

PATTERNS OF COOPERATION BETWEEN THE GOVERNMENT AND BUSINESS ENTITIES AT THE REGENCY/CITY LEVEL: A LEGAL AND POLICY STUDY IN INDONESIA

PADRÕES DE COOPERAÇÃO ENTRE O GOVERNO E ENTIDADES EMPRESARIAIS NO NÍVEL DO MUNICÍPIO/REGÊNCIA: UM ESTUDO JURÍDICO E DE POLÍTICA PÚBLICA EM INDONÉSIA

Article received on: 10/2/2025

Article accepted on: 1/2/2026

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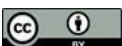
The authors declare that there is no conflict of interest

Abstract

Infrastructure development at the district/city levels faces challenges due to fiscal constraints and increasing demand for public services. The Government-Business Cooperation Scheme (KPBUs) has emerged as an innovative financing alternative that enables risk-sharing, mobilises private capital, and increases project management efficiency. This article examines the pattern of cooperation between the government and business entities from a legal and policy perspective in Indonesia, by reviewing the evolution of regulations, from the national framework, such as Presidential Regulation No. 38 of 2015, to local government regulations under Law No. 23 of 2014. The analysis highlights aspects of value for money, risk allocation, the certainty of return on investment, and the government's position as a legal subject in public-private contracts. In addition, theoretical implications are discussed through classical and contemporary contract law approaches and a utilitarian perspective in assessing the policy's benefits. The findings show that the success of PPPs in the regions is largely determined by legal certainty, institutional capacity, procurement transparency, and harmonisation of regional development planning. With accountable governance oriented towards the public interest, PPPs have the potential to become a strategic instrument for

Resumo

O desenvolvimento de infraestrutura em níveis municipais/regenciais enfrenta desafios devido a limitações fiscais e ao aumento da demanda por serviços públicos. O Esquema de Cooperação Governo–Empresa (KPBUs) emergiu como uma alternativa inovadora de financiamento que possibilita o compartilhamento de riscos, mobiliza capital privado e aumenta a eficiência na gestão de projetos. Este artigo examina os padrões de cooperação entre o governo e entidades empresariais sob a ótica jurídica e de política pública na Indonésia, revisando a evolução normativa, desde o arcabouço nacional — como o Regulamento Presidencial nº 38 de 2015 — até as regulamentações de governos locais previstas na Lei nº 23 de 2014. A análise destaca aspectos como relação custo-benefício (value for money), alocação de riscos, certeza de retorno sobre o investimento e a posição do governo como sujeito jurídico em contratos público-privados. Além disso, discutem-se implicações teóricas por meio de abordagens clássicas e contemporâneas do direito contratual e uma perspectiva utilitarista na avaliação dos benefícios da política. Os achados mostram que o sucesso das PPPs nas regiões é amplamente determinado pela segurança jurídica, capacidade institucional, transparência nas contratações e harmonização do planejamento do desenvolvimento regional. Com governança



accelerating sustainable infrastructure development and improving community welfare.

Keywords: Government and Business Cooperation. Regional Infrastructure. PPP. Contract Law. Public Policy.

responsável orientada ao interesse público, as PPPs têm o potencial de se tornar um instrumento estratégico para acelerar o desenvolvimento sustentável da infraestrutura e melhorar o bem-estar da comunidade.

Palavras-chave: *Cooperação Governo–Empresa. Infraestrutura Regional. PPP. Direito Contratual. Política Pública.*

1 INTRODUCTION

Infrastructure refers to the facilities and equipment provided by the government to support the community's activities, including daily life, economic activities, and religious activities across various religions in Indonesia (Dimitriou, 1991; Sumaryana et al., 2025). Typically, in various countries, the development of infrastructure such as railways, roads, energy, electricity, and clean water systems is wholly owned, operated, and financed by the government (Anguelov, 2024; Salim & Negara, 2019). In its development, not all countries have adequate capacity to provide infrastructure, particularly in financing. On the other hand, some infrastructure activities managed by State-Owned Enterprises (SOEs)/nationalised firms cannot demonstrate optimal performance (Lin et al., 2020; Liu et al., 2025). Furthermore, to accommodate the limitations of financing infrastructure development activities while encouraging performance optimisation, Public-Private Partnerships (PPPs) began to be developed in several countries since the early 1990s (Adamou et al., 2021; Roehrich et al., 2014).

Cooperation between the government and the private sector began during the New Order era (Kase, 2024). In 1987, the private sector began participating in toll road investment as toll road operators by signing a concession agreement (PKP) with PT Jasa Marga. In 1999, the Indonesian government took a major step to delegate greater authority to local governments: cities, regencies and provinces. Regional autonomy is now clearly reflected in all sectoral regulations and the KPS (Andani et al., 2020). Local governments can establish partnerships with the private sector and the community to carry out government tasks related to the provision of facilities and infrastructure. Partnerships are formed because the government's limited financial capacity cannot meet these needs. Law No. 32 of 2004 on Regional Government provides greater legal certainty for the

implementation of development cooperation, both with third parties (public or private) and with neighbouring regions.

A Public-Private Partnership (PPP) is an agreement between two or more parties that enables them to work together to achieve common goals, in which each party plays a role based on their level of responsibility and authority, level of investment in resources, level of potential risk, and shared profits. Thus, each party has its own rights and responsibilities in fulfilling the agreement (Kopańska et al., 2024; Rybnicek et al., 2020).

The role of the government in supporting the implementation of development through such cooperation includes, among other things, government support in the form of fiscal contributions and/or other forms provided by Ministers/Heads of Institutions/Regional Heads and/or ministers who administer government affairs in the field of finance and state assets in accordance with their respective authorities based on laws and regulations in order to improve the financial feasibility and effectiveness of PPPs. In PPP cooperation, support can be provided in the form of feasibility studies and/or tax incentives, in accordance with laws and regulations, based on proposals from the PJPK, with the minister who administers government affairs in the field of finance and state assets approving them (Yusfida, 2022).

In the realm of regulatory policy, cooperation between the government and the private sector, which has been ongoing since the early days of the New Order, was first regulated in Presidential Decree No. 7 of 1998 on Cooperation between the Government and Private Enterprises in the Development and/or Management of Infrastructure (KEPPRES), which was later revoked by Presidential Regulation No. 67 of 2005 on Cooperation between the Government and Infrastructure Provision Enterprises (PERPRES) (Faiz et al., 2023). Due to the dynamic nature of the needs, the Presidential Regulation was amended three times by Presidential Regulation No. 13 of 2010 concerning Amendments to Presidential Regulation No. 67 of 2005 concerning Cooperation between the Government and Business Entities in Infrastructure Provision, Presidential Regulation No. 56 of 2011 concerning the Second Amendment to Presidential Regulation No. 67 of 2005 concerning Cooperation between the Government and Business Entities in Infrastructure Provision and Presidential Regulation No. 66 of 2013 concerning the Third Amendment to Presidential Regulation No. 67 of 2005 concerning Cooperation between the Government and

Business Entities in Infrastructure Provision (Huwaida et al., 2024). These were subsequently revoked by Presidential Regulation No. 38 of 2015, concerning Government Cooperation with Business Entities in Infrastructure Provision, which remains in force until a new regulation revokes it.

Meanwhile, the policy framework governing cooperation between local governments and private entities was initially regulated under Law No. 32 of 2004 on Regional Government, which was subsequently repealed by Law No. 23 of 2014 on Regional Government, and then supplemented by Government Regulation No. 50 of 2007 concerning Procedures for Implementing Regional Cooperation, which was later repealed by Government Regulation No. 28 of 2018 concerning Regional Cooperation (Ramadhan et al., 2025). In addition, there is also the Minister of State Apparatus Empowerment Decree No. 63/KEP/M.PAN/7/2003 concerning General Guidelines for the Implementation of Public Services and Government Regulation No. 27 of 2014 concerning the Management of State/Regional Property and Minister of Home Affairs Regulation No. 19 of 2016 concerning Guidelines for the Management of Regional Property, amended by Minister of Home Affairs Regulation No. 47 of 2021 regulating Procedures for the Implementation of Bookkeeping, Inventory and Reporting of Regional Property through the E-BMD Application, amended by Regulation of the Minister of Home Affairs of the Republic of Indonesia No. 7 of 2024 concerning Amendments to Regulation of the Minister of Home Affairs No. 19 of 2016 concerning Guidelines for the Management of Regional Property (Nurviani et al., 2025).

Cooperation between local governments and the private sector in infrastructure development is not only expected to advance regional infrastructure but also to increase job creation and the utilisation of various local Indonesian products (Pawestri et al., 2024). Moreover, during the current Covid-19 pandemic and post-pandemic period, the Government has even issued a regional infrastructure financing scheme due to the Covid-19 pandemic as mandated in Minister of Finance Regulation No. 105 of 2020 concerning the Management of Regional Economic Recovery Loans for Local Governments through Regional Economic Recovery Loans channelled through the Ministry of Finance's Special Vehicle Mission PT Sarana Multi Infrastruktur (Persero) (PT SMI). Regional PEN loans can serve as an alternative funding source for regions, particularly those eligible and those

severely impacted by COVID-19, enabling them to finance priority expenditures in their respective areas.

2 GOVERNMENT SUPPORT FOR PUBLIC-PRIVATE PARTNERSHIPS IN INFRASTRUCTURE DEVELOPMENT AT THE REGIONAL LEVEL

Local government cooperation with business entities in the provision of infrastructure (KPDBU) through the KPBU scheme is part of the regional development funding policy, which uses creative financing alongside other financing policies such as regional loans, regional bonds, and non-budgetary investment financing (Mahani et al., 2022). The role of KPBU in promoting infrastructure development at the local government level is realised through the schemes applied to KPBU, including:

2.1 Utilisation of private resources

Budget constraints faced by local governments have led to suboptimal development across all sectors, particularly in high-cost 5epen such as infrastructure. According to data from the Ministry of National Development Planning, the projected infrastructure financing requirements in Indonesia for 2015-2019 reached Rp4,796.2 trillion. Of the total funding requirement, 36.5% is expected to come from private sector participation. Given the high funding requirement from the private sector, breakthroughs are needed to provide alternative infrastructure funding, one of which is through the PPP scheme.

Article 1, point 6, of the Presidential Regulation on PPP stipulates that PPP cooperation in the provision of infrastructure using resources wholly or partly owned by business entities is a basic form of cooperation among the government, state-owned enterprises/regional-owned enterprises, and the private sector to finance infrastructure development jointly. This cooperation will accelerate infrastructure provision amid budget constraints, particularly at the regional level (APBD), which remains highly dependent on state budget (APBN) allocations (80.1%).

2.2 Value for money analysis

In KPDBU cooperation, one of the important aspects underlying the realisation of business entity participation is the *value-for-money* principle, which measures KPDBU performance based on economic value, expenditure efficiency and effectiveness, and service quality that meets community needs. Value-for-money analysis is conducted during the KPDBU preparation stage and is one of the determining factors in whether the KPDBU plan will proceed. The criteria for determining value for money in business entity participation include the private sector's advantages in implementing KPDBU, including in risk management, ensuring effectiveness, accountability, and equitable public services in the long term, knowledge and technology transfer, and ensuring fair competition, transparency, and efficiency in the procurement process. The analysis of monetary value aims to improve the effectiveness and quality of public services, as well as the allocation of expenditure, in ways that are more oriented towards public interests and public accountability.

2.3 Risk management and sharing

In the PPP scheme, the risks arising in the infrastructure development process are allocated to the parties, namely the government and the implementing business entity. The allocation of risks is contained in the PPP agreement as stipulated in Article 32, paragraph (2), letter e of the Presidential Regulation on PPP, which states that the PPP agreement shall at least contain provisions regarding rights and obligations, including risk allocation.

In the Government and Business Cooperation (KPBU) scheme, the success of a project is largely determined by the accuracy with which risks are identified and allocated to the parties best able to manage them. At least 10 key risks must be carefully considered in a PPP agreement. First, operational and financial risks related to the project's ability to generate cash flow in line with projections and maintain financing stability during the concession period. Second, design and construction risks, which include potential technical planning failures, construction delays, and cost overruns. Third, operational and maintenance risks that arise during the facility's operation include service quality and

infrastructure sustainability. Fourth, political risks arising from policy changes, government instability, or interventions that affect the project's continuity. Fifth, force majeure risks, which are unforeseeable circumstances such as natural disasters or extraordinary events beyond the control of the parties. Sixth, legal and policy risks arising from regulatory changes or legal disputes that may affect the contract's continuity. Seventh, revenue risks, especially when project revenue depends on tariffs or user numbers. Eighth, environmental risks, which include ecological impacts and mitigation obligations. Ninth, project failure or breach of contract risks. Finally, land acquisition risks are generally the government's responsibility because they concern public interests and social aspects.

Of the 10 risks, those allocated to the government include political, legal, and land acquisition risks. The private sector bears the risks of design and construction, operational and maintenance, and revenue. Risks that must be borne jointly by the government and the private sector include financial, *force majeure*, environmental, and project/contract failure risks. Land acquisition risk lies with the government, as it carries out land acquisition in PPPs in accordance with the provisions of laws and regulations governing land acquisition for development in the public interest, as stipulated in Article 10 of the Presidential Regulation on PPPs.

2.4 Certainty of return on investment

Article 11 of the Presidential Regulation on Public-Private Partnerships provides certainty of return on investment for business entities, which includes coverage of capital costs, operational costs, and profits for the implementing business entity in the form of payments by users in the form of tariffs, *availability payments*, and/or other forms, as long as they do not conflict with laws and regulations. This condition will provide certainty in investing, thereby encouraging business entities to participate in infrastructure development through the KPBU scheme.

Government Support and Government Guarantees. In implementing PPP projects, the government provides feasibility support. At the regional level, the feasibility support provided is regional government feasibility support in the form of financial contributions provided by the regional government to regional cooperation projects in the form and

manner stipulated in regional regulations of the relevant regional government, the contents of which do not conflict with the minister of finance regulations governing the provision of feasibility support for part of the construction costs in cooperation projects. In addition, the government provides guarantees in the form of infrastructure guarantees and guarantees for the obligation to pay financial compensation to business entities for the occurrence of infrastructure risks that are the responsibility of the PJK, in accordance with the risk allocation as agreed in the cooperation agreement. The existence of government support and guarantees provides investment certainty, encouraging business entities to participate in infrastructure development through the PPP scheme (Asenar et al., 2024).

3 CHOICES OF COOPERATION MODELS BETWEEN THE GOVERNMENT AND PRIVATE ENTERPRISES IN INFRASTRUCTURE DEVELOPMENT AT THE REGIONAL LEVEL

Infrastructure development in the 8ator8a a policy issued by the outgoing administration in the 8ator8a a minister of finance decree imposing income 8ator8 parties entering into a build-operate-transfer 8ator8an with the issuance of Minister of Finance Decree No. 248/KMK.04/1995, which introduced build-operate-transfer as a 8ator8a cooperation 8ator8an between land rights holders and investors, stating that land rights holders grant investors the right to establish build-operate-transfer (BOT) projects by transferring ownership of the buildings to the land rights holders for the duration of the build-operate-transfer period. The 8ator8an of this Minister of Finance Decree concerns taxes paid by investors and does not address BOT regulations in their entirety. Furthermore, in 1998, the issuance of Presidential Decree of the 8ator8ante8 Indonesia Number 7 of 1998 concerning Cooperation between the Government and Private Entities in the Development or Management of Infrastructure also did not specifically regulate BOT financing cooperation.

The build-operate-transfer scheme still depends on the policies of each relevant institution. The application of the public-private partnership (PPP) concept has been implemented through Presidential Regulation No. 67 of 2005 to ensure the availability, adequacy, suitability and sustainability of infrastructure for national development and 8ator8ant welfare. Then, in 2014, Government Regulation No. 27 of 2014 concerning the

Management of State/Regional Property was passed, which in Article 1 point 14 defines build-operate-transfer as the utilisation of state/regional property in the 9ator9a land by another party by constructing buildings and/or facilities and their amenities, to be then utilised by another party for a certain period of time as agreed, after which the land along with the buildings and/or facilities will be returned upon the expiry of the period.

The build-operate-transfer scheme is used when users of goods require buildings and facilities for the administration of state/regional government or for public 9ator9an purposes, and when there is no state/regional budget available to provide them. The maximum 9ator9a a build-operate-transfer 9ator9an is thirty years from the date the cooperation 9ator9an is signed (Ramadhani & Ramlan, 2019). The BOT model is a financial 9ator9an approach implemented under the 9ator9a finance financing method, with two main participants: the host government and private sponsors. The host government is the public regulator responsible for issuing permits, authorisations, licences, and 9ator9a concessions. This may affect tariffs, tolls, fees, and other vital aspects of the 9ator9a. The private sponsor is represented by a board of investors or private entities tasked with designing, constructing, supporting, and operating the facility after na agreed period, called the concession period, and with arranging financing for the 9ator9a's life cycle. Both budget constraints and the complexity of the public sector in meeting today's requirements encourage the adoption of the BOT model in developing countries.

PPP 9ator9a known as *Build-Operate-Transfer* (BOT). In BOT (build, operate, transfer), the private sector is responsible for building and operating the facility, which is then handed back to the government upon completion. In addition to BOT, there is *Build, Own, Operate, Transfer* (BOOT), a variation of BOT in which ownership of the facility remains with the private sector throughout the contract. At the end of the contract period, the facility or 9ator9a built under PPP will be transferred back to the government (Syugiarto, 2024).

BOT is generally applied to large-scale government projects. The BOT cooperation model is carried out through na 9ator9an. A BOT 9ator9an is based on cooperation between two parties: one party owns the land, and the other provides the funds or technology. The use of the BOT system in PPPs means the government provides the private sector with opportunities to build a 9ator9a, and the private sector is then given

exclusive rights to manage and profit from the 10ator10a in return for the costs incurred. During the operational phase, the private party has the right to operate the 10ator10a without paying fees to the government. After a specified period during the handover phase, the private party transfers the land and 10ator10ant buildings to the government, at which point the BOT 10ator10an ends.

Cooperation established by the government as a public legal entity is essentially part of public policy that must be accountable to the public. The government's position, which carries a mandate of public interest, means that the freedom to enter into contracts is not entirely the same as that in private contracts in general. While contracts between private legal entities can be freely entered into as long as they do not conflict with laws and regulations, contracts involving the government are limited by the principles of public interest, transparency, accountability, and state financial management. Thus, every cooperation between the government and the private sector must go through clear, open procedures that can be monitored by the public, ensuring its legitimacy and accountability in the future.

In addition, any type of contract entered into by the government is almost always related to state finances, whether in the form of revenue or expenditure. Therefore, any agreement that has fiscal consequences must refer to the State Revenue and Expenditure Budget (APBN) as the official instrument for state financial management. This is in line with the provisions of Article 23 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "The State Revenue and Expenditure Budget, as a manifestation of state financial management, shall be determined annually by law and implemented openly and responsibly for the greatest prosperity of the people" (Libra & Fauzan, 2023). Thus, government contracts are not only legally binding but also have constitutional and public accountability dimensions.

Cooperation between the government and the private sector in the economy can increase the mobilisation of private capital in supporting public interests. One effort to improve community welfare through industrialisation requires various supporting infrastructures. Population growth is a factor in supporting infrastructure. In line with population growth and urbanisation, adequate infrastructure is required to improve the quality and quantity of supporting infrastructure. The government is expected to build

capacity and carry out infrastructure development and maintenance; therefore, cooperation between the public and private sectors is needed.

Guaranteed profitability for the private sector in cooperating with the government, as this can motivate the private sector to consider how to obtain profitability from investments made in cooperation with the government's Public-Private Partnership Agency. This cooperation provides capital for the private sector. Efficiency in the management of public facilities by avoiding problems of corruption, slow administrative processes and the need for internal supervision. In managing public services, private sector involvement is expected to leverage the private sector's optimism and to conduct oversight, ensuring transparency in their management

Limited government budgets drive private-sector involvement in infrastructure development. It is hoped that private-sector involvement will give the government the freedom to allocate its budget to projects oriented towards public services, rather than those that are commercially unprofitable.

The advantage of using the BOT system for the government is that it can reduce reliance on the state budget and loans, thereby eliminating the need for a feasibility study. The project is funded, built, and operated at the risk of other parties. The advantage for the private sector in the BOT system is that it can expand into other fields related to the government's business. For banks or fund providers, the advantage can be in business development in project financing.

The advantages of the BOT system come with the risk of losses. These losses occur when, during the *build-and-operate* phase, the government relinquishes its exclusive rights and transfers them to the private sector. One of the losses for the private sector is that the project carries risks, as careful consideration and preparation are required for financing under the BOT system, especially if it is difficult to obtain bank loans due to the project's lack of *feasibility*. In addition, losses are incurred when a party defaults on its obligations. In supporting economic growth, infrastructure is an important factor, not only in terms of quality but also quantity. By using the PPP system with the BOT model, the government can separate infrastructure development tasks between infrastructure providers and the private sector, so it can focus on other state tasks with higher urgency while still fulfilling infrastructure development for public services and services to its citizens.

4 UNDERSTANDING OF CONTRACT LAW AND THE POSITION OF THE GOVERNMENT AS A LEGAL ENTITY IN PRIVATE ENTERPRISE COOPERATION CONTRACTS

The state is a subject of civil law, just like humans and other legal entities. This means that the state can have rights and obligations under civil law, and can perform legal acts. In its daily activities, the government can act as a subject of civil law, for example, when procuring goods or services. A subject of civil law is anything that can have rights and obligations under civil law. Civil law subjects in Indonesia include natural persons and legal entities. The state, as a sovereign organisation with its own government, is considered a public legal entity. This means that the state can perform legal acts and bear rights and obligations under civil law.

The government not only acts as a subject of public law, but can also act as a subject of civil law in various civil activities. In this position, the government performs functions similar to those of a legal entity in general, with rights and obligations and is subject to civil law provisions. One example of this is in the procurement of goods or services, such as the purchase of office supplies, the construction of buildings, or the construction of infrastructure such as bridges, which is carried out through contracts with third parties. Through these agreements, the government has the right to demand the fulfilment of obligations and is also obliged to make payments or fulfil other obligations as agreed. In addition, the government can perform legal acts, such as purchasing or selling property, including land or buildings, through valid civil law mechanisms. In this context, the government's actions are not based on public authority (*publiekrechtelijk*), but on private legal relationships (*privaatrechtelijk*). Consequently, when acting as a civil law subject, the government is subject to applicable civil law provisions and has equal standing with other parties before the law. Therefore, the government can sue or be sued in court if a dispute arises from a contractual relationship or civil legal action.

Law is classified into public law and private law. Public law regulates the relationship between the state and state institutions or between the state and its citizens. Private law regulates the relationship between individuals or other legal entities, with an emphasis on individual interests. Based on this definition, the subjects of civil law are individuals and legal entities. It is undeniable that in its daily activities, the government

conducts business transactions with non-governmental parties. For example, the government needs to purchase goods or services (*government procurement*) in order to carry out its daily functions. The goods or services required range from simple items such as office supplies to the purchase of aircraft, the construction of buildings and bridges, or even military equipment to support national defence and security. Meanwhile, the services required by the government can include consulting services, among others.

Humans are bearers of rights and obligations. In law, they are commonly known as legal subjects. However, humans are not the only legal subjects. There are other legal subjects, namely anything that, according to the law, can have rights and obligations, including what is referred to as a legal entity. The term legal subject comes from the translation of *rechsubject* (Dutch) or *law of subject* (English). Legal subjects play a very important role in the field of law, particularly in civil law, because they are the ones who can exercise legal authority (*rechtsbevoegdheid*). In the literature, there are two types of legal subjects: natural persons (*naturlichperson*) and legal entities (*rechtperson*).

Basically, humans have rights from birth, but not all humans have the authority and competence to perform legal acts. People who can perform legal acts are adults and/or married. Meanwhile, individuals who are not competent to perform legal acts are minors, individuals under guardianship, and married women (Article 1330 of the Civil Code). However, in practice, a wife may also perform legal acts on her own behalf, whether to enter into agreements or to appear in court. In addition to *natural persons*, other legal subjects include legal entities (*rechtpersonen*). Provisions regarding legal entities in the Civil Code are contained in only 13 articles: Articles 1653-1665. None of its provisions defines a legal entity. The definition of a legal entity can only be found in legal doctrine. According to Rochmat Soemitro, a legal entity is an entity that can have assets, rights and obligations like a natural person. According to Sri Soedewi Masjchoen, as quoted by Salim H. S (2021), a legal entity is a group of people who jointly aim to establish an entity, namely (1) in the form of an association, and (2) assets that are set aside for a specific purpose, and this is known as a foundation. From these two opinions, it is clear that a legal entity is always related to assets, which fall within the realm of private law.

The government's involvement in this contractual relationship differs from that in general commercial contracts, because the characteristics of this contract are no longer purely private legal actions but also involve public law. The government's involvement

in this contract indicates that the government's actions are classified as civil government actions. About civil law actions in the administration of government affairs, Hadjon et al. (2005) states that: "Even though civil law actions for government affairs by state administrative bodies or officials are possible, it is not impossible that various provisions of public law (state administrative law) will infiltrate and influence civil law regulations. For example, several provisions of legislation specifically regulate certain procedures that must be followed in relation to civil law actions taken by state administrative bodies or officials." The government, as a subject of civil law, is a legal entity because, according to Apeldoorn (1978), the state, provinces, municipalities, and so on are legal entities. However, its establishment was not done specifically, but grew historically. The government is considered a legal entity because it engages in commercial activities (*acts jure gestionis*). The government as a legal entity can also be found in Article 1653 of the Civil Code, which states: "In addition to true civil partnerships, associations of persons as legal entities are also recognised by law, whether the legal entity is established by public authority or recognised as such, or whether the legal entity is accepted as permissible or established for a specific purpose that does not conflict with the law or morality."

The establishment of legal entities, as outlined in the *Burgerlijk Wetboek*, particularly Article 1653, indicates that legal entities can be created through several different mechanisms. According to Chidir Ali (1987), there are three types of legal entities based on their formation. First, legal entities established for the public interest, namely legal entities formed by the government or state to carry out public functions. This category includes public legal entities such as provinces, autonomous regions, regencies, and other forms of regional government that exercise administrative authority and provide services to the community. Second, legal entities recognised by public authorities, namely those initially formed by the community or certain groups and subsequently granted official recognition by the state, thereby acquiring legal status. Third, legal entities that are permitted and established for specific purposes that do not conflict with the law or morality. This form usually arises from private initiatives, such as associations or foundations, provided their objectives and activities do not violate applicable laws and norms. Thus, this classification emphasises that the legality of a legal entity is highly dependent on its establishment and recognition by the applicable legal system.

From a contractual law perspective, including those involving the State as one of the parties to the contract, there is, in theory, a classical contract law theory. The formation of this new theory was a reaction to and a critique of the medieval tradition of *substantive justice*. Judges and legal scholars in the United Kingdom and the United States subsequently rejected the long-standing belief that the inherent justice or fairness of an exchange justifies contractual obligations. They then stated that the source of contractual obligations is *the convergence of the parties' wills* or their consensus.

In the nineteenth century, contract law scholars tended to treat *individual choice* not only as an element of a contract but, as French legal experts stated, as the contract itself. They tended to identify choice with freedom, and freedom became the highest goal of individual existence.

Freedom of contract in classical contract law theory has two main ideas: that contracts are based on agreement and that they are the product of free will (choice). The fundamental doctrine inherent in freedom of contract is that contracts are born *ex nihilo*, that is, contracts are the embodiment of the free will of the parties entering into the contract (contractors). Contracts are exclusively the free will of the contracting parties. The postulate that contracts as a whole create new obligations and that such obligations are exclusively determined by the will of the parties has severed the link between custom and contractual obligations. Freedom of contract allows civil agreements to override obligations based on pre-existing customs (Anggraeni, 2019; Edwards, 2009).

The central premise of nineteenth-century classical contract law theory was freedom of contract. Individual autonomy to make bargains as they saw fit (with as little state intervention as possible) truly placed the formation of contracts *ex nihilo* at their discretion. According to classical contract theory, the parties to a contract are equal and can determine a fair bargain between themselves. This view is consistent with the idea that a contract is a product created by the parties (with the freedom to determine its terms) and also aligns with the spirit of a free market and free competition. The main concept of contract law thinking in the nineteenth century was the linking of the broad autonomy of will with the idea of unlimited freedom of contract.

In classical contract law doctrine, legal certainty is prioritised, emphasising the formal requirements for an agreement to have binding force on the parties. The theory of will, or classical contract law theory, which originates from the principle of *private*

autonomy, means that it is the will of the parties that determines their contractual legal relationship (Mills, 2018).

The principles of freedom of contract and autonomy of parties will have several fundamental consequences in contract law. First, the law applicable to the parties relates solely to the actual intention of those who make the promise, so that the content and binding force of the contract are determined by the consciously agreed will. Second, the intentions of the parties must “meet” (meeting of minds) before the contract is made, because the conformity of wills is a condition for the creation of a valid agreement. Third, in the classical view, judges do not have the authority to fill gaps in agreements or adjust them to unforeseen circumstances; judges only interpret and enforce what has been agreed upon. Fourth, the parties are free to express their will as long as it does not conflict with the law, public order, and morality.

This view aligns with Roscoe Pound’s (2003) thinking in *An Introduction to the Philosophy of Law*, which defines a contract as a relationship between two legal subjects. According to Pound, an important part of a person's property consists of benefits promised by another person, namely claims for performance that can be brought not against society in general, but against a specific individual. Thus, contracts establish personal rights and obligations arising from mutually binding promises.

The contract referred to by Pound is more akin to a private contract, namely one between the contracting parties, and it also involves the contract's object. The essence of a contract or promise, according to Pound, is the balance required to enter into a contract. On the one hand, humans have the freedom to fulfil a promise if it suits them; on the other hand, they must abide by the promise they have agreed to. Human desires are to be equal, and the parties desire to be free, thus requiring a balance of interests (*interest balancing*).

Contract law, as part of civil law, is one of the most complex areas of law. It is complex because it contains many regulations governing contract dynamics and leaves room for interpretation in the design, creation, and implementation of an agreement. Contracts and agreements must be recognised as cornerstones of modern society, especially during periods of extraordinary economic growth. Contracts are not only important for establishing relationships between individuals but also the foundation of economic activity. Contracts evolve. Changes in the times and society have significantly

influenced the evolution of contracts. The development of industrialisation and the strengthening of capitalist societies have enhanced the role of contracts.

Contract law can be classified into two types: old contract law and contemporary/modern contract law. Contemporary legal theory views contracts from a broader perspective. Traditional contract law emphasises contracts from a normative perspective (legal validity). It views contracts as constructs that contain *consideration* (performance) and the rights of the parties bound by them. Traditional contract law does not recognise the pre-contract stages as contracts themselves or at least as a binding understanding that gives rise to rights and obligations.

Contemporary contract law theory expands the classical understanding of agreements by introducing three important stages in the formation process. First, the pre-contractual stage, which is the phase before the contract is formed, is characterised by bargaining, negotiation, information exchange, and the exploration of the parties' interests that the contract will bind. At this stage, the principle of good faith begins to play a role in preventing misrepresentation, abuse of circumstances, or improper termination of negotiations. Second, the contractual stage, which is when there is a meeting of minds that gives rise to an agreement and legally binds the parties. In this phase, rights and obligations are explicitly set out in the contract's clauses. Third, the post-contractual stage, which is the stage of implementing the agreement, during which the parties are obliged to fulfil the agreed performance in accordance with the principles of good faith, propriety, and fairness.

In line with this, Knapp et al (1999) define a contract as “an agreement between two or more persons—not merely a shared belief, but a common understanding as to something that is to be done in the future by one or both of them.” This definition emphasises that a contract is not merely a shared view, but a concrete understanding of actions or obligations to be performed in the future by one or both parties.

This definition has changed the perspective on agreements. Such a definition gives rise to pre-contractual stages (*preliminary negotiations*) which contain binding promises (*promissory*) and have legal consequences for the parties conducting the negotiations. In line with this, Suharnoko (2015) emphasises that modern contract law tends to eliminate formal requirements for legal certainty and places greater emphasis on the fulfilment of a sense of justice. If, during the pre-contract stage, one party withdraws without a

lawful or proper reason and causes loss to the other party, the withdrawing party is liable to compensate the other party for the loss.

Contemporary contract law theory appears to seek to bridge the gap between *consideration* in agreements and *promissory obligations* in pre-contractual agreements. *Consideration* is a specific performance agreed upon by the parties to an agreement. With reference to Article 1320 of the Civil Code, *consideration* is equated with a “specific object” agreed upon by the parties. The lack of normative force of an agreement underlying a promise is overcome by the desire to achieve substantive justice for the losses suffered by the promised party, rather than being bound by the principle of legal certainty, which is rigid and unable to accommodate developments (dynamics) in modern contract law.

The Utilitarian school of thought holds that actions and policies are evaluated by the benefits and costs they impose on society. The application of moral principles holds that something is right if it reduces social costs and benefits its users. Everything considered right is an action that can benefit many people. In Jeremy Bentham’s (1876) *Theory of Utilitarianism* (1748-1832), he brought direction to policy by seeking an objective basis by comparing the benefits and consequences of making a decision that could provide norms accepted in society to establish decisions and social regulations.

The correct and appropriate action from a utilitarian perspective maximises public utility or benefit. This principle emphasises that moral judgements on a policy or action must be based on its consequences. There are several key criteria in the utilitarian principle. First, there must be an objective basis for assessing an action or policy, namely by rationally considering the potential benefits and possible losses before a decision is made. Thus, every policy must undergo an impact assessment to ensure that the benefits outweigh the risks or losses that may arise.

Second, the greatest benefit is an important parameter for assessing alternative actions, including in dispute resolution. An action is considered feasible if, overall, it provides greater benefits than the harm it causes. Third, the target recipients of the benefits are also a major concern: the extent to which the action can deliver the greatest benefit to as many people as possible without causing significant harm.

The measures of happiness and benefit in utilitarianism do not focus solely on individuals but also on society as a whole. Therefore, every decision must consider its

collective impact. This principle is known as the adage “*the greatest happiness for the greatest number*,” which holds that an action is considered good if it produces the greatest happiness and benefit for the wider community.

Business ethics are ethical if they involve business activities that can greatly benefit the majority of society. Thus, business activities can yield benefits without harming society or committing crimes. In other words, they can maintain usefulness or benefits. Therefore, the existence of law is necessary to prevent conflicts or clashes of individual interests in achieving desired happiness. For this reason, boundaries need to be established within the law itself. Otherwise, it could lead to *homo homini lupus*, meaning that humans become wolves to other humans. Therefore, the teachings of the author Bentham are known as individual utilitarianism.

m views that good behaviour or actions are those that can bring about quality happiness, namely happiness that is in harmony with wisdom and moral values, not merely hedonistic, utilitarian, materialistic, or capitalist happiness. Thus, the measure of goodness lies not only in physical pleasure or economic gain, but in broader benefits for human life. However, this theory is not without fundamental weaknesses.

First, utilitarianism assumes that benefits, happiness, pleasure, and suffering can be measured objectively. In practice, unlike economic transactions, which can be measured using a uniform monetary standard, there is no universal measure of a person's level of happiness. Individual pleasures cannot be equated with one another. Second, the issue of distribution and intensity of happiness becomes problematic because, although this principle emphasises the greatest benefit for as many people as possible, it pays relatively little attention to the principles of justice and equality in the distribution of these benefits. Third, there is the issue of the scope of assessment, namely the extent to which the impact of an action should be taken into account. Fourth, utilitarianism focuses solely on consequences and ignores the perpetrator's motivations, even though two actions with similar results can have different moral foundations. Therefore, utilitarianism is often considered incapable of producing comprehensive ethical decisions.

An assessment of an action can only be made once the consequences and objectives have been considered. As zoons politicon, humans cannot live alone because they are social beings. If a policy is to be used collectively, the common interest must be prioritised to bring happiness to many people. The strength of utilitarianism lies in its use

of clear, rational, and result-oriented (consequentialist) principles, thus providing relatively concrete guidelines for those in power in formulating public policy. By focusing on the consequences of an action, utilitarianism enables policymakers to assess whether a decision systematically benefits society. This approach provides a strong argumentative basis because the assessment is functional, namely, the extent to which an action produces tangible benefits.

Utilitarianism's criteria can be formulated in several ways. First, the principle of utility, which states that every action or deed must produce a certain use or benefit. A policy is considered feasible if it has a positive impact that can be felt in concrete terms. Second, the principle of greatest benefit, which states that an action must produce the greatest possible benefit and minimise, or even avoid, suffering or harm to others. Third, the principle of the greatest benefit for the greatest number of people, which emphasises that an action is morally good not if it only benefits a handful of people, but if it brings the greatest benefit to as many people as possible. Thus, the main orientation of utilitarianism is the realisation of collective welfare through the achievement of optimal social benefit.

5 LEGAL REGULATIONS ON COOPERATION PATTERNS BETWEEN THE GOVERNMENT AND PRIVATE ENTITIES (*PUBLIC-PRIVATE PARTNERSHIPS*) IN INFRASTRUCTURE DEVELOPMENT AT THE REGENCY OR CITY LEVEL

Infrastructure development is a vital pillar of economic growth and community welfare, but limitations often hamper its implementation in the State Budget (APBN) and the Regional Budget (APBD). The gap between infrastructure financing needs and the government's fiscal capacity necessitates financing innovations outside of conventional schemes. In this context, the Government and Business Cooperation (KPBU) or Public Private Partnership (PPP) model serves as a strategic instrument to bridge this gap. This concept allows the government to share risks and funding with the private sector without losing control over public assets and the quality of services provided to the community.

Nationally, the main legal basis governing the implementation of PPPs throughout Indonesia, is Presidential Regulation No. 38 of 2015 concerning Government

Cooperation with Business Entities in Infrastructure Provision. This regulation serves *as an umbrella act* that replaces previous regulations and creates a more certain investment climate for the private sector. This Presidential Regulation emphasises that infrastructure provision is no longer the government's monopoly, but can be carried out in cooperation with business entities through the principle of fair risk-sharing. This regulation applies nationally and is binding on all levels of government, including local governments acting as Project Cooperation Responsible Parties (PJPK).

The central government has issued more specific implementing regulations. Regulation of the Minister of National Development Planning/Head of Bappenas Number 2 of 2020, which updates the previous regulation, concerns the Procedures for Implementing Public-Private Partnerships. This regulation provides step-by-step guidance from the planning and preparation stages to the project transaction stage. The existence of these technical guidelines ensures that every PPP project, at both the central and regional levels, has uniform quality standards for preparing *the outline business case from financial close through to financial close*.

The selection of private partners in infrastructure development, transparency and accountability are key to preventing corruption and inefficiency. Therefore, the procurement of implementing agencies is strictly regulated through the Government Goods/Services Procurement Policy Agency (LKPP) Regulation No. 29 of 2018. This regulation governs competitive tendering or auction mechanisms for selecting the business entities most capable technically and financially. For local governments, compliance with these LKPP procedures serves as a legal safeguard, ensuring that selected private partners are credible entities capable of completing infrastructure projects in accordance with the agreed long-term contracts.

Turning to the context of regional government, the implementation of PPPs at the district and city levels has strong legitimacy through Law No. 23 of 2014 on Regional Government. This law is a manifestation of the principle of regional autonomy, which gives regions broad authority to manage their own affairs, including the provision of public services. The articles of this law explicitly grant regional heads (regents/mayors) the authority to collaborate with third parties, including private enterprises, to improve the efficiency and effectiveness of public services in their regions.

In the institutional structure of PPPs at the regional level, the Regional Head (Regent or Mayor) serves as the Project Manager (PJPK). As PJPK, the Regional Head has the authority to determine priority projects for cooperation, establish PPP nodes within the regional government, and sign cooperation agreements. However, this authority does not operate without oversight. Political support and approval from the Regional Representative Council (DPRD) is often required, especially if the project requires fiscal feasibility support or guarantees that burden the regional budget in the future.

More specifically, regarding the mechanism for regional cooperation with the private sector, the regulatory framework is also strengthened by the Ministry of Home Affairs Regulation No. 74 of 2012, concerning Guidelines for Cooperation between Local Governments and Foreign Private Entities. This regulation specifically opens opportunities for local governments not only to partner with domestic private entities but also to attract investment and expertise from foreign businesses. This is crucial for regions that require high technology or large capital that the domestic market may not fully meet.

Although the document refers to Permendagri 74 of 2012, in dynamic legal practice, local governments also need to pay attention to harmonisation with the latest regulations governing regional cooperation in general. Regional cooperation with third parties must be based on the principles of efficiency, effectiveness, and mutual benefit, with the object of cooperation prioritising government affairs under regional authority. This ensures that infrastructure projects such as markets, hospitals, or waste management at the district/city level truly address the real needs of the local community and are not merely flagship projects.

At the district/city implementation level, PPP arrangements require integration between spatial and fiscal planning. Infrastructure projects to be undertaken through PPPs must be included in the Regional Medium-Term Development Plan (RPJMD) and the Regional Spatial Plan (RTRW). This regulatory synergy prevents land overlap and ensures project sustainability. District/city governments are also required to develop adequate institutional capacity by establishing PPP Teams to oversee the legal, technical, and financial aspects of projects and ensure compliance with national regulations that cascade from the central to the regional levels.

In conclusion, the legal framework for PPPs at the district and municipal levels is a hierarchical, integrated system, starting with Presidential Regulation No. 38 of 2015 as the national foundation, and extending to sectoral and regional technical regulations. The synergy between the Regional Government Law and technical PPP regulations provides district/city governments with legal certainty to innovate in infrastructure financing. Thus, regional autonomy is not only about the delegation of administrative authority, but also about the authority to develop creative solutions through strategic partnerships with the private sector, provided they remain within the framework of accountable, transparent law.

The legal framework for Government-Business Cooperation (GBC) at the regional level has gained new significance with the issuance of Minister of Home Affairs Regulation No. 7 of 2024, amending Minister of Home Affairs Regulation No. 19 of 2016 on Guidelines for the Management of Regional Property. Whereas previous analyses focused on the “project transaction” aspect under Presidential Regulation No. 38 of 2015, Permendagri 7 of 2024 further strengthens the “asset management” aspect, which is the object of the cooperation. This latest regulation provides more rigid legal certainty regarding the mechanism for Utilising Regionally Owned Assets (BMD), which often form the basis for infrastructure projects (such as local government land for the construction of markets or hospitals). One crucial point in this regulation is the adjustment of provisions regarding the duration of asset utilisation, for example, in lease schemes for infrastructure cooperation, which now have the flexibility of a duration of more than five years to accommodate the characteristics of long-term infrastructure projects, thereby aligning the life cycle of PPP projects with the administrative cycle of regional assets.

Ministry of Home Affairs Regulation No. 7 of 2024 requires closer integration between PPP project planning and regional asset planning. As a result, district/city governments can no longer submit cooperation projects on an ad hoc basis; plans for the use of assets for cooperation with the private sector must be explicitly stated in the Regional Property Requirements Planning (RKBMD) document, particularly the RKBMD Utilisation document. This creates a new *check-and-balance* mechanism on the one hand, as the regulation facilitates private investment through more standardised procedures for asset valuation and security.

On the other hand, it tightens administrative requirements at the pre-feasibility study stage. Thus, legal risks related to future land disputes or asset misuse can be minimised, as the status of assets as KPBU objects has been verified as “*clean and clear*” in the regional asset planning document.

6 WEAKNESSES IN LEGAL REGULATIONS GOVERNING COOPERATION BETWEEN LOCAL GOVERNMENTS AND THE PRIVATE SECTOR IN INFRASTRUCTURE DEVELOPMENT AT THE DISTRICT/MUNICIPAL LEVEL

Weaknesses in the Pattern of Cooperation between Local Government and Private Sector in Infrastructure Development at the Regency/City Level: legal vacuum (*rechtsvacuum*) and legal uncertainty in the implementation of Government-Business Cooperation (KPBU) at the regional level.

The Public-Private Partnership (PPP) scheme in Indonesia is designed as an innovative financing alternative to overcome the limitations of the Regional Revenue and Expenditure Budget (APBD) in providing infrastructure. Normatively, the main legal basis for this scheme is Presidential Regulation No. 38 of 2015 on Government-Business Cooperation in Infrastructure Provision. This regulation serves as *an umbrella act* that lays the foundation for collaboration between the public and private sectors. However, the reality on the ground shows that there are implementation distortions due to the unpreparedness of legal instruments at the regional level.

The first and most fundamental legal issue is the existence of a legal vacuum (*rechtsvacuum*) at the regional regulatory level. Although Article 19 of Presidential Regulation No. 38 of 2015 explicitly states that “the Minister/Head of Institution/Regional Head shall act as the PJKP (Project Cooperation Responsible Person)”, the majority of regional governments do not yet have specific derivative regulations. The absence of Regional Regulations (Perda) on PPPs means that regions lack technical guidelines for translating national policies into unique, region-specific guidelines tailored to regional conditions. This creates a grey area in which strategic policies are taken without a solid operational foundation. Moreover, the absence of local regulations means that regions lack the legal flexibility to adapt complex national

procedures to their unique economic and geographical characteristics, thereby hindering the acceleration of infrastructure development.

This regulatory vacuum, when analysed using Lawrence M. Friedman's Theory of the Legal System, reveals a fatal flaw in the Legal Substance component. Legal substance requires clear rules to guide behaviour. In the context of regional autonomy, the absence of a Regional Regulation on Public-Private Partnerships constitutes a disregard for the mandate of Law No. 23 of 2014 on Regional Government. Specifically, Article 236 paragraph (1) reads: "To implement Regional Autonomy and Assistance Tasks, the Region shall formulate a Regional Regulation." Failure to formulate this Regional Regulation means that the region has failed to use its attribution rights to create legal certainty for the local investment climate.

From the perspective of the National Legal System, harmonisation between the central and regional governments is key. The lack of synchronisation between Presidential Regulation No. 38 of 2015 and the absence of local regulations creates legal dissonance. Lawrence Friedman emphasises that the effectiveness of law depends on the synergistic interaction between structure, substance and culture.

In the regions, these three elements are dysfunctional: the substance is empty (no local regulations), the structure is weak (no expert units), and the culture is resistant (closed bureaucracy).

The impact of this weak legal substance extends to weaknesses in the legal structure, namely, the implementing institutions. The problem is that many regions lack specialised units or competent experts. In fact, Article 5 paragraph (1) of Presidential Regulation No. 38 of 2015 stipulates that "PPP shall be carried out based on the principles of: a. Partnership; b. Benefit; c. Competition; d. Risk control and management". Without a competent institutional structure ("PPP Node"), the risk-control principle mandated by this article becomes unimplementable, leaving the Regional Budget (APBD) vulnerable to long-term contingent liabilities.

This institutional capacity gap is exacerbated by the complexity of the technical requirements set out in Regulation No. 7 of 2023 of the Minister of National Development Planning/Bappenas. Article 10 of this regulation requires the preparation of a Feasibility Study (*Outline Business Case*) covering legal, technical, economic, financial and environmental aspects. The limited human resources available in the regions to meet the

technical standards of this article have led many regional infrastructure projects to be unbankable or financially unviable, thereby failing to attract private investors who require certainty in their business calculations.

The next *issue* concerns convoluted bureaucracy and overlapping authorities, which reflect *the* bureaucracy's poor *legal culture*. This lack of clarity in procedures contradicts the principles of good public service. In Law No. 30 of 2014 on Government Administration, specifically Article 10 paragraph (1) letter e, it is stated that the General Principles of Good Governance (AUPB) include the "principle of openness". A lengthy, closed bureaucracy in the regions actually hinders the acceleration of development and creates significant economic inefficiencies. This is exacerbated by the process of appointing private partners, which is considered to be lacking in transparency, thereby creating investor *distrust* regarding legal certainty and the security of their capital in the regions.

Transparency is the next crucial issue, especially in the process of appointing private partners. Limited transparency causes legal uncertainty for investors. This is a serious violation of Law No. 25 of 2007 on Investment. Article 3, paragraph (1), letter d of this law states that "Investment shall be carried out based on the principle of openness." The lack of transparency in PPP project auctions violates the principle of transparency and risks invalidating contracts due to procedural flaws.

Analysis under Transparency Theory shows that information disclosure is an absolute requirement to prevent information asymmetry and corruption. In the book *Hukum Investasi di Indonesia (Investment Law in Indonesia)*, transparency is referred to as the foundation of investor *trust*. When local governments fail to provide a transparent partner-selection process, they not only violate the law but also damage the region's reputation as an investment destination, ultimately harming the community by delaying public infrastructure provision (Salim H. S., 2008).

The solution to this problem requires progressive legal intervention. Local governments are encouraged to immediately draft a local regulation on public-private partnerships (KPBU) that references Article 236 of Law No. 23 of 2014 to fill the legal vacuum (*rechtsvacuum*). This local regulation must include clauses that enforce, in an imperative manner and not merely as a moral appeal, the principles of transparency in Law No. 25 of 2007 and the sustainability standards in Law No. 32 of 2009, thereby

ensuring that cooperation contracts have strong executory power over the environmental and social obligations of private partners.

Good Corporate Governance (GCG) principles must also be enforced in the public sector (Good Public Governance). Transparency in the appointment of partners must be carried out through an audited electronic procurement mechanism (*e-procurement*). This is in line with the principle of accountability in state administrative law. The book *Hukum Administrasi Negara (State Administrative Law)* by Ridwan H.R (2016) emphasises that every government action that has implications for state finances must be legally and morally accountable to the public.

Another crucial issue is the weak integration of sustainable development principles in PPP contracts. The existing regulatory framework often focuses solely on financial and technical aspects of construction (*profit-oriented*) and ignores imperative clauses regarding long-term environmental and social impacts. This risks creating infrastructure projects that are economically profitable for investors in the short term, but burden the region with ecological damage and social conflict in the future.

The unsustainable infrastructure development can be seen from the series of massive floods that shook Indonesia at the end of 2025, particularly the major floods in Aceh, North Sumatra, and West Sumatra, which claimed more than 127 lives and left 104 people missing, with millions of people affected. These floods were exacerbated by infrastructure projects that were built without holistic consideration of regional water management, for example, many flood control projects worth billions of rupiah in various cities (Jakarta, Bandung, Medan) proved ineffective and even counterproductive, such as in Bandung, where the construction of a water basement in 2018 actually shifted the flooding problem to a more severe area in the Cibadak sub-district, with water levels reaching 1.5 metres.

In addition to economic and administrative aspects, a legal issue that is often overlooked but is very vital is the weak integration of sustainable development principles in PPP contracts. Many cooperation contracts only focus on short-term financial gains. This contradicts Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH). Article 2, letter b of the UUPPLH states that "Environmental protection and management shall be carried out based on the principles of preservation

and sustainability.” Ignoring these principles makes infrastructure projects an ecological threat.

More specifically, this environmental integration obligation is regulated in Article 15 paragraph (1) of the UUPPLH, which reads: ”The government and regional governments are obliged to conduct a Strategic Environmental Assessment (KLHS) to ensure that the principles of sustainable development form the basis of and are integrated into the development of a region” (Jhanattan et al., 2023). When PPP planning documents are not based on a valid SEA, the project is substantively flawed from an environmental perspective. This issue calls for applying the Theory of Sustainable Development, in which the law must serve to maintain a balance among economic profitability (profit), social welfare (people), and environmental sustainability (planet) (Shanta & Adedokun, 2025; Velenturf & Purnell, 2021).

Legal uncertainty and disregard for environmental standards in PPP schemes in the regions must also be analysed from the perspective of Pancasila justice, particularly the Fifth Principle, ”Social Justice for All Indonesian People”. Infrastructure development must aim to bring prosperity to the people as a whole, not just profits to a handful of investors. The regulatory vacuum that hinders development in disadvantaged regions is a form of structural injustice that perpetuates regional disparities in Indonesia.

In conclusion, resolving PPP legal issues in the regions requires more than just a technocratic approach; it requires comprehensive legal reform. There is a need for regulatory harmonisation that integrates investment legal certainty, environmental protection and social justice. Only with a solid, transparent, and environmentally friendly legal framework can the PPP scheme transform from a mere financing tool into an instrument of development that improves people’s welfare, in accordance with the mandate of the constitution.

7 CONCLUSION

The pattern of government-private sector cooperation at the district/city level must be viewed as a pragmatic instrument that bridges the fiscal deficit and public infrastructure needs. However, its effectiveness depends on three pillars: legal certainty, institutional capacity, and the integration of sustainable development goals. On the one

hand, PPP schemes add resources, facilitate technology transfer, and enable risk allocation that can make projects bankable and promote management efficiency; BOT/BOOT practices, for example, offer mechanisms for the private sector to finance, build, and operate before eventually handing over assets to the public. On the other hand, experience in the field shows serious gaps: the absence of specific regional regulations (Perda KPBU), weak institutional units to prepare and oversee feasibility studies, and selection procedures for partners that are not yet transparent, which opens up opportunities for inefficiency and contingency risks for the regional budget (APBD). Therefore, there is a need for more rigorous harmonisation between the national framework — including Presidential Regulation 38/2015 and technical implementation guidelines — and local regulations and planning, so that PPP projects are integrated into the Medium-Term Development Plan (RPJMD), Spatial Plan (RTRW), and Local Budget Plan (RKBMD).

The role of fiscal and guarantee facilitators—as instruments to improve project feasibility—whether initiated by central ministries or through regional PEN Loan schemes involving PT Sarana Multi Infrastruktur (Persero), must be accompanied by transparent, accountable regulations to avoid unexpected long-term burdens. In addition, technical institutions such as the Ministry of National Development Planning (Bappenas) and the Government Goods/Services Procurement Policy Agency (LKPP) must strengthen their technical guidelines for value-for-money analysis, risk allocation, and competitive tender procedures. Local governments must also obtain administrative certainty from the Ministry of Home Affairs regarding the utilisation of Regional Property, as adjusted in the latest Permendagri, as well as a monitoring mechanism from the Regional Representative Council (DPRD) to ensure that investment decisions that affect the APBD gain political legitimacy and public accountability. Furthermore, environmental and social aspects need to be included as mandatory clauses in PPP contracts—binding private actors to KLHS obligations, impact mitigation, and sustainability standards—so that investments are not only financially profitable but also do not harm the region's ecological and social capabilities. The recommended reforms include: (1) drafting comprehensive local regulations on PPPs in each region; (2) establishing PPP hubs with technical and financial capacity; (3) implementing e-procurement and public audits to prevent information asymmetry; and (4) establishing

clear and measurable fiscal guarantees. If these provisions are implemented in an integrated manner, PPPs can transform from a mere financing option into an effective, fair, and sustainable development instrument, addressing the community's infrastructure needs without sacrificing the public interest or the future of the region's environment.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

How to cite this article (APA)

Mardiana, I., Santoso, B., & Yunanto. (2026). PATTERNS OF COOPERATION BETWEEN THE GOVERNMENT AND BUSINESS ENTITIES AT THE REGENCY/CITY LEVEL: A LEGAL AND POLICY STUDY IN INDONESIA. *Veredas Do Direito*, 23, e235058. <https://doi.org/10.18623/rvd.v23.n4.5058>