

The Partnership Agreement between Banda Aceh Municipality and Private Parties

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Abstract: Public Private Partnership (PPP) as a concept must be able to face the new era of disruption caused by the Fourth Industrial Revolution (4IR). For this reason, it is necessary to re-examine and renew the legal and economic paradigm. Public Private Partnership (PPP) is an effort to improve the community's economy, such as infrastructure development. Infrastructure development need very large budget, so it requires cooperation with the private sector. The Build Operate and Transfer (BOT) contract collaboration is a new project financing model that is not only benefits the contracted parties, but have benefits the public interest also. The purpose of this study is to determine the increase in Indonesia's readiness to participate in 4IR and the impact of the Build Operate and Transfer (BOT) cooperation agreement on infrastructure development in the Aceh region. The research method used is juridical normative by using secondary data as the main data in the form of a Build Operate and Transfer (BOT) contract, as well as empirical data issued by the World Economic Forum (Global Competitiveness 2018) to measure readiness in facing 4IR. The results of this study showed overall the method of measuring Indonesia's readiness to participate in 4IR has increased, with the ratio of the country increasing from 47 to 45 while for the institutional pillar, the capacity of the legal and regulatory framework has increased from 40 to 37. BOT contract between the government and the private sector in large-scale infrastructure development have a positive impact on society. The conclusion of this research is optimistically that the Indonesian state is ready to participate in the 4th Industrial Revolution and there is no need for a legal vacuum to transplant legal movements, but still reconceptualize the Public Private Partnership (PPP) with the Build Operate and Transfer (BOT) Contract to pursue the effectiveness of the law framework.

Keywords: Partnership Agreement-- Banda Aceh Municipality Private Parties

I. INTRODUCTION

Since the last decade, some technologies have affected our lives. Every new innovation and technology that will come will changes in society, like attitude, way of life, way of thinking, and et cetera. Between the major changes that are important in human society is the way humans interact with each other, and now involves technology which was previously unknown [1].

The 4th Industrial Revolution (4IR), societies have new situations and conditions. The 4IR revolution has come and

lives that make affects the live around the world, and provides new opportunities for individual development, for governments, and also for businesses. However, It can threaten divergence and new polarization in the economy and society.

The Indonesian government has carried out economic development in all regions including regional governments in the western most province of Indonesia, namely Nangroe Aceh Darussalam. The government continues to develop infrastructure for facilities to fulfill community needs. However, because the limited government funds, infrastructure development has become hampered. So governments have to cooperation with investors to build and develop infrastructure. This is a practical action taken by the government to fulfill the increasingly high and diverse needs of society.

To realize the development of infrastructure and services in order for people's welfare, the concept of Public Private Partnership (PPP) emerged, which is a concept of cooperation between the government and the private sector to fulfill the community. The Build Operate Transfer (BOT) contract reflects the concept of public private partnership. BOT is an alternative financing mechanism in the provision of public service infrastructure and has been widely used in several countries including Indonesia. In Indonesia, the BOT contract is an agreement that must be signed to bind the government and private parties within the scope of the applicable law [2].

The law constitution, government regulations, presidential regulations, and regional regulations have become the legal protection for cooperation agreements between the government and the private sector. It is an empirical fact that BOT contracts are still not fully good regulated, so can resulting in conflicts because regulatory ambiguity and misinterpretation in practice and finally influencing various regulations.

A. Economic Perspective

According to Teich et all, the term 'industrial revolution' has been coined as early as in 1799 by Louis-Guillaume Otto, which mentioned that France had joined the race to industrialize. After several decades and types of industrial revolutions, it is now entering the fourth phase, which is called the Fourth Industrial Revolution (FIR) [2]. According

to Prof Schwab, Industrial Revolution has describe as follow: "Today we are in an era of technological revolution that can change your lives, occupation and all of which have a relationship each other. In this case the scope and complexity and will not transform as humans have so far experienced. We also don't know exactly how this will happen, but one thing for sure that the response must be integrated and comprehensive and involve all parts of global political stakeholders and from the public sector and private parties to academics to civil society."

In deep explanation Schwab mention: "The First Industrial Revolution used water and steam power to mechanize production. The Second used electric power to create mass production. The Third used electronics and information technology to automate production. Now a Fourth Industrial Revolution is building on the Third, the digital revolution that has been occurring since the middle of the last century. It is characterized by a fusion of technologies that is blurring the lines between the physical, digital, and biological spheres. There are three reasons why today's transformations represent not merely a prolongation of the Third Industrial Revolution but rather the arrival of a Fourth and distinct one: velocity, scope, and systems impact. The speed of current breakthroughs has no historical precedent. When compared with previous industrial revolutions, the Fourth is evolving at an exponential rather than a linear pace. Moreover, it is disrupting almost every industry in every country. And the breadth and depth of these changes herald the transformation of entire systems of production, management, and governance

These developments 4IR and the consequences of the Great Recession - redefined the path to prosperity and, indeed, the notion of prosperity, with profound implications for policy making. Caring leaders grapple for answers and solutions, aiming to go beyond short-term reactionary steps.

B. Legal Perspective

Legal Perspective in this case grows and develops from the community itself (inner necessity). Von Savigny's view is a new view to see the law rooted in people's lives. Before the Von Savigny era, law had been studied as the root of natural law or right reasoning or from legal positivism, as the will of the sovereign. According to Von Savigny, the source of law is people's lives.

According to Von Savigny, the legal perspective (referred to as The Law and / or all powerful instruments) is a product of community life as a manifestation of people's enthusiasm. Thus the source is public awareness itself in general. When communities live together, the spirit of unity allows it to be expressed in language, method, ethics and law. This unity was preserved by tradition by later generations. It runs slowly and requires a long process. There are at least 3 steps that must be determined, namely (1) Political elements - these are legal principles that are not contained in statutory regulations but are part of national beliefs (volksglauben); (2) The technical

element of legal skills - codification is possible if legal skills are well developed; (3) Loss of national identity.

C. Law And Economic Perspective

In law and economics, there are two characteristics, namely the rational maximization of individuals who take part in the economic field, whereas in the field of law, these individuals are bound by legal norms that demand fairness for all members of society. Public. According to Daniel Little, social phenomena are the result of various human activities, while humans are agents whose behavior is based on beliefs, meanings, values, goals and prohibitions as well as standards. Humans are living beings who deliberately act based on reason. "

The Chicago approach is carried out by analyzing micro-economic problems directly to the law, where rational individuals who maximize satisfaction and response to prices, with legal decisions will produce efficiency. The Chicago Approach has made the statement: The most decisive character of the Chicago approach, its direct application to microeconomic analysis or the so-called price-to-law theory. Therefore, this approach can be assumed as follows: (a) Each individual will maximize his desire according to what the market can provide, (b) Each individual will respond to prices according to market behavior, then (c) Legal regulations and the law of consequences can occur based on the validity of the applicable law, therefore there is a normative perception which explains that legal decision making must be based on the accuracy of the law that is enforced.

The relationship between economic behavior and norms that can be called illegal in this case is contrary to the prevailing norms. However, in the economic approach, behavior can change to be rational even though this is contrary to social norms: The behavior of a "rational" person from an economic level is different from someone who is "reasonable". Based on the theory contained in traditional law, it states that the norm socializing to individuals and communities from a convention, and behavior in accordance with norms. Law can be called a reflection of these norms and conventions. Therefore it must be obeyed for those who think. People who carry out illegal activities make no sense because they have violated these norms and conventions. Furthermore, it is contrary to what has been stated that the behavioral economic approach is that behavior is rational, contrary to social norms.

It is increasingly recognized that law plays an important role in economic development. By establishing constraints, both legal (laws and enforcement mechanisms) and informal (norms of behaviors), institutions determine the context in which individuals organize themselves and their economic activity. Institutions impact productivity, mainly through providing incentives and reducing uncertainties.

Changes in the law and legal institutions are associated with the legal transplant phenomenon. Steven J. Heim explained that "legal transplantation" refers to the "movement" of legal

or specific norms between countries in the period of law-making law reform. Legal transplants are used to determine the suitability of foreign legal concepts or the quality of foreign laws. The advantages of a foreign legal system is to provide legal thoughts from abroad. So in legal transplantation there are several theories that can be used as a basis for using and implementing foreign laws or legal systems in a country. In Indonesian, even though substantive laws and legal institutions have responded to economic policies, is Indonesia ready to face the challenges in the era of the industrial revolution 4.0?

D. Reconceptualizing Public Private Partnership PPP Regulations

In the legal and economic paradigm, PPP partnership is mostly agreed upon by economic policies. Based on research by the Asian Development Bank (ADB) quoted by HikmahantoJuwana, it was stated that legal institutions in the Asian region experienced changes which were a manifestation of a response to economic policy. In his lecture at the research approval event at the Asian Development Bank in Asia (6) countries in Asia (The Fed). When introducing economic policies, laws and also their participation in the matter of economic development in the Asian region, it becomes more directed towards the Western economic system. This does not apply to law substantially, but the course of the legal process and legal institutions also changes”.

II. RESEARCH METHODS

This study is done qualitatively. A qualitative method was implemented to explore more in-depth rich data for the study (Creswell, 2012). In legal research, libraries play a major role, because of places where various legal materials can be accessed easily and quickly. The library stores collections, both printed and electronic material scan be accessed online through the Internet which is connected to various networks and databases.

The first objective of this study is qualitative method will explore sufficient empirical data released by the World Economic Forum on The Global Competitiveness Report 2018 compared to the last one in the series. This valuable report represents an Analysis based on a methodology that integrates the latest statistics from international organizations and executive surveys. The methodology developed in collaboration with leading experts and practitioners through a three-year consultation process designed to support countries in identifying relevant policies.

The Global Competitiveness Report is designed to help policy-makers, business leaders and other stakeholders around the world make a strategy in improving their economy in the period of the 4th Industrial Revolution. We hope it will also serve as a call to action to engage in the long-term, holistic, agile and far-sighted leadership required to build the competitive economies of the future, lift living standards and provide opportunities for all members of society. There are as

many as 98 indicators contained in the index. And all of them are a combination of data from an international organization and also the results of a poll of opinions from the World Economic Executive forum. Based on these indicators, these are further compiled into 12 pillars in GCI 4.0, which displays the conditions of level and complexity that are driving productivity and the ecosystem of the supporting system. These are:

1. Institutions
2. Infrastructure
3. ICT Adoption
4. Macroeconomic Stability
5. Health
6. Skills
7. Product Market
8. Labour Market
9. Financial System
10. Market Size
11. Business Dynamism and
12. Innovation Capabilities

Competitiveness is an important starting point because it contributes to higher living standards and generates the resources needed for wider societal goals. There are, inevitably, tensions—social, economic, and environmental—between the various dimensions of economic progress. However, there are no inherent trade-offs among them. We believe that a competitiveness agenda is not just compatible but integral to the pursuit of other developmental goals.

Furthermore, the second objective of this study is to measure the level of efficiency of the legal framework based on regulations outside the Partnership Agreement between the Banda Aceh City Government and the private sector. In this case the qualitative research method digs deeper into the empirical data based on the Build Operate Transfer (BOT) contract agreement.

III. FINDING AND DISCUSSION

A. The Global Competitiveness Report 2018

The index integrates well-established aspects with new and emerging levers that drive productivity and growth. This supports role of human resources, innovation, resilience and agility, as not only drivers but also defining features of economic success in the 4IR. It calls for better use of technology for economic leap frogging—but also cautions that this is only possible as part of a holistic approach with other factors of competitiveness. Finally, it offers objective, data-driven analysis for dispassionate, future-oriented, and rational policy-making. Key to the report below is a new tool that represents the results obtained in analyzing the country, regionally and globally. The analysis based on the country is a reflection of the Indonesian state, including:

1. In general, the measurement of Indonesia's level of readiness in attending 4IR has progressed, rising

from 47 from 135 countries in 2017 to 45 from 140 countries in the world in 2018.

- Specifically in the institutional pillar, the efficiency of legal framework in challenging regulations also increased from 40 in 2017 to 37 in 2018.

B. Legal framework on Public Private Partnership between Banda Aceh Municipality and Private Parties

Law on Governing Aceh as lex specialist regulation for Aceh Province in Indonesia has stated:

- The Basic Principles of Economic Development. Economy shall constitute an economy that is open and without barriers to investment, as part of the national economic system. Economic affairs in Aceh shall be conducted based on a foundation of kinship and economic democracy, in accordance with the principles of solidarity, efficiency, justice, sustainability and environment-friendly, while maintaining a balance in the progress of districts / municipalities in Aceh. Economic enterprises in Aceh shall operate based on the principles of sustainable development and environmental preservation, respect of local community rights, provision of the broadest possible opportunities and access to financing to women-led enterprises, and provision of legal guarantees to entrepreneurs and employees.
- The Direction of the Economy. The Aceh economy shall be directed towards raising productivity and competitiveness in order to achieve prosperity and public welfare, while upholding the values of Islam, justice, equality, public participation, and efficiency within a system of sustainable development. Economic affairs in Aceh shall be conducted using natural and human resources through a process of creating maximum value added. The Aceh Government and district/municipality governments shall implement the simplification of regulations in order to create a conducive business climate for investment growth and other economic activities, in line with their authorities.

Highlighting Part Six of the Same Law on Trade and Investment Article 163 reads as follows: The Government, Aceh Government, and district/city governments ensure that the implementation of internal trade in Aceh is free from disturbances. This article immediately describes the current situation of 4IR readiness in Aceh. Regarding qanuns as a derivative of the legal framework contained in article 35 concerning qanuns, governor regulations and regent / mayor regulations. Article 232 (2) District / city qanuns are ratified by the regent / mayor after obtaining a joint agreement with the representative. The qanun as referred to in Article 232 comes into effect after it is promulgated in the Aceh Regional Gazette or the regency / city Regional Gazette.

Since this Law was release for publicity, it is need among 12 years later become clear the PPP regulation between Banda Aceh Municipality and Private Parties called Qanun Kota Banda Aceh Number 7 Of 2018 About Public Goods Management. This regulation consist the utilization and it Agreement formula,

- Leases*, is the utilization of public goods by private party within a certain period by receiving cash compensation.
- Loans and use*, is transfer of utilization of public goods among government within a certain period without receiving compensation and after that time period is returned to the Mayor.
- Cooperation Utilization*, is the utilization of public goods by private parties within a certain period in the framework of increasing regional non-tax revenue / regional income and other funding sources.
- Build Operate Transfer*, is the utilization of public goods in the form of land by private party by constructing buildings and / or facilities and facilities, then using these other parties within a certain agreed period of time, for the subsequent return of land and buildings and / or facilities the following facilities after the end of the term.
- Build Transfer Operate*, is the utilization of public goods in the form of land by private party by constructing buildings and / or facilities and facilities, and after the construction is given up for the other party to use it within the agreed period of time.
- Infrastructure Provision Cooperation* is collaboration between Banda Aceh Municipality and Business Entities or private parties for infrastructure supply activities in accordance with statutory regulations.

According to the analysis and interpretation of the author, in article 59 article (4) states that the Utilization of public good is done without requiring the approval of the representative. This is an important issue and is an obstacle to the legal framework against regulations outside the Banda Aceh City Government Partnership Agreement with Private Parties.

IV. CONCLUSION

In the 4th Industrial Revolution (4IR), all people in the world have entered a new phase. 4IR has provided concrete evidence for all people in the world, can create opportunities for business development, for governments and for individuals. However, it also threatens the divergence and new polarization that exists between the economy and society. Economic and law perspektive show the corresponding impacting on law and economic paradigm should enter into account. Governmental institution and private entities shall be pointing out of disrupting era as a challenge. According to

The Global Competitiveness 2018, which captures Indonesia's readiness, shows optimistic empirical data.

The signing of a civil cooperation agreement contract leads to cooperation between (regional) governments carried out by different legal subjects. The governor / regent / mayor should have the authority to sign civil law acts as the highest responsibility in regional government. Referring to the provisions of Article 24 and Article 25 of Law Number 1 Law no. Decree No. 32 of 2004 gave the status of an autonomous legal entity to regional heads to regulate and administer government affairs in order to protect the interests of the local community. Therefore, the person in charge of regional government needs to formulate a legal action on a public-private cooperation agreement because it will affect and become a burden on the community.

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