COMPARATIVE ANALYSIS OF TRANSPORTATION INFRASTRUCTURE DEVELOPMENT THROUGH PPP SCHEME IN INDONESIA AND JAPAN

Siti Maimunah*)

Peneliti Badan Litbang Perhubungan
Jalan Medan Merdeka Timur No. 5 Jakarta Pusat

ABSTRACT

During the last decade, infrastructure development has become the main focus for several developing countries seeking to achieve a high economic growth rate. However, developing sufficient infrastructure to meet the demand side is quite challenging, especially given the financing required. To fulfill this condition, methodology for financing schemes for infrastructure projects with Public Private Partnerships (PPP) has recently been significantly increased in both developed and developing countries. To attract private investments, the government has attempted to improve the legal and regulatory framework at transportation sector. However, revising the infrastructure laws is not enough to attract private sector investment. The government of Indonesia still needs more efforts to create an attractive investment climate. Although Indonesia has had a system for PPP methodology, only a few projects have been implemented.

The objectives of this study are to learn about and understand Japan's PFI methodology, particularly type I, and find the benefits of its implementation in terms of the development of public infrastructures and it can be implemented in Indonesia.

Through comparative analysis between PFI methodology in Japan and PPP methodology in Indonesia, it can be concluded that in general, since the project scope between Japan's PFI and Indonesia's PPP are fundamentally different, not all procedures in Japan's PFI methodology can be applied to improve Indonesia's PPP methodology. To apply some lessons learned from Japan's PFI, it is necessary to consider the nature and culture of the country. Based on the current condition of PPP projects in Indonesia, the government needs to take specific actions, including: institutional framework, service payment scheme and risk allocation.

Keywords: *Japan's PFI, Indonesia's PPP, Comparative Analysis*

ABSTRAK

Selama dekade terakhir, pembangunan infrastruktur telah menjadi fokus utama bagi beberapa negara berkembang untuk mencapai tingkat pertumbuhan ekonomi yang tinggi. Namun, mengembangkan infrastruktur untuk memenuhi permintaan cukup menantang, terutama mengingat pembiayaan yang diperlukan. Untuk memenuhi kondisi ini, maka dikembangkan metodologi pembiayaan yang dikenal dengan Kerjasama Pemerintah Swasta (KPS), yang akhir-akhir ini telah meningkat secara signifikan di banyak negara maju dan berkembang. Untuk menarik investor, pemerintah telah berusaha untuk memperbaiki kerangka hukum dan peraturan di sektor transportasi. Namun, merevisi undang-undang infrastruktur tidak cukup untuk menarik investor. Pemerintah Indonesia masih membutuhkan lebih banyak upaya untuk menciptakan iklim investasi yang menarik. Meskipun Indonesia telah memiliki sistem untuk metodologi KPS, hanya beberapa proyek telah dilaksanakan.

Tujuan dari penelitian ini adalah untuk mempelajari dan memahami metodologi PFI di Jepang, terutama tipe I, dan menemukan manfaat dari pelaksanaannya dalam hal pembangunan infrastruktur umum dan dapat diterapkan di Indonesia.

Melalui analisis komparatif antara metodologi PFI di Jepang dan PPP metodologi di Indonesia, dapat disimpulkan bahwa secara umum, karena ruang lingkup proyek antara PFI di Jepang dan di KPS di Indonesia pada dasarnya berbeda, tidak semua prosedur dalam metodologi PFI di Jepang dapat diterapkan untuk meningkatkan PPP di Indonesia. Berdasarkan hasil analisis PFI di Jepang, maka perlu mempertimbangkan sfat dan budaya negara. Berdasarkan kondisi saat ini, maka pemerintah perlu mengambil tindakan tertentu untuk proyek KPS di Indonesia, termasuk: kerangka kelembagaan, skema layanan pembayaran dan alokasi risiko.

Kata kunci: *PFI di Jepang PFI, KPS di Indonesia, Analisis Perbandingan*

BACKGROUND

In the last decade, infrastructure development is the main focus for some developing countries to achieve a high economic growth rate. Infrastructure development is not only limited to specific sectors, but also in almost all sectors such as, electricity, transportation and clean water provision. However, to develop infrastructure in order to meet the demand side is very hard, especially for its financing. To fulfill this condition, recently financing scheme for infrastructure projects with the Public Private Partnerships (PPP) methodology has been increased significantly both in developed and developing countries.

Public sector governance in many developing countries is still weak. Experience with private sector involvement in infrastructure projects underlines the need not only for innovative regulatory and financial structures to deal with a multitude of contractual, political, market, and credit risks, but also for building credible structures to ensure that projects are environmentally responsive, socially sensitive, economically viable, and politically feasible. Following up the government attention, there is a need to establish a PPP organizational unit for policy and planning which has an important role to formulate the PPP policy and plan.

As Indonesia launched the next Five-Year National Development Planning, the time is now critical for the government to address and overcome several problems in developing infrastructures and attaining their full potencies. One of the government efforts in solving those problems is by renewing the focus of National Development Planning in order to attract private-sector investments.

To attract the private investments, government has attempted to improve the legal and regulatory framework at the sector level. Since 1999, as shown in Table 1, the process of dismantling public monopolies and creating a more open market for infrastructure investments was initiated.

Under the new laws, the private sector can invest in several sectors independently, which was not regulated under the previous sector law. The new sector law represents a legal milestone that provides a wider scope for private sector involvement.

Table 1. The Revision of Sector Laws

Sectors	Old Laws (State Monopoly)	New Laws (Open Market)
Telecommunications	Law No. 3/1989	Law No. 36/1999
Oil and Gas	Law No. 8/1971	Law No. 22/2001
Roads & Toll Roads	Law No. 13/1980	Law No. 38/2004
Railways	Law No. 13/1992	Law No. 23/2007
Sea Transport & Ports	Law No. 21/1992	Law No. 17/2008
Air Transport & Airports	Law No. 15/1992	Law No. 1/2009
Land Transport	Law No. 14/1992	Law No. 22/2009
Electricity	Law No. 15/1985	Law No. 30/2009
Water	Law No. 11/1974	Law No. 7/2004

Source: Authors' analysis

Beside the sector regulatory reform, the Government has reformed the cross sector regulatory. The Presidential Regulation No. 67 year 2005 concerning cooperation between Government and Business Entities in Infrastructure Provision is being amended under the Presidential Regulation Number 13, 2010. The Government expects that the new regulation is able to solve the bottlenecking problems in PPP implementation.

By revising some basic laws at each sector level, it is expected to support for successful PPP projects in developing infrastructure in Indonesia. However, revising the infrastructure laws is not enough to attract private-sector investment. GOI still needs more efforts to create an attractive investment climate. Although Indonesia has had a system for PPP methodology, but there are only few projects implemented.

The objectives of this study are to learn and to understand the **Japan PFI methodology particularly type I** and to find the benefits of its implementation in term of development of public infrastructures. The understanding of Japan PFI Methodology will be obtained by studying the procedure and process of Japan PFI and some examples of PFI projects. In addition, the comparison between Japan PFI and Indonesia PPP will be done to gain a best practice from the implementation of Japan PFI methodology to indicate the issues/problems of Indonesia PPP that should be improved.

METHODOLOGY

The methodology to learn PFI/PPP in Japan through:

1. Class learning: Lecture by the specialists/experts of the Japan PFI/PPP Association, presentation materials, discussion, case studies, and group presentations at the Japan PFI PPP Association.
2. Field visits: carried out with a visit to the Diet Members Building and some Government Office Buildings in Tokyo, Michino Eki and bus terminal in Miyazaki Prefecture, discussion and question and answer with some staffs.
3. Analysis: team discussion to gather the information from the material obtained in the classroom and field visits
4. Resume: carried out by making a conclusion/summary of all materials provided by instructors and information obtained from the field visits.
5. Presentation of tentative report to professors of University of Miyazaki and Indonesian students who are studying in the Linkage Master Double Degree Program, and discussion.
6. Library Research: obtaining additional information/differences, either from books, guidelines, annual reports, and the internet.

7. Final Presentation and discussion: presenting the comparison of Japan PFI and the Indonesia PPP at the Japan PFI PPP Association.
8. Final Assignment: Preparing reports to be submitted to National Development Planning Agency and to our own institutions.

PRIVATE FINANCE INITIATIVE (PFI) IN JAPAN

PFI in Japan was inspired by PFI success story in England. There are some reasons to learn PFI England. One of the reasons is the failure of previous joint private-public ventures or a cooperation owned both by private and public due to poor risk allocation and planning. On the other hand, the shortage in tax revenue due to the depression over the years and a small government budget to rebuild the social infrastructure, for example increasing earthquake resistance of old buildings.

The number of PFI projects increases every year and it reaches 352 projects at the end of June 2009. There are some characteristics of PFI projects based on the number of population and Life Cycle Cost (LCC). Among the government level, the number of PFI projects in prefectures (local government) is the most compared to the number of projects conducted by the ministries (central government) and universities (national agency).

Japan PFI Law Number 117 was stipulated on 30th July 1999 (effective on 24th September 1999). The article number 1 states that the purpose of PFI is to improve the social infrastructure efficiently and effectively and to ensure the affordable provision and good service to the citizen. By measuring the provision of public facilities through utilization of private finance, management abilities and technical capabilities, it will contribute to healthy development of the national economy. It is followed by article number 2 that explains the definition of public facilities which mean:

1. Public facilities, such as roads, railways, ports and harbors, airports, rivers, parks, water services, sewage systems and industrial water supplies.
2. Official facilities, such as government buildings and accommodations.
3. Public interest facilities, such as public housing, educational and cultural facilities, waste treatment facilities, medical facilities, social welfare facilities, offender rehabilitation facilities and underground malls.
4. Information and communication facilities, heat supply facilities, new energy facilities, recycling facilities (excluding waste treatment facilities), tourist facilities and research facilities.
5. Other facilities.

   In addition, there is a mandatory policy for government to realize social infrastructures efficiently as well as affectively to supply public services in high quality. To reach this goal, it is being required to entrust to private enterprises to build public facilities.

In October 1999, government created "The Committee for Promotion of PFI" under the Cabinet Office and in March 2000, government released the "Policy Framework" or "Basic Policy". Based on the Basic Policy with respect to Implementation of Public Facilities development by utilizing private funds, there are eight principles:

1. Public interest means to implement an undertaking having public interest.
2. Utilize private's managerial resources means profiting to use private's funds, managerial as well as technical skills.
3. Efficiency means an efficient and effective way by respecting independence, inequality and innovative ideas by private enterprises.
4. Fairness means during conducting selection of the specified undertaking and the selected enterprise, the procedure should aim fairness.
5. Transparency means transparency for whole process from initiation of the specified undertaking until the end of such undertaking.
6. Objectivity means for determination of evaluation shall be required at each step.
7. Contractual means it being mandatory requirement to clarify in writing contractual substance like allocation of role and responsibility of the concerned parties.
8. Independence means independence as a legal entity or independence as to accounting separation between department assuming the undertaking and its parent entity.

Then, it was follwed by releasing the Process Guideline and Risk Sharing Guideline in January 2001. After issuing the two guidelines, government was continuing to release many documents to improve the PFI methodology, such as revision of PFI Law, Value for Money (VFM) Guideline, Contract Guideline and Monitoring Guideline, interim report of the committee for promotion of PFI, arrangement paper of Directors from PFI Liaison Conference of the Relevant Ministers and Agencies. In 2006, they released annual report of 2005, the first annual report that was issued. In November 2007, PFI Promotion Office launched a report of the Committee for Promotion of PFI.

1. **Objective of PFI Methodology**

   The objective of PFI is to establish the framework for promoting private sector activity to build social infrastructure and to contribute to the development of the national economy. PFI methodology is expected to be able to maximize the VFM. This objective can be achieved by introduction of a new tender system which consists of a life-cycle-cost-based pricing and quality of proposed services.

2. **Benefits and Impacts of PFI Methodology**

   By implementing PFI, it is expected to get some benefits as it is mentioned below:

   a. It will enable to supply economical and better public services to national citizen.
   b. It will innovate ways of involvement of public administration in supplying public services.
   c. It will contribute to activate economy by creating business opportunities for private sector.

   While the impacts of implementing PFI methodology to the existing system in Japan (Ueda, 2010) are as follows.

   a. Transparency: Transparency of all the steps
   b. Life cycle cost management: Improvement of financial problems and efficiency of public works

c. Principle of contract: Detailed contract has to spell out clearly roles, risks and responsibilities allocation and procedures in case of project failure.

d. Project finance: There is feasibility in public works, risk analysis and allocation and present value.

3. **Basic Concepts of PFI Methodology**

Regarding Nippon Life Insurance (NLI) Research Institute (1998), the basic concept of PFI methodology can be explained as follows.

a. Public sector's role is to purchase appropriate services.

b. PFI methodology is applicable to all public activities.

c. PFI methodology offers the best value of service delivery to taxpayers. Therefore, public expenditure must satisfy the VFM requirement.

d. Based on market testing, if the private sector can deliver services more efficient than the public sector, then the service will be privatized.

e. There is an optimum point to get the best VFM by transferring risk to private sector.

f. Full disclosure
The contracts should stipulate information about bidding process and contract conditions, if they are not against the public interest.

4. **Alternatives of PFI Methodology**

There are three alternatives based on the characteristics of the project.

a. Type I (Recovery Investment from Tax)

A private supplier, upon receiving approval from the relevant public body, design, builds, maintains and operates a public facility or service. Fees or other income from those benefiting from the project enables the private supplier to recover part of the project costs. For this type, there is no public contribution.

Source: Ueda (2010)

b. Type II (Recovery of investment from fees)

Source: Ueda (2010)

A private sector supplier design, builds, maintains and operates the public facility and public sector is the purchaser of the services. The private supplier recovers its project costs by the tax of public sector.

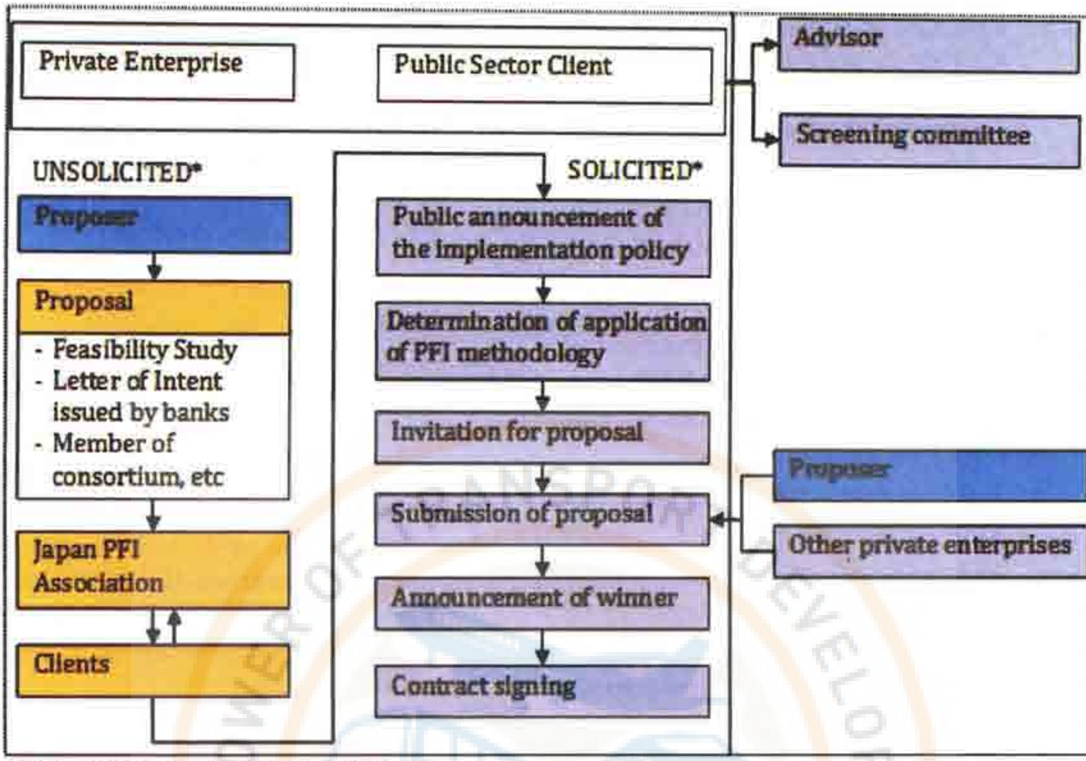
Source: Ueda (2010)

c. Type III (Public-private joint project)

Both public and private capitals are used to design, build, maintain and operate the public facility. The private sector takes the lead in operations.

5. **Implementation Process**

There are two types of the PFI implementation process that is called as unsolicited and solicited projects. The steps of the process for both types are almost same (see Figure 1). The main difference of these two types lies on the initiative to develop the projects. If the initiative comes from the private, then it is known as unsolicited and if the initiative to develop the projects comes from the governments, then it is known as solicited. In case of unsolicited projects under Japan PFI, the private sectors submit their proposal to the govern-



Note: * starting process. → it shows the following steps.
Source: Ueda (2010)

Figure 1. Two Types of the Implementation Process of PFI

ment for evaluation. If the CA thinks that the proposal is worthy, then the CA will approve the proposal and it is vice versa. For solicited projects, it is started from the public announcement to the contract signing (these steps also belong to the unsolicited projects).

6. **Example of PFI Project in Japan.**

Tokyo (Haneda) International Airport-Re-Expansion PFI Projects

The purposes of expanding the Haneda Airport are:

a. To increase annual aircraft movement;
b. To improve services for travelers and visitors;
c. To strengthen competitiveness of Haneda Airport among international airport;
d. To strengthen competitiveness of Tokyo among international cities;
e. To promote regional interchange and vitalizing regional economy.

The expansion of Haneda Airport consists of:

a. Passenger terminal
b. Cargo terminal
c. Apron development

The passenger and cargo terminal is expanded by using PFI methodology type II (recovery investment from user fees) and apron development is expanded by using PFI methodology type I (recovery investment from tax).

Table 2. The Detail Projects of Re-Expansion Haneda Airport

	Passenger Terminal PFI Project	Cargo Terminal PFI Project	Apron Development PFI Project
1. Type of PFI Methodology	Type II (recovery of investment from user fees)	Type II (recovery of investment from user fees)	Type I (recovery of investment from tax)
2. Transfer Asset Methods	BOOT (Build, Own, Operate, Transfer)	BOOT (Build, Own, Operate, Transfer)	BTO (Build, Transfer, Operate)
3. Duration of operation and monitoring	27 years	28 years	25 years
4. Project costs	80,000 million yen	25,000 million yen	52,000 million yen
5. Risk Allocation	Risks to be taken by Ministry (for Type II): 1. Mistakes in the tender documents 2. Delay of obtaining licenses to be issued by Ministries 3. Claims from residents due to proposals by Ministries 4. Obligations to pay reparations due to proposals and instructions by Ministries 5. Early termination requested by Ministries 6. Early termination due to recession caused by introduction of government's new policy 7. Delay of signing contract due to Ministry's fault 8. Incompleteness of survey related to the project due to Ministry's fault 9. Change of construction cost due to request of Ministries 10. Change of construction cost due to underground undesired obstacle 11. Change of demand standard (requirements) requested by Ministries 12. Change of policy in relation with operational matter by Ministries 13. Repayments of the facilities due to inappropriate usage by Ministries.		Risks to be taken by Ministry (for Type I): 1. Mistakes in the tender documents 2. Change of Laws to affected to government project and PFI project 3. Change of tax system to be affected to government project and PFI project 4. Change of consumer tax 5. Delay of obtaining licenses to be issued by Ministries 6. Claims from residents due to proposals by Ministries 7. Obligations to pay reparations due to proposal and instructions by Ministries 8. Change of interest rate 9. Early termination registered by Ministries 10. Force majeure 11. Delay of signing contract 12. Incompleteness of survey related to the project due to Ministry's fault 13. Delay of completion due to instruction by Ministries 14. Delay of completion due to underground un-described obstacles 15. Change of construction cost due to instruction of Ministries 16. Change of construction cost due to underground un-described obstacles 17. Change of demand standard (requirements) regulated by Ministries 18. Repayment of the facilities due to instruction of Ministries 19. Change of price within agreed price range

The PFI Projects

The re-expansion of Haneda Airport uses the PFI methodology. Table 2. shows the detail explanation of the projects in the passenger terminal, cargo terminal and apron development.

COMPARATIVE ANALYSIS OF JAPAN PFI AND INDONESIA PPP

1. Regulatory Framework

Japan PFI and Indonesia PPP have differences in the regulatory framework. In Japan, the regulatory framework is much more efficient, because there is only one law regulating the mechanism of PFI implementation. Based on the PFI Law, every ministries and local government stipulated their own guidelines, if it's necessary. Whilst in Indonesia, there are too many regulations stipulating PPP implementation. The basic law is the Presidential Regulation (PR) No. 67 year 2005 as amended by PR No. 13 year 2010, while the implementation guidelines are stipulated in several regulations. In addi-

Table 3. Comparison of the Regulatory Framework between Japan PFI and Indonesia PPP

	JAPAN PFI	INDONESIA PPP
Basic Law & Regulation	There are three basic laws in Japan: - PFI Law No. 117 year 1999 (The Law regarding to Promote Provision of Public Facilities and Other Related Services by Use of Private Capital and other Resources - Basic Policy (by Prime Minister: 13 March 2000 - Notice by Ministry of Home Affairs (by Vice Minister 29 March 2000)	There are several basic laws in Indonesia: - Presidential Regulation No. 67 year 2005 concerning Cooperation between Government and Business Entities in Infrastructure Provision as amended by Presidential Regulation No. 13 year 2010
		- Presidential Regulation No. 42 year 2005 concerning The Committee on the Policy for the Acceleration of Infrastructure Provision (KKPPI).
		- Regulation of the Minister of Finance No. 38 year 2006 concerning Implementation Instructions for The Control and Management of Infrastructure Provision Risks.
		- Regulation of The Coordinating Minister For Economic Affairs As Head Of The Committee For Acceleration Of Infrastructure Provision No. 4 year 2006 concerning Procedures for Evaluation of Public Private Projects in the Provision of Infrastructure Which Require Government Support
		- Regulation of Coordinating Minister for Economic Affairs as Head of Committee for Acceleration of Infrastructure Provision no. 3 year 2006 concerning Procedures and Criteria for Preparation of Priority List for Public Private Partnership Infrastructure Projects
		- Regulation of State Minister of National Development Planning/Head of National Development Planning Agency Number 3 year 2009 Concerning Procedure for Preparation of the List of Plan of Cooperation Project Between Government and Business Entity in Infrastructure Provision
General Guidelines	Guidelines issued by Cabinet Office: 1. Guideline for Process 2. Guideline VFM 3. Guideline Risk Sharing 4. Guideline for Contract 5. Guideline for Monitoring	Regulation of State Minister of National Development Planning / Head of National Development Planning Agency Number 4 year 2010 Concerning Guidelines for Implementation of Cooperation Between Government and Business Entity in Infrastructure Provision

Source: Authors' analysis (2010)

tions to the general PPP regulations, to implement PPP Project, it is necessary to refer to each law and regulations governing infrastructure sector. Table 3 shows the comparison of the regulatory framework between Japan PFI and Indonesia PPP.

Based on the comparison above, herewith are the fact findings:

a. The basic regulatory for PPP Indonesia is in the form of Presidential Regulation, while in Japan is in the form of Law. In the Regulatory Framework, law is higher than the presidential regulation. This is one barrier why PPP in Indonesia can't be implemented clearly.

b. Beside PPP general regulations, there are several laws and regulation governing infrastructure sector which is related to PPP implementation. Those laws and regulation are sometimes overlapping each others. The Government has to consider doing some regulatory impact assessment to overcome this problem.

2. Institutional Framework

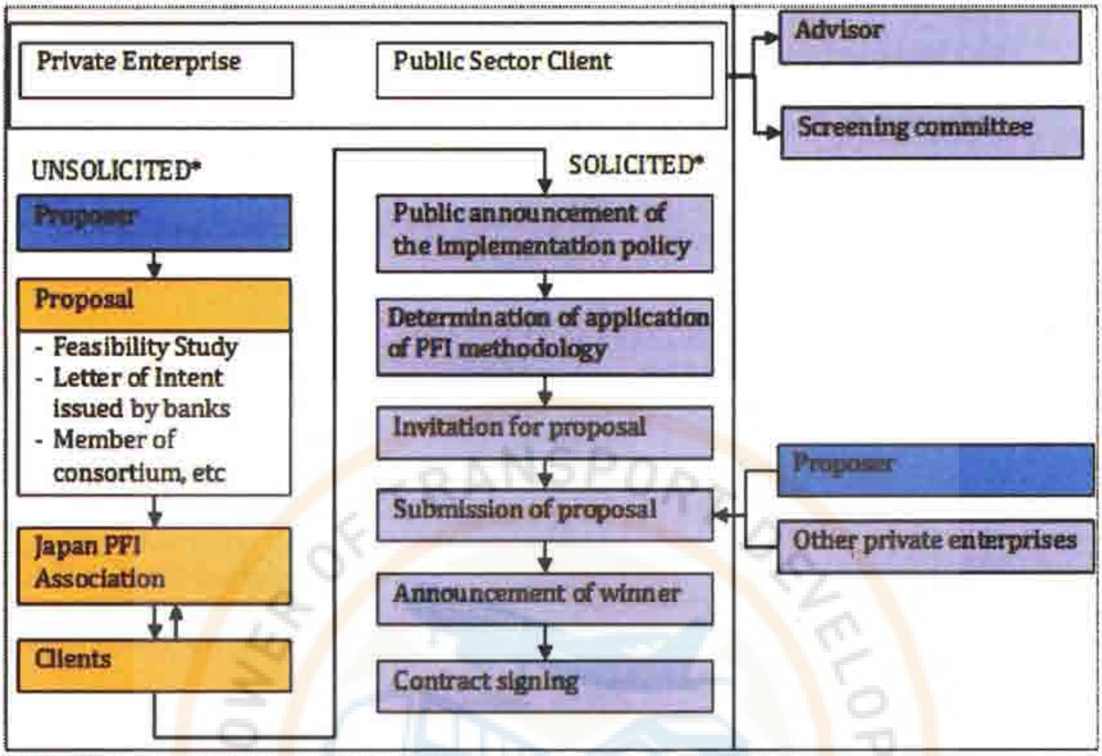
a. Japan PFI

Japan PFI institutional framework is based on the Act on Promotion of PFI. To implement the PFI methodology, the Cabinet Office issued general guidelines for: 1) Process; 2) VFM; 3) Risk sharing; 4) Contract; and 5) Monitoring.

Under the Cabinet Office there is the PFI Promotion office and Committee for Promotion of PFI. The PFI Promotion office is responsible to interpret PFI law, promoting and disseminating the PFI information among the Governments. The member of this PFI promotion office comprises merely government staffs. In the PFI implementation, in case there are certain things that cannot be regulated by or doesn't match with the stipulation in the guidelines or PFI law, the Committee for Promotion will issued recommendations to solve the problems, rather than changing the Guidelines or PFI law. The members of Committee for promotion come from independent authority from several professionals. If needed, the PFI Promotion Office and Committee for Promotion will cooperate to suggest amendments of guidelines or PFI law.

For other problems that may arise not because of the guideline or PFI law but may affect in the implementation of PFI, the PFI liaison conference has responsibility to solve the problems. The liaison conference member consists of the members of Cabinet Secretariat, PFI promotion office, and committees from 14 ministries/agencies, those are: Japan Fair Trade Commission, National Police Agency, Financial Services Agency, Ministry of Internal Affairs and Communication, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Health, Labor, and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, Ministry of Land, Infrastructure Transport and Tourism, Ministry of Environment, and Ministry of Defense.

Each ministry and local governments have the authority to announce their PFI projects and stipulate their own guidelines on PFI implementation, if it necessary. The local governments do not need to obtain an approval from



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ning Agency, and BKPM. They agreed to make acceleration on PPP implementation. In the MOU, BKPM will act as the front office that is responsible to promote the PPP projects to the investors through market sounding, road show, and investor forum.

National Development Planning Agency and the MOF will act as the back office on PPP project. National Development Planning Agency will coordinate with each line ministries to ensure that the PPP projects are in line with the National Development Plan and each ministries annual work plan. National Development Planning Agency will also be responsible to promote the PPP methodology to the line ministry and local government through capacity building and technical assistance.

MOF will be in charge of the Government Guarantee and Government Support of the PPP Project. Government guarantee is financial compensation and/or other form of compensation that provided by Minister of Finance to the Business Entity through risk allocation scheme for Cooperation Project while government support is fiscal or non-fiscal contribution that provided by the Minister/Chairman of Institution/Head of Regional and/or Minister of Finance according to its authority pursuant to the laws and regulations in order to increase financial viability of the Project.

A special unit in the MOF, RMU (Risk Management Unit), prepares recommendations on government guarantees for PPPs. The responsibility of RMU is defined by the MOF regulation number 38 year 2006, which states that contingent government support can only be provided to PPP projects that are assessed financially viable from the viewpoints of three categories of risk: Political risk; Project performance risk; and Demand risk.

There have been recent changes to the contingent government support system. In December 2009, the government established PT. Penjaminan Infrastruktur Indonesia (PT. PII) with basic capital of 1 trillion rupiahs from the state budget (APBN) under Government Regulation number 35 year 2009. In addition, World Bank will provide a US$150 million backstop facility to PT. PII. Notably, under the regulation, local governments are eligible to apply for government guarantees for the Central Government for their PPP projects.

This is a significant development, as local Governments acting as a Government Contracting Agency (GCA) are prevented by law to provide guarantees to a private investor (stipulated in PR No. 13 year 2010). PT PII, accountable to the RMU, will operate the IGF (Infrastructure Guarantee Fund), and will act as a one-stop operation for handling requests for contingent government support, while the RMU will be responsible for policy development. The RMU is considering to revise the PMK 38/2006. One consideration is to widen its remit to include projects that are deemed not

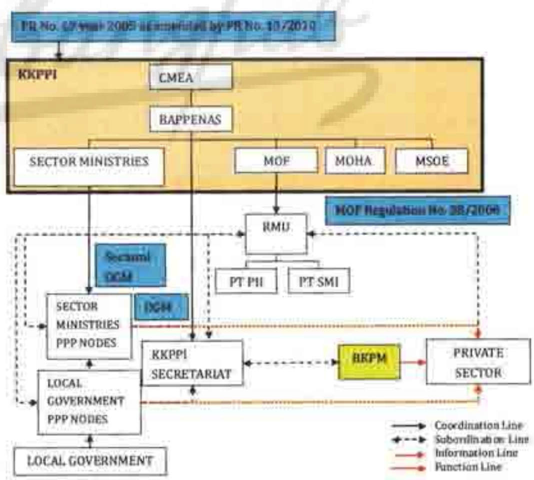


Figure 3. Institutional Framework of Indonesia PPP

financially viable. Another is to issue the revision as a Presidential Regulation to make it a stronger legal basis.

A non-bank financial institution, PT Sarana Multi Infrastruktur (PT SMI), wholly owned by the GOI was established in February 2009. PT SMI provides financing to infrastructure projects through various financing scheme including loan, mezzanine and equity. In January 15, 2010 MOF, through PT SMI, established PT Indonesia Infrastructure Finance (PT IIF). PT IIF will be privately owned and managed with initial shareholders being the Asian Development Bank (ADB), International Finance Corporation (IFC) and Deutsche Investitions-und Entwicklungsgesellschaft mbH (DEG) and PT SMI. PT IIF as an infrastructure financing company is expected to increase the availability of equity and long term debt, particularly Rupiah, available for private infrastructure investment in Indonesia. PT IIF will provide funding towards commercially feasible, mainly private, infrastructure projects through debt instruments, equity participation or infrastructure financing guarantee for credit enhancement.

Each line ministries and local government are instructed by the President to form a special unit for PPP or PPP Nodes (Presidential Instruction No. 1 Year 2010 concerning Acceleration on Implementation of National Development Priority year 2010). Some line ministries already have their PPP nodes, for example the MOT with the Pusat Kajian Kemitraan dan Pelayanan Jasa Transportasi, MPW with the BPJT for toll road and BPPSPAM for water and sanitation. This PPP nodes function among other functions is to issuing licenses needed for the PPP implementation.

Detailed comparison on Institutional Framework between Indonesia PPP and Japan PFI is shown on the table 4.

3. Project Finance Cycle

Conceptually, project finance cycle between Japan PFI and Indonesia PPP is almost similar. The differences lie on:

a. Contracting Agency (Government) definition
b. SPC definition
c. Funds sources
d. Government Guarantee and Government Support
e. Financial Institution/Lender definition

Both in Japan PFI and Indonesia PPP the contracting agency could be from Ministry or Local Government, but the difference is in Japan PFI, incorporated admin-

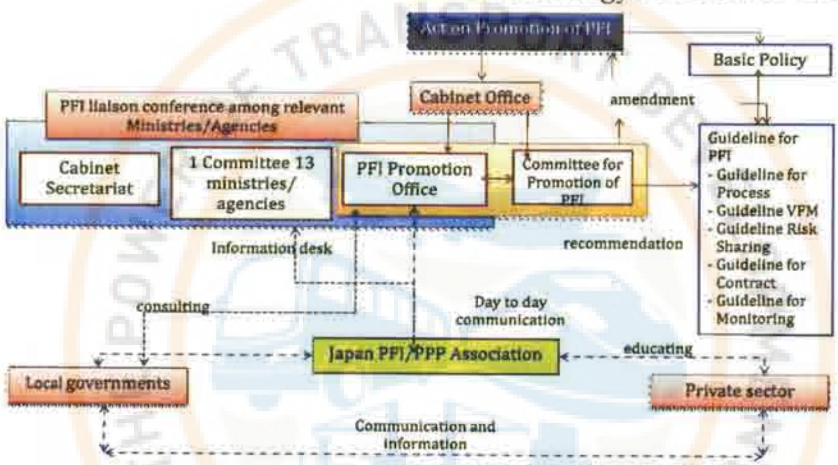
Table 4. Comparison of Institutional Framework between Indonesia PPP and Japan PFI

No		Indonesia PPP	Japan PFI
1	Independent institution	No independent institution	PFI/PPP Japan Association
2	Policies	KKPPI (headed by the minister of CMEA, its member are minister from related sector)	Cabinet Office
3	Guideline	1. State Minister of National Development Planning/Head of National Development Planning 2. Ministry of Finance 3. Related Ministries	1. Cabinet Office (PFI Promotion Committee) 2. Ministry of Internal Affairs 3. Local Governments
4	Government Guarantee	PT PII (in some cases co guarantee with Government)	None
5	Government Support	Contracting Agency	None

Source: Authors' analysis

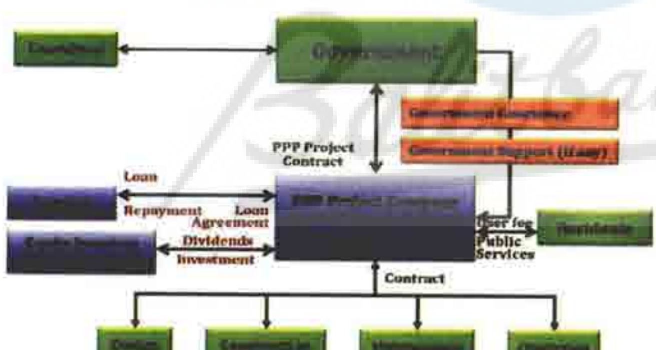
istration agency can also act as Contracting Agency while in Indonesia PPP SOE or ROE can also act as Contracting Agency. For the investor, Japan PFI projects scope are only social infrastructure so there is a chance that the investor is a single investor and not consortium. Since Indonesia PPP projects scope are basic infrastructures so most of the investor comes in form of consortium.

The reasons why PFI Projects have low risks because most of the projects scope is social infrastructure projects which payments are based on government regular payment. PPP projects scope is basic infrastructure projects which payment depends on the user fees. Up to now, Japan never uses PFI methodology to provide basic infrastructures. Without Government Guarantee on the payment, the project will be a risky business for the investors. Therefore, most basic infrastructures, such as toll roads and railways, are constructed by the Government (conventional methodology) rather than PFI methodology. To monitor the level of public services conducted by the SPC PFI Japan has an independent committee called as the PFI Project Committee. Figure 4.a and 4.b are showing the differences of project finance in Japan PFI and Indonesia PPP.



Source: Ueda (2010)

Figure 4.a. Project Finance in Japan PFI



Notes:

⟷ Cooperation line

⟶ Provide if needed

Source: Ueda (2010)

Figure 4.b. Project Finance Cycle in Indonesia PPP

Detailed comparison on Project Finance Cycle between Indonesia PPP and Japan PFI is shown on table 5.

Table 5. Comparison on Project Finance Cycle between Indonesia PPP and Japan PFI

No		Indonesia PPP	Japan PFI
1	Contracting Agency (Government)	a. Minister/ Head of Institution/ Head of Regional/SOE or ROE as stipulated by the laws b. Consultants c. Investors/SPC	a. Ministries/Local Government/incorporated administration agency b. Consultants c. Investors/SPC
2	Fund Sources	a. User Fees b. Fiscal (if government agree to support)	a. National Taxes For Central PFI projects b. Local Taxes and Government subsidies for local PFI Projects
3	Investor	Mostly consortium	Consortium or single investor
4	Govt. Guarantee and Govt. Support	Yes with tight requirements	None
5	Relationship between lender and Government	Have no direct relationship	Direct Agreement
6	Relationship between lender and investor	Financial funding	• Financial funding • Lender has authority to ask SPC to change the sub contractors
7	Financial Institution/ Lender	Banks, PT SMI	Banks, Insurance Company, equity holders

Source: Authors' analysis (2010)

4. PFI and PPP Stages

a. Before Contract Sealing

In Japan PFI project, after the stages of conceptual planning, the Government will have an adviser selection process. The adviser is needed to do the daily job in preparing the project. After that the Government, with the help of selected adviser, prepares the Feasibility Study and Value for Money test. Before the announcement of PFI implementation and the issuance of Letter of Intent, there is a stage of Q&A with the stakeholders and the process of final VFM test. The Q and A stages are needed for clarifying the detail of the Project with the private sector. While the final VFM test is needed because the source of the payment comes from the tax, so the government has to be firmly sure that the project has the value for money.

The bidding process itself is done by an independent committee, namely the PFI Screening Committee. This committee is formed before the announcement of PFI methodology and supported by the adviser in preparing and implementing the selection. After the negotiation process, the SPC has to be formed before the contract sealing. These stages are different from the PPP Indonesia project.

In Indonesia PPP, after the stages of planning, the Government conducts a preliminary study that denotes the basic for the Pre Feasibility Study. Between the planning and Pre FS stages, the Government will conduct a Public Consultation where community and the stakeholder will be invited to join. In this Public Consultation, they will discuss the Government project plan. This Public Consultation/hearing is aimed to prevent any objection from the community on the project and to inform/explain the investors about the project briefly. Before the bidding process started, the Government conducts one more Public Consultation, namely Market Sounding. This Market Sounding is mainly aimed to find potential investors for the project. In this market sounding, initial prediction for the Government Guarantee and/or Government Support for the project is being informed to the investor. The Government will ask the investor about their thoughts of that Government Guarantee and/or Government Support. Their opinion will be considered by the Government in confirming the final decision for Government Guarantee and/ or Government Support.

Besides, CA has to submit an application for Government Guarantee to PT PII and/or clarified. The Government Support for the project. The Government Guarantee and/or Government Support have to be confirmed and

Table 6. Comparison on Before Contract Sealing Process between Indonesia PPP and Japan PFI

	Indonesia PPP	Japan PFI
Screening/ Procurement Committee	Procurement Committee (Government staff)	PFI Screening Committee (independent and voluntarily members from professionals)

stated in the bidding documents. The bidding itself is being conducted by the procurement committee. The procurement committee member is from consists of the government staffs maximum 6 month after the contract negotiation and awarded bidding winner, the SPC has to be formed legally. Detailed comparison on Before Contract Sealing Process between Indonesia PPP and Japan PFI is shown on table 6.

b. After Contract Sealing

In Japan PFI, the most important stages after contract sealing is Loan agreement sealing between SPC and Lender, followed by the direct agreement between the Government and lender. The loan agreement is for the financing of the project, while the direct agreement is just a way for communicating between the lender and the Government. Direct agreement is not a guarantee agreement, but it is a precautionary action, in case if something happens to the SPC that might affected the project implementation then the lender will inform this to the Government, so the Government will take some action to the SPC. After the completion of the project, the asset will be transferred to the Government. In these stages the Government through the Contract Management Unit will monitor the project implementation. If there is any problems arouse in this stages, the Government will be helped by the PFI Project Committee to solve the problems.

In Indonesia, since the Government gives the Government Guarantee, direct agreement between the Government and Lender is not necessary. The PR No. 13 year 2010 stipulated that the financial closure must be made within 12 month after the contract sealing. The period for the financial closure can be extended only if the failure to obtain funding is not contributable to failure of Business Entity pursuant to criteria as determined by Government. If the financial closure period or the extended period of financial closure can't be met by the private sector, then the Cooperation Agreement? The performance bond may be cleared by the Government.

To monitor the project, the Government formed a unit called Contract Management Unit. The unit started to work from the transaction project. In the transaction project, along with the drafting of the agreement, the unit started to plan for their contract management. After the contract sealing, they started to monitor the implementation of the contract. Before the end of the contract, the Government

Table 7. Comparison on After Contract Sealing between Indonesia PPP and Japan PFI

No		Indonesia PPP	Japan PFI
1	After contract sealing	Financial closure max 12 month	Followed by loan agreement sealing and direct agreement

Source: Authors' analysis, 2010

formed another unit, the transferring assets unit. The unit will take care for the procedure for transfer assets to the Government after the contract ends. Detailed comparison on After Contract Sealing between Indonesia PPP and Japan PFI is shown on table below:

Figure 5.a. Solicited Project in Japan PFI

Figure 5.b. Solicited Project in Indonesia PPP

5. Solicited and Unsolicited Project

a. Solicited Project

In the solicited project, there is no significant difference between Japan PFI and Indonesia PPP. Both of the mechanisms basically have similar process, from the planning stages until the contract signing.

FACT FINDINGS:

Basically there are similarities in the stages between Japan PFI and Indonesia PPP.

b. Unsolicited Project

For unsolicited project, in Japan PFI, the proposer (private sector) submitted their proposal to the Government. After the evaluation of the proposal, if the Government thinks that the proposal is worthy, and then the Government will approve the proposal, if it is vice versa, then the proposal will be returned to the proposer. Same with the PFI Japan, in Indonesia, the proposer submitted the proposal directly to CA. CA will evaluate the proposal based on the criteria stipulated in PR No. 13 year 2010. After the evaluation, the Government will decide which com-

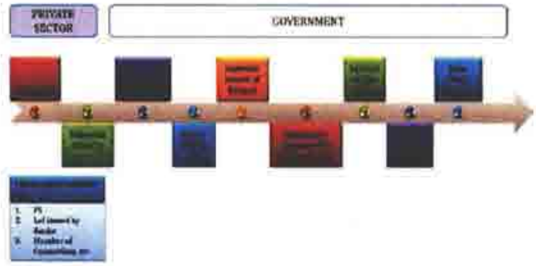


Figure 6.a. Unsolicited Project in Japan PFI

Figure 6.b. Unsolicited Project in Indonesia PPP

Table 8. Comparison on Unsolicited Project between Indonesia PPP and Japan PFI

No		Indonesia PPP	Japan PFI
1	Compensation methods	a. Award project initiator up to 10% bonus points; or b. Right to match; or c. Purchase of the intellectual property rights.	none

Source: Authors' analysis (2010)

Table 9. Comparison of Risk Allocation in Japan and Indonesia

	Risk Allocation	
	Japan PFI	**Indonesia PPP**
The objective of PFI/PPP	Focus more on maximizing Value of Money (Make the efficient use public resources).	Focus more on addressing the budget constrain in infrastructure development.
Source of Payment	Government Tax (Mostly)	User Fee (Mostly)
Regulation Framework	Act and Basic Policy Level	Implementation Level (Ministry of Finance Decree)
Risk Classification Focus	Specific at Project Performance Risk Level	Broad, from Country Level Risk until Project Performance Risk Level

Source: Authors' analysis (2010)

pensation methods will be given to the proposer. Both methods, Japan PFI and Indonesia PPP require the proposer to follow the bidding process, so there is no direct appointment for the proposer.

Detailed comparison on Unsolicited Project between Indonesia PPP and Japan PFI is shown on table 8.

6. Matrix Comparisson of Japan PFI and Indonesia PPP Risk Allocation System

In a brief the comparison of JAPAN PFI and INDONESIA PPP scheme in Risk Allocation can be summarized in table as follows:

In Japan PFI, applying PFI objective with focus more on maximizing Value of Money are benefitted by the regular subsidies scheme provided by the government. By having regular payment from the government the investor is more secure in the revenue income in the long run. Therefore the guarantees for risk are less needed in PFI Japan scheme. In the contrary, in Indonesia PPP, due to the objective of introducing PPP scheme are caused by the limitation of budget for infrastructure development, user fee/ tipping fee plays very dominant role as revenue. Government payment to the private usually are avoided as far as possible. However, to compensate the security feeling on the invested project, the government provide guarantee for a wide range of risk potential from the country risk (political risk), project performance risk (land acquisition risk) and demand risk (minimum income revenue and maximum income revenue).

7. Project Finance

Project finance is one of the essential part in applying PFI or PPP scheme. Even though the primary domain area of project finance closely related to financing matters such as providing loans (course and non-recourse) from banks or a group of investors, the characteristic of its form is depend on the situation and condition of each country. Based on the experience in applying Japan PFI scheme, there are several elements to be noticed in Project Financing:

a. Sponsors

Sponsorship is the most important element in the project financing. In PFI/ PPP scheme, usually a Special Purpose Company (SPC) is established for each project. The interest investors will provide capital to contribute to the SPC. In case of higher amount of capital is needed, the investors may seek banks to borrow some money. However, asking loans from banks are not simple matters. Banks usually need guarantees which are provided by investors (*recourse* loans) or credibility (*non recourse loans*). In recourse loans, a group of investors agree to pay the whole money (fully recourse) or only part of it (*limited recourse*) in case of the project is fail. In case of non recourse loans, the sponsors will play an important role. Highly credible sponsors such as, Chevron, Nippon Steel, and Toyota are very creditworthy, and hence banks are undoubtedly to provide loans for them. Therefore, sponsorship credibility should have a high evaluation score in the process of selection bidder.

b. The Objectives

To decide to use PFI methodology, there are two objectives to be considered.

1) Worthy project whereas the government is willing to have such kind of services.
2) Having the ability to deliver a des-

ignated service.

Therefore, project objective is an important element to determine feasibility of project.

c. Philosophy among stakeholders

Project financing is not about the money. The underlying reason in which groups of investors attracted in contributing to a project may indicates the level of significant credibility. Why they are interested in the project, or why they think the investment are reasonable, and how the stakeholder feels/understands about the project may impact the implementation of the project as well. The good understanding among stakeholders may incur a strong partnership.

Besides a partnership, a project should have a person who acts as a project defender such as lawyers. In a project scheme, the lawyers usually are recruited by two parties, the public and the private. Each lawyer will be on the side of their employers. However, since PFI projects are supposed to deliver public services, then there should be a project lawyer who stands on the side of public interest. In some cases, government's lawyer is possible to be chosen as the project lawyer.

d. Contract and Culture

Every country has its own culture that affects the style of contract arrangement. Even though, some countries attempt to pursue a global standard contract, the scheme may not fit to be implemented in all countries. Contract arrangement may differ for each country depends on their law systems (Civil Law or Common Law). Each country should learn from its own experience to apply which law system is best for contract arrangement.

e. Regulator, regarding Excess Profit

In some cases, the project may gain excess profits. When it is occurred, many third parties may intervene the excess profit. This intervenes will cause problem in implementing the project. Therefore, to avoid such things, an exact system to manage excess profit is highly necessary to be stipulated in the contract.

8. Monitoring System And Payment Mechanism

In terms of institutional framework that in charge in project monitoring, Indonesia PPP has a similar scheme with that of Japan PFI. The difference is in the existing of

Table 10. Comparison Between Monitoring Indonesia PPP and Japan PFI

No		Indonesia PPP	Japan PFI
1	Regulation	General guidance for monitoring spread in some regulations	Basic policy General guideline for monitoring
2	Projects are monitored by	Government (Project Management Team/Unit) Independent Auditors SPC Beneficiaries Lender Investor	Government (Consultant) Independent Auditors SPC Beneficiaries Lender Investor PFI Project Committee*
3	Subject	Pra-construction process Construction process Operation and maintenance process	Design process Construction process Operation process Maintenance process
4	Object	Service level performance Environmental impact	Service level performance Environmental impact

Source: Authors' analysis (2010)

PFI Project Committee. Indonesia PPP does not have such kind of committee as PFI Japan do.

In addition, there is no direct monitoring done by the lenders, because the government gives a guarantee and support to SPC for the PPP project. As mentioned before, government guarantees and support are given to the SPC after PT PII (Indonesia Infrastructure Guarantee Fund/ IIGF) completed the risk analysis. If the risk happens, SPC will be able to withdraw that government guarantee.

Comparison between monitoring between Japan PFI and Indonesia PPP can be simply explained in the Table 10.

As Japan PFI, for project management, public sector will establish the contract management unit. This unit has duty to monitor the project in stage of transaction (start from bidding process till contract sealing) till its implementation. Its member consists of government staff member. In case of PPP done by local government, local government will establish the cooperation unit to support in management, monitoring and evaluation of PPP implementation.

No		PPP Indonesia	PFI Japan
1	objective	To address the budget constrain in infrastructure development.	To maximize Value of Money (Make the efficient use public resources).
2	Scopes	Basic Infrastructures	Social Infrastructures
3	Fund Sources	▪ User Fees ▪ Fiscal (if Government agree to support)	▪ National Taxes For Central PFI projects ▪ Local Taxes and Government subsidies for local PFI Projects
4	Investor	▪ Mostly consortium	▪ Consortium or single investor
5	In charge Institution for:		
	1. Policies	KKPPI (headed by the minister of CMEA, its member are minister from related sector)	Cabinet Office
	2. Guidelines	1. State Minister of National Development Planning/Head of National Development Planning 2. Ministry of Finance 3. Related Ministries	1. Cabinet Office (PFI Promotion Committee) 2. Ministry of Internal Affairs 3. Local Governments
	3. Contracting Agency	Minister/ Head of Institution/ Head of Regional/SOE or ROE as stipulated by the laws	Ministries/Local Governments, incorporated administration agency
	4. Monitoring	▪ Government (Project Management Team/Unit), consultant) ▪ Independent auditors ▪ Beneficiaries ▪ SPC ▪ Lender ▪ investor	▪ Government (consultant, PFI Screening Committee) ▪ Independent auditors ▪ Beneficiaries ▪ SPC ▪ Lender ▪ investor ▪ PFI Project Committee *
	5. Government Guarantee	PT. PII (in certain case co guarantee with the MOF)	None
	6. Government Support	Contracting Agency	None
	*7. Independent PFI Institution	Have no independent PPP institution	PFI Association

No		PPP Indonesia	PFI Japan
	8. Financial institution/ lender	Banks, PT SMI	Banks, Insurance Company, equity shareholders
	9. Screening/Procurement Committee	Procurement Committee (Government staff)	PFI Screening Committee (independent and voluntarily members from professionals)
6	Relationship between lender and Government	Have no direct relationship	• Direct Agreement (Direct Contract) • Lender has step-in right to negotiate with CA to change SPC and sub-contractors • Mutual Benefit Communication
7	Government support and Guarantee	Yes with tight requirements	None
8*	Relationship between lender and SPC	Financial funding	1. Financial funding 2. Lender has authority to change SPC
9	After contract sealing	Financial closure max. 12 month	Followed by loan agreement sealing and direct agreement
10	Guidelines	1. Operational guideline manual 2. Risk Sharing Guideline 3. Technical guideline for each sectors	Practical Guidelines for: 1. Process 2. VFM 3. Risk Sharing 4. Contract 5. Monitoring * (Local Governments provides their owned Guidelines)
11	Process done by Government (consultant, if need)	▪ Preliminary Study ▪ Pre-Feasibility Study ▪ Transaction ▪ Project Management	▪ Conceptual Planning ▪ FS and VFM test ▪ Tender ▪ Monitoring and Payment
12	Compensation methods for unsolicited projects	▪ Award project initiator up to 10% bonus points; or ▪ Right to match; or ▪ Purchase of the intellectual property rights.	none
13	Risk Classification Focus	▪ Broad, ▪ Country Level Risk – Project Level	▪ Specific, ▪ Project Level
14	Risk allocation	▪ SPC ▪ Government	▪ Government ▪ SPC/Investor ▪ Equity investor (shareholders) ▪ Lender ▪ Subcontractor ▪ Insurance company
15	Stages to be Monitored by Contract Management Unit	▪ Pre-construction ▪ Construction ▪ Commercial Operation ▪ Asset Transfer	▪ Design ▪ Construction ▪ Maintenance ▪ Operating
16	Object/Outcome Monitoring	▪ Availability ▪ Service level performance ▪ environment impact	▪ Availability ▪ Service level performance ▪ Environment impact

Source: Authors' analysis (2010)

CONCLUSIONS AND RECOMMENDATIONS

1. Conclusions

In general, since the project scope between Japan PFI and Indonesia PPP are mainly different, not all procedures in Japan PFI methodology can be applied to improve the Indonesia PPP methodology. To apply some Lessons learnt from Japan PFI, it is necessary to consider the nature and culture of a country.

The detailed differences between Japan PFI Japan and Indonesia PPP can be described in table below:

2. Recommendation

Based on the current condition of PPP projects in Indonesia, government needs to take some actions such as:

a. Institutional Framework

Adopting Japan PFI institutional framework which has independent institution such as Japan PFI/PPP Association, PFI Screening Committee, and PFI Project Committee. The combination of these institution will create a one stop service for PPP in Indonesia called PPP Central Unit. This institution is an independent private institution, Non Profit Organization. The tasks of the PPP Central Unit are:

1) To promote PPP methodology to the private d public sector through conducting dissemination and training & education.
2) To act as an advisor (information desk) for the relevant ministries/agencies.
3) To conduct day to day contact with KKPPI regarding the update information on PPP law and guidelines
4) To support the by preparing the bidding documents and implementing the bidding process
5) To help the Contracting Agency in preparing the project
6) To monitor the level of public services of PPP Project

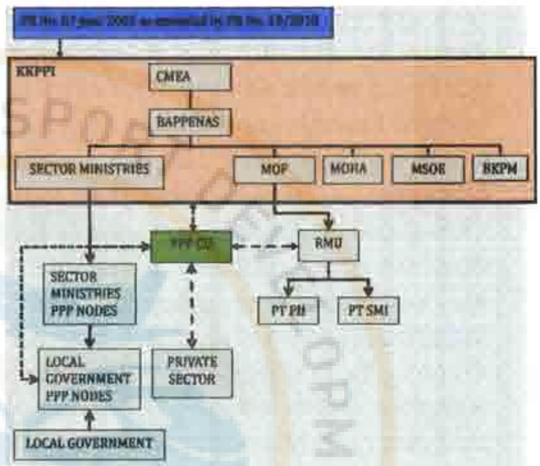


Figure 7. New Institutional Framework for PPP Scheme in Indonesia

7) To conduct an enhancement policy review

Figure 8. Service Payment System Suggestion

8) To conduct survey and publication regarding PPP activities
9) To provide and manage database on PPP activities

The members:

1) Professional (finance, law, etc)
2) Academician
3) Government staff

Figure 9. Risk Allocation in PFI/PPP Japan

In Japan PFI, the PFI Screening Committee and PFI Project Committee is a project basis institution, while PPP Central Unit is a steady institutional and not an ad hoc institution.

b. Service Payment Scheme

To level up the focus on using PPP scheme into the Japan PFI/PPP methodology which emphasizes the concept of maximizing value for money in order to achieve optimum quality of public services with efficient budget. Having good quality of public services may give impact to the economic as a whole rather than individual project finance return calculation. As consequences, government may consider a new perspective of using private sector involvement from addressing the budget constraint into pursuing the improvement of all aspect of economic condition at reasonable cost.

Therefore the decision on using PPP scheme is not necessary to avoid government expenditure in providing public service but to get better public service quality with agreed cost which mutually benefiting both side (public and private). This perspective may also other significant impact in attracting investors especially those from overseas with this side of view. Investors would feel more secure if government is willing to purchase the service quality as a whole package without sharing market risks with the investors. The accountability of such mechanism can be secured by introducing an escrow account on all collected revenue obtained from the service provided. The escrow account then can be used as a basis for project financing and repayment mechanism. Surely in applying the PFI methodology the government budget capacity should be taken into account to design such long term financing scheme.

c. Risk Allocation

For the risk classification focus, Indonesia can learn how the project level risk identifications and risk allocations are managed between parties in Japan. Figure 9. explains the risk allocation in Japan PFI/PPP scheme.

d. Due the existing of many ineffective laws and regulation, government needs to do some regulatory impact assessments. Existing condition shows that too many referred laws and regulations can affect investor interest in PPP projects. While on the other hand the basic law for PPP implementation is not high enough, it is only in the Presidential Regulation level. Therefore in the PPP implementation the Presidential Regulation may conflict with the higher sector laws and regulations. Concerning the regulatory framework, it may be worth to continue the efforts to have a higher regulation level such as Law level which has legal mandate to perform as an umbrella for other sectors/local laws and regulations.

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*) Lahir di Malang, 23 Mei 1978 Peneliti Muda/ Kasubag Rencana Setbadan Litbang Perhubungan, Sarjana Statistika IPB Tahun 2000, Magister Sains Ekonomi, Universitas Indonesia Tahun 2009, Master of Arts, Hiroshima University, Tahun 2009