vital point for partnership, not only because the kind of investment and long-term agreement between parties are bindingly regulated, but also because the complexity and the punctuality of items to be agreed among parties are should be mentioned in the contract agreement. The smart negotiator in public private partnership project should use every kind of possibilities in negotiation for inviting every kind of parties legally binding in one commitment to consequently running the agreement for the future. In the beginning this is very difficult to fulfill because since 2005 we found nothing to legally adopted as regulation for such agreement. The purpose of good negotiator in this case are emerge as mediator to make an agreement with all parties whom to commit to get all content to follow what mention inside the agreement. To cope with such complexity we have to understand the collaborative negotiation to find the better understanding interaction among parties in partnership.

3. Why Negotiation in Public Private Partnership should be Collaborative

The output of negotiation process is agreement in the context of making decision for parties which exist when the differences or split interest emerge or sometimes conflicting one to each other which should be resolved by negotiation to put inside every differences in one agreement. Not in my back yard (NIMBY) emerge when the negative reciprocity among parties stand in front of someone interest. Negative reciprocity are related to the negative valence which create the aversion of actors such as anger and fear to make decision in agreement. All parties get an agreement when positive reciprocity among actors exist and emerge in the positive valence which create the attractiveness and joy to make decision in agreement. The theory is paradoxically and un-comparable among the good and the bad one, because in negotiation all parties should be stay in the same position level.

We can see that if collaborative and learning process is interaction between the able and the disable parties, then in negotiation an interaction among party emerge because sometime someone has an ability and sometime has an disability. While on the other hand 'will shaping' or persuasion process is interaction between the able parties persuade the disable parties to follow the agreement for both interest. We can make a premise that in the partnership an optimal interaction among parties can be fulfilled if we use the negotiation strategy, rather than persuasion strategy or learning strategy.



Graph: Pattern of Interaction among Parties

Collaborative negotiation is one from five the possibilities of negotiation strategy in the context of cooperativeness and aversion tactics of negotiation from other four tactics and strategies such as forcing strategy, compromising strategy, accommodating strategy and avoiding strategy. Collaborative Negotiation strategy are in the grade of very cooperative and very integrative strategy in making decision for an agreement, while avoiding strategy are in the grade of very uncooperative and very distributive approach in negotiation strategy. In the context of partnership (public private partnership) avoiding strategy will became fail or abort in agreement (or NIMBY) if there is no some significant external power infiltrate to find the

reason of why failure happened on agreement. Avoiding strategy usually using power and political leverage to decide an agreement among parties, but for the long term the avoiding strategy will be very risky to be adopted because there are some possibilities of changes happened in the long term. The longer term agreement are very risky to commit because the more possibilities of change will be happened for adjustment someday and for that reason why there will be some strong commitment is needed to commit the policy to follow.

Compromising negotiation strategy are in the position of moderate in cooperation and aversion. Each parties compromising to decide the agreement, for some degrees one parties can sacrifice their interest to get better deal from other interest. Nearly equal to accommodating negotiation, which some parties receive the deal from other sacrifice of their interest. Whether compromising and accommodating negotiation strategy both are fit in the context of partnership (public private partnership) these are all depend on some praxis of variable or conditions to be considered. For the countries where the partnership just initiated in the beginning stage, the preference of using collaborative negotiation are more fit to be adopted than compromising and accommodating negotiation strategy. Some strong commitment are needed to be held for the reason of each parties are in the vulnerable position in making decision. Such theory are anticipated suit just for the beginning stage of partnership and could be adjusted for later stage after some parties reciprocally knowing each other in depth.

Collaborative negotiation strategy and tactics in making a decision for agreement are required in the early stage of partnership. As why it is required, the strong commitment and cooperation are very crucial to make in dealing the project, for such purpose all actors should be maintained in making the negotiation, tactics and strategy and this is absolutely required. We can say compromising and accommodating or forcing and avoiding strategy as an alternative to make decision in partnership, but in the early stage of interaction some prerequisite to make a decision are as a 'must factors' to be understandable by all parties. In the long-term management process some kind on interaction should be maintained to make the project more effective in the future.

In the early stage of public private partnership project, the collaborative negotiation strategy are strongly required and later the compromising, accommodating and adversarial negotiation strategy could be significantly used eventually by some parties to make better combination for some reasons. This is very substantial to understand for all parties if we want to make an effective agenda for the project than we could be consistently followed the schedule. The project can be on schedule if negotiation team can make better condition for all strategy and tactics being implemented through smart condition.

4. What conditions influence the decision in Negotiation.

There are Peter Anderson's Cognitive Valence Theory (1993) in Communication says the variable or conditions of Culture, Personality, Relationship, Interpersonal Valence, State and Situation could influence the communication in dyad relationship. The theory says that there are some variable or conditions could influence the decision making in negotiation among two actors and such conditions could create the positive valence and the negative valence. Positive valence influence the attractiveness of actor to another's such as attractiveness and feel happy to make an agreement. While on the other hand some negative valence could influence the aversion among actors such as adversarial to make a decision and that could be no agreement between them.

Partnership among two parties (public versus private) are involving more than a dozen of actors to cooperate and interact one to each other making reciprocity to make a decision for an agreement. In depth variable of negotiation for collaborative strategy need more specific parameter such as a ability, knowledge, professionalism, sense of crisis, attention, endurance, responsibility, commitment and will. There will be a combination of some variable or condition we have to understand why negotiation fail to grasp or delay to decide. Effective negotiation through collaborative strategy in partnership are mostly influenced by common variable or condition (culture, personality, relationship, interpersonal valence state and situation) and also influenced by combination among specific variable or condition (ability, knowledge, professionalism, sense of crisis, attention, endurance responsibility, commitment & will).

What kind of collaborative negotiation being needed by actors to reach there should be some guideline as follow: (1) there should be an mutual interaction among actors (2) there should be two way of communication among them (3) there should be an conversation or statement among actors (4) there should be an inverse or impulse to make better condition (5) there should be an invert to change or innovation in it (6) there should be an cross-exchange or give and take about small thing to a significant thing. The need of skill, strategy and tactics in negotiation as mentioned before are as a 'must condition' to all actors who participate as a negotiation team in partnership project.

5. Public Private Partnership in Indonesia

Actually Public Private Partnership concept already adopted in Indonesia since 1991 when public and private company developed the toll road from Surabaya to Gresik (21 kilometer with concession period 25 year through 2016) with BOT scheme (Built-Operate-Transfer) between PT Margabumi Matraraya with Jasa Marga (on behalf of Government as National

Public Owned Company in Toll way Road). Until the year of 2010 there are already 24 toll road operated with concept of Public Private Partnership with total length 697 kilometer. The latest toll road Sentul Selatan to Kedung Halang with the length of 3,65 kilometer just officially used since October 23th 2010 are partnership between PT Jasa Sarana (on behalf of Jawa Barat Provincial Owned Company in Infrastructure Development) with the private PT Marga Sarana Jabar with the operation concession period 30 year. Since 2010, the government already signed the contract of toll road with some private company (with the public private partnership scheme) for total of 27 toll way road with length of 1009 kilometer some of it are toll road Cikampek-Palimanan (116 kilometer), Solo-Ngawi (90 kilometer), Ngawi-Kertosono (87 kilometer), Semarang-Solo (75 kilometer), Semarang-Batang (75 kilometer), Pejagan-Pemalang (57 kilometer), Ciawi-Sukabumi (54 kilometer).

Public private partnership for sea port and harbor already adopted since 1995 with concept of ROT (Rehabilitation-Operate-Transfer) in Container Port of Koja Jakarta between PT Hutchinson Whampoa (Private Consortium) with PT. Pelindo (National Public Owned Company in Sea Port) for concession period of 20 years. BOO scheme (Build-Operate-Own) for sea port also already adopted since 1995 for special purpose 'Coal Harbor' between directorate general of sea transportation with private consortium company PT Dermaga Prakasa Pratama. BOO scheme also in East Kalimantan for Bulk Terminal between PT Terminal Indonesia Bulk (representative of directorate general of sea transportation=DGST) with the private consortium PT Adaro Energy. ROT scheme (Rehabilitation-Operate-Transfer) in sea transportation of container port terminal Makassar (South Sulawesi) in 2003 between government (DGST) with private consortium PT ICTSI for concession contract 10 years. Prospective contract using public private partnership in the year 2011 are the development of International Airport of Kertajati, Majalengka, West Java. Sentani Airport Jayapura Papua, Juwata Airport Tarakan East Kalimantan, Sultan Thaha Airport in Jambi.

Until this year (2011) there are eleven public private partnership scheme are in the stage of 'pre-feasibility study' such as:

1. Integrated Land Port Gedebage Bandung (West Java)
2. Banda Aceh Infrastructure Redevelopment (Aceh)
3. Multi-mode Terminal Palembang (South Sumatera)
4. Cargo Terminal Pekanbaru (Riau)
5. Clean Water Serang (Banten)
6. Clean Water of Palu (Central Sulawesi)
7. Clean Water Lamongan (East Java)
8. Revitalization of Malioboro Station (Jogjakarta)
9. Spring Water Krabayakan Malang (East Java)

10. Drainage Installation Southern Cimahi (West Java)

11. Clean Water Cimahi (West Java).

From such how intensive the public private partnership scheme are nowadays to be developed, some hinderance still occur in making partnership among parties because of some split interest and lost of trust among them. One of the problems are in difficulties to make a decision caused by the weakness of negotiation capabilities among actors. Conventional and conservatives mind which set by government as representative of public interest look likes a body of power which has a strong authority in making decision to run the infrastructure development, while in partnership the equal standing position are still as a basic point to make an agreement. For the current situation after the revision of presidential decree no 13 in the year of 2010, the mind set of each parties are looked be under collaborative relationship. This phenomenon could bring all parties to understand how 'win-win' situation can be adopted as an target to develop the deficiencies of infrastructure development in the future.

6. Collaborative Negotiation in Public Private Partnership

Until in the year of 2011 most of the agenda public private partnership project in Indonesia are in the position of delay (out of the schedule). Negotiation process generally takes more than two year long lasting period of time. From about more than a dozen agenda to be committed by all parties most of the agenda are in the position of delay (out of time). Changing mind set are not as a simple as what the regulation purpose to be adopted by all parties in the project, because some revision to other regulation and procedure must be follow to adjust within the partnership scheme. One example of the problem are in the procurement system for infrastructure development which must be adjusted (and just being revised in the year of 2010 through presidential decree no 54 / 2010).

Public private partnership scheme for infrastructure development in Indonesia are still a new concept and still gradually being adopted by consortium company. For such awareness the way of how each parties interact to communicate and making decision in negotiation are very substantial in finding the best strategy and tactics. The collaborative negotiation for public private partnership are required in the early stage of the project. An effective negotiation must be fitted if the parties are awkward to make a decision, and for that reason the collaborative negotiation are fundamentally required to make public private partnership being proceeded in an effective way.

From eleven project of public private partnership in Indonesia mostly in status of delay. Nowadays, the central government is unlikely to tender five infrastructure projects worth

\$4.44 billion that were offered through a pilot projects of public-private partnership program. The projects to be offered in this year 2011 were a railway project to connect Soekarno-Hatta International Airport to Manggarai in South Jakarta (\$735 million), the Tanah Ampo Cruise Terminal in Bali (\$24 million), the Medan-Kuala Namu toll road in North Sumatra (\$475 million), the Umbulan water plant in Pasuruan, East Java, (\$200 million) and a 2,000 megawatt coal-fired power plant in Central Java (\$3 billion). **The government has targeted a total of \$160 billion in infrastructure investment to boost economic growth through 2015, with hopes that 42.8 percent of the funding will be come through the partnerships.**

There are some differences between the conventional project and PPP projects. Conventional project are how to provide the infrastructure by provide the building after the construction accomplished, next will be another contract being provided for maintenance and operation. The conventional scheme are project oriented and the mind set are how to build not how to use it. Developer don't want to know how to use it, how to operate it and how to maintain it, because the contract to government is how to build the infrastructure only. The quality of building in conventional scheme are lower and very risky and can't perform for the very certain period of time. We usually find: after the very short time (say one to five year after the hands over of the contract) the construction are deteriorated and even ruined drastically because of the very poor quality.

PPP project scheme are designated for the long term of contract, and the construction being handed over to the government after 15 to 30 years of time. The PPP contract will be accomplish after the construction of infrastructure including the operation and maintenance attached to the agreement can be runed normally. The performance of projects should be functioned based on contract and should be performed under what the agreement content inside articles on contract. Agreement on contract in PPP project are long term and payment mechanism within the project are being fulfilled based on performance quality. The articles on the contract should be very detail and accountable for performance.

Nowadays the central government (for PPP's purpose) offering some conditions to private company along with helping to navigate the maze of regulations that presume often come up to impede the opportunities. The BKPM (National Coordinating Investment Board) appointed as the "front office" for marketing and registering PPP projects, seeking an easier way for investors to secure permits, as dealing with local governments which is often a time-consuming, frustrating process that is widely seen as a deterrent to investment, because of complicated procedures. The BAPPENAS (National Development Planning Board) has a big role to prepare the planning phase, preparation phase, transaction phase and contracting

phase. Planning process and procedures are including choosing the kind of PPP scheme, determine the project and setting the criteria. Preparation process and procedures are preparing pre-feasibility study, possibility of funding and regulation scheme. Transaction process and procedures including prequalification and determine the consortium company (special purpose company). Contracting process and procedures are the final phase of documentation of contract including the bank and investment document, guarantee and insurance document, rule and regulation document and other derivation or supplement contract document.

The government has about 79 projects it intends to offer through the PPP scheme, but the slow pace of implementation need some revision of regulation with changes in the land acquisition law, which are expected to be approved by lawmakers (DPR or Central Legislative and DPRD or Local Legislative). From such 79 PPP projects in Indonesia, the government classified it as three categories such as ready to offer project (13 project consist of 5 project by central government and 8 project by local government), priority project (21 project consist of 18 project by central government and 3 project by local government), potential project (45 project consist of 15 project by central government and 30 project by local government). All the 79 PPP project are already propose since the term 2007-2008, means already three to four year lasting.

The reason of why most of the project was delayed are caused by the common condition and also by some the specific condition. Common or general condition are influenced by the effectiveness of negotiation such as culture and interpersonal valence, while the specific condition are influenced by the effectiveness of negotiation such as attention, endurance and sense of crisis. The phenomena of negotiation in public private partnership slightly has a varieties among areas in eastern part and western part of Indonesia which influenced by culture and personality.

General Condition & Specific Condition of Collaborative Negotiation

General Condition	Specific Condition
1. Culture	1. Ability & Capability
2. Personality	2. Sense of Crisis
3. Relationship	3. Knowledge
4. State	4. Professionalism
5. Situation	5. Attention
6. Inter Personal Valence	6. Endurance
	7. Responsibility
	8. Commitment
	9. Willingness

7. Conclusion

Negotiation in the public private partnership scheme are very intriguing topic to talk, because we are talking about the strategy and tactic which must be chose by parties. From 79 PPP projects in Indonesia, mostly need about three to four years of preparation until the project financially closed. This is beyond the schedule, which is more than one year from predicted preparation or about two to three years of preparation. Both parties in PPP project need some strategy to negotiate to make all the program being deal in time. From some strategy of negotiation such as avoiding strategy, accommodating strategy, compromising strategy and forcing strategy; than the collaborative strategy are considered more suitable and eligible being used in the very early stage of PPP project. The effectiveness of collaborative negotiation strategy are influenced by common condition such as culture, personality, interpersonal valence, situation, state and relationship and also by specific condition such as knowledge, ability, professionalism, sense of crisis, attention, endurance, responsibility, commitment & will.

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