

**Build Operate Transfer (BOT): Does it Apply Universally?
The Case of Dinoyo Malang City Mall, Indonesia**

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Abstract

Politics change, so does public administration. The aim of this research is to evaluate the Build Operate Transfer (BOT) – based policy in the modernization of Dinoyo Traditional Market Malang city, East Java province, Indonesia. The research was conducted during 2017-2018. The research was based on a qualitative research design, and used in-depth interview, observation and documentation to collect data. Research results showed that the change in Indonesian political landscape that begin with the step down of President Soeharto from office in May 1998, also served as a milestone of radical change in public administration. The change in politics from authoritarianism towards democracy, also affected the way government is organized and the delivery of public services are delivered from an over centralized to a decentralized approach. The BOT scheme in the public service delivery, is a public private partnership arrangement, which is a new alternative available to deliver public services. The Dinoyo Traditional Market, which was developed by the central government in 1980s, has since been redeveloped to become a modern market that is today known as Malang City Mall. Under the BOT scheme, a group of private Indonesian Chinese investors financed the reconstruction of the market, and have the opportunity to operate the mall for a certain period, after which ownership will revert to the city government. Some of the adverse effects of BOT arrangement include decline in income of small traditional traders due to the loss of space to carry out their activities, marginalization of traditional tenants as their products are replaced by domestically manufactured and imported goods, caused disputes due to the feeling of unfairness.

Keywords: *built operate transfer (BOT), conflicts, good governance, modernization, political economy of development, traditional market*

INTRODUCTION

There is a symbiosis between rural and urban areas. Rural areas supply basic needs such as rice, vegetables and fruits, which urban dwellers buy to meet their basic needs while generating income for the former (Hlaing, Kamiyama, & Saito, 2017). Meanwhile, urban dwellers provide services, including education, medical services and manufactured products, which rural dwellers buy (Satterthwaite, McGranahan, & Tacoli, 2010). Thus, relations between urban and rural areas are mutual in nature, hence interdependent. One manifestation of interdependence between rural and urban areas is the existence of traditional markets (Castle, Wu, & Weber, 2011). Usually located in strategic parts of the city, traditional markets have served various roles for society, including meeting places, buying and selling merchandise, and sharing and exchange between urban and rural cultures. Nonetheless, traditional markets despite offering a variety of merchandise from rural areas to urban residents at affordable prices face an existential threat posed by modern markets who are better organized, managed, have better facilities, good sanitation, safety and security. It is in order to redress this problem that the Indonesian government since 1980s implemented traditional market revitalization policy, that continues to this day (Gunawan, 2018). Dinoyo traditional market is one of thousands traditional markets were affected by the revitalization program (Alamsyah, 2017).

Nonetheless, the management of the revitalization process right from bidding to execution, has come in for criticism, from some stakeholders who dissatisfied with the mechanisms used in the process. The objective of this research is to assess the impact of using BOT mechanism in revitalizing Dinoyo traditional market on relations among the three key stakeholders in the project, inter alia, traditional market tenants, private investors, and Malang city government.

Traditional markets, sell products

that are produced in rural areas to urban residents, serve as space for transactions and exchange between rural and urban dwellers, hence are essential for the survival and sustainability of residents in rural and urban areas. The New Order Regime, under President Suharto issued a presidential instruction that provided the legal foundation for the establishment of thousands of traditional markets during the 1980s in many urban areas in Indonesia. For that reason, traditional markets are also referred to as *Inpres* or presidential instruction Number 7 of 1982 about Market Development and Credits Assistance. Physically, traditional markets have simple structures that are characterized by open spaces traditional sellers display their produce and merchandize that are easily accessible to buyers (Sasanto & Yusuf, 2010). However, in general, traditional markets occupy strategic locations on state owned land. In relation to the management, most, if not all, of traditional markets have been put under the control of local governments

Another important characteristic of traditional markets is the priority they accord to small tenants, who are usually residents of the surrounding areas. Thus, traders with a lot of capital are not allowed to operate stalls in traditional markets. A thorough observation on the regular market activities have shown that based on the above management and ownership of stalls model, traditional markets have been successful in serving as a meeting place for traditional sellers and the lower income urban buyers (Aulawi, 2015) .

Traditional markets serve broadly two sets of customers. Some customers are attracted by cheap prices offered in traditional markets for basic necessities while another set of customers comprises those who buy products at cheap prices in traditional markets for reselling to high end customers near their residences and in modern shops (Sumintarsih, 2011). However, the performance of traditional markets has been bedeviled by poor management, disor-

ganized display of products in stalls, low hygiene, danger to the personal and property safety (pickpockets being a common problem) and product price fluctuations, and generally marginal incomes for tenants due to small margins. Thus, unlike modern markets such as Indomart, Alfamart, Giant and Hypermart, sellers and buyers of products in traditional markets face uncertainty of both product price and quality. Consequently, while some traditional tenants continued to sell their produce at increasingly low profit margins, the number of customers visiting traditional markets declined over time largely due to personal safety and health concerns (Rahayuningrum & Tjahya, n.d.).

To address the problem of decreasing public interest in traditional markets, successive reformative era governments embarked on measures to modernize them to make them more welcoming and attractive to customers. Based on Minister of Trade regulation No. 37/M-DAG/PER/5/2017, thousands of traditional markets are set for modernization. Indeed, the process of modernizing traditional markets has been underway even before the ministry of trade regulation to that effect was issued. The number of traditional markets which have been claimed to be modernized between 2015 to 2018 is 4.211 dispersed throughout 34 provinces. Accordingly, there still 1.037 markets to be finished in 2019 or are set for modernization in the future (Kominfo,2019.) Based on the Minister of trade regulation, Malang municipality has initiated plans to modernize traditional markets in the City, one of which is the Pasar Inpres Dinoyo. To support the modernization process, the municipal government issued local regulation No. 12/ 2004 as the legal framework.

Dinoyo City Mall is an epitome of a modernized traditional market. In line with changes in national and local politics and public administration, which have led to the increasing involvement of the private sector, civil society, and the public in the delivery of services, the modernization of Dinoyo

Traditional Market, which is based on the Build Operate and Transfer (BOT) public and private sector arrangement. The project was entrusted to private investors. In other words, the redevelopment of Dinoyo traditional market, was not tailored toward empowering traditional tenants rather driven by investment cost and return considerations for investors who bankrolled the modernization of the project.

Consequently, modernization of Dinoyo traditional market has fundamentally changed the function and relations among various stakeholders. The involvement of private sectors, especially Indonesian Chinese, in the modernization process, has significantly shifted the role and function of the traditional market. While traditional markets historically, have been reserved as locations where low income residents sell and buy basic necessities, the development of Dinoyo traditional market to become Dinoyo Mall, has led to the marginalization of traditional tenants. The implication is the current government has abandoned the purpose of empowering traditional tenants which was conceived and implemented by the previous government.

Poor implementation of good governance principles in the management of traditional markets is another factor that caused disputes among the traditional market tenants, the local government and modern sector practitioners. In the Dinoyo City Mall case, the dispute pitted between the Association of Traditional Traders, which represents Dinoyo traditional market tenants on one hand, and Citra Gading Asritama Ltd and the local government (representing Dinoyo redevelopment investors and the City Mayor, respectively). It is thus apparent that the current city government, unlike its predecessors, tends to lend support the stance taken by large private investors as opposed to that taken by traditional market tenants.

The modernization and management of traditional markets is based on Presidential regulation No. 112 / 2007 on the man-

agement and development of traditional markets, shopping centers, and modern stores and trade, and Minister of Trade regulation No. 70/M-DAG/PER/12/2013 that stipulates the Guidelines for Planning and Development of Traditional Markets, Shopping Centers, and Modern Stores.

There are 7 large traditional markets in Malang, which have been earmarked for modernization, inter alia, Dinoyo market, Blimbing market, Gadang market, Oro-Oro Dowo market, Klojen market, and the Central Market (locates in Malang city center). Specifically, Dinoyo market, which is the focus of this research, is located in Lowokwaru sub district, Malang city, East Java province. Modernization of traditional markets in Malang city is underpinned by the Malang City Mayor Regulation No. 188.45/16/35.73.112/2010, which stipulates the use of Build Operate Transfer as the financing and management mechanism for the construction and subsequent management of the market.

In 2010, the city government socialization the project. Based on project plan, Dinoyo traditional market tenants were supposed to be temporarily resettled to a new location in Merjosari village administration during the construction phase, and would return to the modernized market. However, considering that private investors were responsible for redeveloping the traditional market rather than the local government, traditional tenants initially refused the request to temporarily relocate because of the fear that they would find it difficult to return to their stalls once the completion of the modernization exercise was done.

To that end, from the outset, modernization of Dinoyo traditional market based on BOT model, was characterized by vested interests that varied by key stakeholders (Prastanta, 2004). Traditional market tenants, who were not involved in paying the cost of traditional market redevelopment perceived modernization as a threat to their livelihoods (losing space to trade their mer-

chandize once modernization was done); local government, lacking sufficient resources to implement central government policy on modernization of traditional markets, opted to use BOT mechanism with the consequence that the redevelopment and subsequent management of the traditional market had to be relinquished to private investors who financed the project; private investors, financed the development of the market, hence had vested interest in ensuring that tenants in the modernized market would be charged such rent that would enable them to recoup their investment cost .

It is not therefore surprising that the dispute ended up pitting traditional market tenants on one hand, and private investors and local government on the other. Consequently, efforts by traditional market tenants to stage demonstrations against the local government demanding more stalls in the modern market were futile. Based on BOT arrangement, Malang city government no longer has the authority to influence tenants in the modern market, because it is vested in private investors (CGA Ltd) Thus, upon completion of the redevelopment exercise of Dinoyo traditional market, many traditional tenants have been unable to return to their former stalls, let alone allocated new ones, which has adversely affected incomes and wellbeing of their households and families.

Literature Review Dual Economy and its Ramifications

Indonesia like many other emerging countries has characteristics of dual economy. There is a traditional, rural and urban sector, which is fraught with economic activities which are informal, small scale, low technology adoption, managed by the use of traditional practices, lack access to modern financial system and potentially suffer from low productivity (Bebbington, Dharmawan, Fahmi, & Guggenheim, 2006). Conditions in the modern sector are the converse of those in the traditional sector and are characterized

by formal, medium and large enterprises, high and quick adoption of technology in operations and management, use modern management practices such as book keeping, have easy access to financial system (Cowan, 1954). There is however, little relations between the traditional and modern sectors of the economy, which undermines productivity and progress of the economy as a whole. In other words, since both the traditional and modern sectors are an integral but separate components of the economy, reducing stark differences in social, economic, managerial, financial, and technological conditions, should be advantageous to both and the local and national economy at large (Susanto & Prihatminingtyas, 2016). This underlines the rationale for the government policy on revitalizing traditional markets. The policy of President Law Number 112 year 2007 among other goals, aimed to empower traditional market tenants by improving the quality of infrastructure of the markets where they undertake their activities, overhaul organization of stalls to instill order, improve public facilities including sanitation and health, parking space, safety and security.

Traditional Market Revitalization

One of the most formidable challenges traditional markets face is strong competition from modern markets (Minten & Reardon, 2008). Modern markets create an ambience that provides shoppers memorable experience that is punctuated by a lot of fun, good sanitation and incredible hospitality, have a one-stop shopping strategy that allows an individual to not only do shopping but have lunch or dinner, whilst enjoying entertainment (*Ibid*).

Besides, modern markets are well organized, offer attractive discounts, trade-in opportunities, afford customer personal safety and price certainty (Arianty, 2018). To that end, unless traditional markets are revitalized, there is lit-

tle reason to believe they can survive the competition in the long run. Consequently, the demise of traditional markets, if it materializes, will not only marginalize small traditional market tenants whose income comes solely from selling merchandise in the market, but will also have adverse effects on rural areas and population who supply produce as well as low income brackets in urban areas who rely of such places to buy food, clothing and other items at cheap prices. In other words, the decline of the importance of traditional markets in the economy of urban areas, has the potential to have debilitating effects on incomes of low income earners in both rural and urban areas, and by extension, urban and rural economy (Bebbington et al., 2006)

Revitalization of traditional market can be defined as the act of synergizing the potential of traditional market by improving competitiveness through redressing various obstacles that undermine operations, management, and performance in a comprehensive, integrated, and holistic manner (Daryanto, 2009). Revitalizing traditional markets is necessary for a number of reasons. Traditional markets are not competitive as they strategic location would suggest, because of poor management, disorganization, poor sanitation, insufficient public facilities such as parking area, hallways, and hardly any fun to entertain (Arianty, 2018). Consequently, despite cheap prices of products and commodities and strategic locations in urban areas, traditional markets continue to be no areas for most but a few urban residents.

Principles of Good Governance

The concept of good governance owes its origin and popularization to the United Nation Development Program (UNDP). Since its introduction, many local and national government have emphasized the im-

portance of adopting good governance principles as an integral component of people centric delivery of public goods and services (Rhodes, 1996) (UNDP, 2011). Moreover, good governance emphasizes good management of public assets, which is predicated on the involvement of key stakeholders, inter alia, the state, that provides a conducive political and legal environment; ii) The private sector, which is involved in various fields and informal sectors in the market; and iii) Society, which is engaged through the participation of non state actors in general and civil society (non-governmental organizations and professional organizations) in particular in economic social, and political activities (Indradi, 2005).

RESULT AND DISCUSSION

The Political Economy of Dinoyo Traditional Market Revitalization

Malang city mayor regulation No. 188.45/16/35.73.112/2010 provided the legal framework for the modernization of Dinoyo traditional market. The regulation stipulates that the Build Operate Transfer scheme was the mechanism used in implementing and subsequently managing the project for the pre-determined period until it was to be transferred back to the Malang city government. Indonesian Chinese entrepreneurs provided the funding for the construction of the project, which also implied that they had the rights over the management of Dinoyo market revitalization after its completion. To that end, by its nature, the BOT mechanism of revitalizing Dinoyo traditional market had the potential for disputes between former traditional market tenants on one hand, and Indonesian Chinese and the city government, on the other. To identify sources of disputes, several questions can serve as pointers, which include, the kind of products that a modern market can sell, customers that have the purchasing power to buy such products, the cost of the revitalized market and who bears the cost of the project

(economic and labor dynamics); the impact of the market revitalization on distribution of production and resources that are the market and its environment generate, who loses and who gains, and the effect that such outcomes have on relations between various stakeholders who have vested interest in market dynamics (political economy); and the level and consumer surplus revitalized market generates and how such surplus is distributed among stakeholders (traditional market tenants, investors of the revitalization process, and the city government) (impact of market revitalization on development).

Closer observation of the contents of the regulation, especially its provisions on the mode of financing and management of Dinoyo market revitalization, underscores the departure of the policy direction which the current city government has taken from that pursued by the former government, which was in line with the spirit that underpins the goal of the central government in revitalizing traditional market-enhancing competitiveness of traditional market tenants vis-a-vis traders and operators of modern markets. The main focus of Dinoyo market revitalization is to increase revenues for the city government, which is possible through relinquishing the task of financing project construction to private investors, in compensation for which, future management of the modernized market was vested with investors. It is efficient taking precedence over empowerment of traditional market tenants, which makes disputes between traditional market tenants and other members of society who derived benefits from the existence of the traditional market one hand, and beneficiaries of the revitalized market that include private investors and Malang city government.

Social and Economic Conditions

There is stark contrast in economic, management and technological conditions that characterized the economic activities that served a means of livelihood for the ma-

jority of local indigenous population traditional market for example and that those where the majority of Indonesian Chinese population earned a living. It has been common knowledge that economic activities that involved Indigenous people were small in scale, managed by owner operator using traditional management skills, used rudimental technology, if at all, financed by funds collected from friends and close kin, and had very few limited connections and relations with other businesses and government (Dan et al., n.d.). On the contrary, agents involved in the modern economy, where most Indonesian Chinese earn a living and own and operate businesses, are capially intensive, characterized by separation between ownership and management, adopt high technology in operations, have easy access to the banking system, their connections with other businesses and government. In an attempt to reduce the stark differences in operating, management, financing, and technological conditions between traditional and modern markets, the Indonesian government implemented the policy on revitalizing traditional markets in the 1980s which was famously called Pasar Inpres or Presidential Instructed Market. The thrust of the policy lies in its efforts to enhance the ability of traditional markets to serve as bridgehead between rural production centers and urban customers

Improving operating and management conditions in Dinoyo traditional market for instance, was expected to smoothen and strengthen the flow of agricultural commodities such as rice fruits, vegetables as well as nonagricultural products produced in rural areas from rural areas to customers in urban areas. Besides, improvement in organization of stalls in the market, safety and security, availability of parking for visitors, and sanitation and health, were expected to increase the attractiveness of Dinoyo market for urban customers, which by implication would increase demand and supply of goods from rural areas.

Assessing the adoption of Good Governance Principles in the Revitalization of Dinoyo Traditional Market.

With respect to the adoption of good governance during the revitalization of Dinoyo Traditional Market, several indicators point to absence of the same. One good indicator of absence of good governance in the revitalization of Dinoyo traditional was the noninvolvement of traditional tenants in project planning and reconstruction. Considering the fact that the project was financed through BOT mechanism, the main players were limited to Malang city government as the regulating authority and private investors, through CGA Ltd as the project implementation entity that The redevelopment plan, based on CGA Ltd plan which was approved under the BOT arrangement, confers upon private investors the right to manage the revitalized market for 30 years after which it will revert to Malang city government. There are indications, which however, have not been proved without reasonable doubt, that project bidding process was plagued by collusion between rogue Malang city officials and CGA Ltd. This is reflected in the fact that during the bidding process, CGA Ltd bid had 10 percent points advantage compared with other bidders. It is not therefor surprising that CGA was declared winner of the Dinoyo reconstruction bid.

It should, however, be noted that winning the bid did not automatically guarantee CGA Ltd as the company to reconstruct the Dinoyo traditional market. This is because upon winning the bidding process, it had to be submitted to the city legislature for ratification. Traditional market tenants used that opportunity to stage demonstrations expressed their objection to the bidding process and the outcome. Nonetheless, such opposition proved irrelevant as the city legislature also ratified the results of the bidding process. It is not, therefore, surprising that some members of society allege collu-

sion between the city government executive organ and legislature on one hand and CGA Ltd which ensured that the reconstruction of the traditional market and subsequent management after completion, for 30 years.

The Triangular Conflict in the Dinoyo Market Revitalization Project

Ideally, the implementation of Dinoyo traditional market revitalization project, based on BOT mechanism, should go smoothly if all good governance principles were complied with during project planning, bidding and implementation. The assumption that using BOT in revitalizing Dinoyo traditional market would make necessary compliance with good governance principles with all driven by the overarching goal of achieving common interest, proved unfounded and unrealistic. The three parties, inter alia, traditional market tenants, Malang city government, and Indonesian Chinese investors, despite having different interests, were expected to sideline their group interests to support the common goal of improving collective wellbeing through the reconstruction of Dinoyo traditional market. Facts on the ground pointed to divergence of interests among the three parties, as a source of irreconcilable differences that created fertile ground for protracted conflicts.

The local government or Mayor is one the key three stakeholders, vested with authority to regulate, administer the conferring of operating permits to operators of assets that belong to city government, collect revenue, and charged with the responsibility of providing public services to the citizenry under their remit. Private investors, is the second party, which is represented CGA Ltd and Hyarta Danadipa Raya Ltd (HDR). Private investors provide funds to finance the reconstruction of the market, and in compensation, based on BOT terms, offered the right to manage Dinoyo revitalized market for 30 years. To that end, private investors in an attempt to ensure their investment cost will be repaid by the end of the 30 year pe-

riod, they should ensure that stalls are occupied by individuals or groups of individuals who have the capacity to pay as much rent as possible. That implies that the kind of business and merchandise cannot be the selling of agricultural products and other nonagricultural products from rural areas. Such a requirement, therefore eliminates traditional market tenants as viable tenants in the reconstructed market.

Thirdly, the traditional tenants who have a traditional market traders' union, as front organization (P3DKM) to represent and advocate for their rights and interests. Traditional market tenants would prefer a policy that did not reconstruct the market, but in case reconstruction was deemed imperative, then the implementation of the project should have been Malang city government, and not private investors. Thus, traditional market tenants though not opposed to the idea, expressed strong objection to the project plan and implementation scheme. Thus, while local government and city mayor was eager to showcase the reconstruction of Dinoyo market cost effectively achieved as proof of the performance of the government under his or her tenure, private investors focused on controlling the management of the reconstructed public asset to expedite return in investment made based on the approved business plan.

Meanwhile, tenants if given the opportunity, would have preferred to maintain their traditional small businesses in either the traditional market or the reconstructed market. To that end, using BOT as a form of public private partnership to develop public infrastructure while generates efficiency hence cost effective for the government, generates disadvantages for some of the local population who lose their rights to earn a living by paying affordable rent to local governments. Consequently, BOT while in theory can be used as a model in procuring public services, in practice, it has the potential to arouse public opposition against the local government and management under the control of the private investors.

CONCLUSION

The reconstruction of Dinoyo traditional market which was based on Minister of Trade regulation No. No 37/M-DAG/PER/5/2017, and Minister of Trade regulation No. 70/M-DAG/PER/12/2013 on revitalization of traditional markets and modern markets and Malang city Mayor Regulation No. 188.45/16/35.73.112/2010 has generated many benefits, which include among others, improving quality of sanitation and health, attractiveness of the market due to better organization, availability space for parking, improved security and safety for sellers and buyers.

Nonetheless, the project failed to achieve the principal goal of the policy of revitalizing traditional markets in Indonesia which was adopted since 1980s. The main objective is to enhance competitiveness of traditional market sellers with modern markets. Dinoyo revitalization, has led to loss of livelihood for many traditional market tenants because of the reluctance of management to allocate them stalls in the refurbished market, high rent paid for hiring stalls, leading to conflicts among the traditional market tenants, Malang city government and private investors who are charged with managing Dinoyo modern market for 30 years. The case of Dinoyo traditional market revitalization underscores a dilemma that policy makers often face. Due to financial constraints which is attributable to having many development priorities that need funding at the same time, local government have to choose public services which must be implemented directly by the various offices, and those that are delegated to the private sector through public private partnership arrangements.

Using BOT as a mechanism to finance public infrastructure facilities has become increasingly common practice in the procurement of public goods especially those that require large investment cost. Some of the benefits include, the involvement of non-state actors in procurement, delivery and management of public physi-

cal infrastructure, creates fiscal space for financing other equally important public goods and services, and reduces the cost public sector should have to pay for civil servants and administration units that produce and manage such services.

Nonetheless, the adoption of BOT, like in the case of Dinoyo traditional market, has the potential to create disputes between private investors who finance the reconstruction and future management of the refurbished facilities and former tenants of public facilities because the latter more often than not end up losing rights they had prior to coming into force of new arrangements. The case because the more complicated if principles of good governance do not underpin project planning and implementation, making corruption, collusion and nepotism possible.

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