

DISPUTE RESOLUTION ON PPP PROJECT IN INDONESIA'S INFRASTRUCTURE DEVELOPMENT

RESOLUÇÃO DE CONTROVÉRSIAS EM PROJETOS DE PPP NO DESENVOLVIMENTO DE INFRAESTRUTURA NA INDONÉSIA

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R. Adi Nurzaman*

*Universitas Padjadjaran, Bandung, Indonesia
adi.nurzaman@unpad.ac.id

Adrian E. Rompis*

*Universitas Padjadjaran, Bandung, Indonesia
adrian@unpad.ac.id

Zainal Muttaqin*

*Universitas Padjadjaran, Bandung, Indonesia
zainal.muttaqin@unpad.ac.id

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Abstract

The authors aim to create an in-depth analysis of a possible solution for PPP projects dispute resolution revolving around the field of infrastructure development and to serve as an input for a party in implementing PPP project's, policymakers in particular. This legal research is conducted in the manner of normative approach within the rules and the systematics of law relevant to normative studies. The principles and norms of legislation contained in this qualitative analysis, are carried out by using legal interpretation and legal construction. The research findings show the concept of PPP project in the infrastructure sector in Indonesia still requires proper improvement and evaluation in order to run effectively and efficiently, in accordance with the vision of business entities and the government's platform. Referring to the identification of potential problems or problems likely to emerge in conjunction to the existence of PPP projects, this research is expected to give a contribution to the development of legal science, specifically on State administrative law and Laws concerning Infrastructure Development. To further examine the effectiveness of using the PPP scheme in infrastructure development by the government for its sustainability and to explore the concept of dispute resolution between the government and business entities in addition on the implementation of PPP project in Indonesia.

Keywords: Infrastructure. KPBU. PPP. Government. Private.

Resumo

Os autores têm como objetivo realizar uma análise aprofundada de uma possível solução para a resolução de controvérsias em projetos de PPP no âmbito do desenvolvimento de infraestrutura, bem como servir de contribuição para as partes envolvidas na implementação desses projetos, em particular para os formuladores de políticas. Esta pesquisa jurídica é conduzida sob uma abordagem normativa, dentro das regras e da sistemática do direito relevantes para estudos normativos. Os princípios e normas legislativos contidos nesta análise qualitativa são abordados por meio da interpretação jurídica e da construção jurídica. Os resultados da pesquisa mostram que o conceito de projeto de PPP no setor de infraestrutura na Indonésia ainda requer melhorias e avaliações adequadas para funcionar de forma eficaz e eficiente, de acordo com a visão das entidades empresariais e a plataforma do governo. Com referência à identificação de problemas potenciais ou que possam surgir em conjunto com a existência de projetos de PPP, espera-se que esta pesquisa contribua para o desenvolvimento da ciência jurídica, especificamente no direito administrativo estatal e nas leis relativas ao desenvolvimento de infraestrutura. Para examinar mais a fundo a eficácia do uso do esquema de PPP no desenvolvimento de infraestrutura pelo governo para sua sustentabilidade e para explorar o conceito de resolução de disputas entre o governo e as



entidades empresariais, além da implementação de projetos de PPP na Indonésia.

Palavras-chave: *Infraestrutura. KPBU. PPP. Governo. Privado.*

1 INTRODUCTION

Infrastructure is the set of fundamental facilities that support the functionality of economic and market activities, such as transportation, communication and distribution networks, utilities, water, waterways, and energy supply systems (Todaro *et al.*, 2011). Prasetyo (2009) interpretation of Stone's definition on infrastructure as physical facilities, essential for the public agencies to set off government functions of running water supply, power plants, waste disposal, roads and irrigation. They are all aimed to organize the structural systems necessary for the economy to run.

As the main component of social system and the economic system in households, infrastructure can be defined as the basic facilities or structures, equipment, or installations, constructed and required for the well-being of the socio-economic system in the community (Prasetyo, 2009).

The availability of adequate physical infrastructure provides support for many of the community's economic activities, distribution of the flow of goods and services (Jannah & Kurniati, 2025). Their function is to ensure the flow of goods and services keep moving. Transportational infrastructure will have a massive impact in minimizing the cost of production. Infrastructure is an increase in accessibility to facilitate more efficient mobility of goods and services (Susantono, 2012).

Infrastructure is an important and vital aspect to accelerate the national, regional and local development process. They partake on an important role as one of the driving forces for economic growth (Moljevic, 2016). Alongwith investment, a country or a region cannot be separated from the availability of infrastructure such as transportation, telecommunications, sanitation and energy. Therefore, infrastructure development is the foundation of sustainable economic growth. It is to be hoped that the government's expansion on infrastructure will spur economic growth (Suratno, 2010).

By allocating resources to public and private financing, Infrastructure is often viewed as the locomotive of national and regional development (Latif, 2023). In macroeconomic terms, the availability of infrastructure affects the marginal productivity of private capital, meanwhile in the context of microeconomics, the availability of infrastructure services affects the reduction of production costs (Gie, 2002).

Its importance in propping up the economic growth can also come with its shortcomings, due to potential obstacles by the government in constructing infrastructure. For that reason, the PPP funding between the government and the private sector may serve as alternative solution. However, it is necessary to draft the concept of dispute resolution for the funding, should a dispute emerge at some point in the future (Yescombe, 2011).

The imbalance of the differences in the character of legal subjects in PPP has the potential to cause disputes (Wardana, 2025), however, dispute resolution that occurs cannot be determined with certainty, whether it uses the realm of pure public law or private law, because in PPP there are several legal aspects involved, so that a concept of dispute resolution is needed. that regulates the relationship between the government and business entities that are part of investment activities in the infrastructure sector that can provide guarantees for economic benefits, legal certainty, and political stability for the parties (Rajagukguk, 2001).

Legal certainty is an aspect affecting the investment climate, especially in infrastructure development, due to the proximity between law and infrastructure project development (Hernawati & Suroso, 2020). Consequently, legislations must be able to restore the confidence of both domestic and foreign investment in Indonesia regulated under the principles of certainty, fairness, and efficiency) (Rajagukguk, 2001). The most effective incentive plan to attract investment activities is the firm stance of the government in implementing regulations and policies, especially the consistency of law enforcement and national security (Rajagukguk, 2001)

Public-Private Partnership (referred to as PPP) is an alternative financing mechanism in the provision of public services widely used in various countries, especially developed countries (Leigland, 2018). The Presidential Decree Number 67 of 2005 later amended by the Presidential Decree Number 38 of 2015, states that the implementation of PPP is based on the principles of fairness, openness, transparency, and competition.

In Indonesia, PPP is also known as Government Cooperation with Business Entities (referred to as PPP), is a cooperation between the Government and Business Entities in the provision of infrastructure for the public interest by referring to the specifications previously determined by the Minister / Head of Institution / Head of Region / BUMN / BUMD, which partly or wholly uses the resources of the Business Entity by taking into account the risk-sharing among the parties (Rohman, 2022).

Cooperation between the government and the private sector has been known and started since the New Order era with the term Public-Private Partnership (KPS) carried out infrastructure development in the form of toll roads and electricity, was later carried out again after 1998 the monetary crisis (Djabbari, 2021).

Several supporting regulations related to KPBU were born, aim to adapt to the latest PPP developments around the world. The Government's response to this is to issue Presidential Regulation Number 38 of 2015 concerning Government Cooperation with Business Entities in Provision of Infrastructure (referred to as Perpres KPBU) (Rajagukguk, 2001).

The authors have an interest in the possibility of potential disputes that could result from PPP fundings, since there is uniqueness in principle, emphasizing that PPP is the implementation of infrastructure development activities in the public sphere and carried out by the government yet regulated under Civil law.

2 METHODS

The normative juridical method is used as a reference in writing this article (Soemitro, 1985), also known as literature review, by conducting a grammatical and authentic legal interpretation (Soekanto & Mamudhi, 1985; Bhakti, 2000). Referring to extensive use of secondary data, namely regulations within the scope of insurance for e-commerce. This article aims to analyze the concept of data and facts described in the background section, to identify the issue, hence providing an output that would serve as an alternative solution to current circumstances. Qualitative Juridical is an analytical method used in writing articles, by analyzing data in line with legislations in force. Served descriptively in regular and logical presupposition, the primary data is also used to support secondary data to come into conclusions based on existing legal regulations

The research specification is conducted through analytical descriptions, that describe and analyze a fact over a situation in a systematic manner.

This method aims to provide a systematic, factual, and accurate description of the object.

The data is acquired through literature studies from government agencies or private parties related to infrastructure development projects under the PPP scheme. The data obtained, collected through field research and the results of the literature study will be analyzed juridically qualitatively, meaning that the means for analyzing data are norms, rules, and principles of law as well as theories known in law by using legal interpretation methods to obtain clarity on the subject.

3 DISCUSSION

To ensure equality in income distribution through infrastructure development. the government is aggressively building adequate constructions to connect regions in Indonesia. It is directly proportional to the number of infrastructure projects that are being accelerated, including new toll roads, ports, and airports, or other infrastructure development sectors.

However, in the effort to accelerate infrastructure development there are several obstacles, one of which is the lack of costs to build. For this reason, the government has made an infrastructure development program with a KPBU scheme.

Co-operation is the provision of infrastructure for the public interest by referring to the specifications previously determined by the minister/head of institution/head of region / state-owned business entity / regionally owned business entity, which partly or wholly use the resources of the business entity by taking into account the risk-sharing among the parties.

KPBU is a government instrument to ensure legal certainty for (private) entrepreneurs to be more eager to invest. Finally, a good business climate will lead to increased employment opportunities and reduced unemployment and poverty. It is hoped several improvements made in current development (Kurdi, 2024).

KPBU scheme is a priority in infrastructure financing with the following considerations:

1. a limited government budget for infrastructure development;
2. alternative sources of funding and financing in the provision of public infrastructure or services;
3. KPBU scheme allows the involvement of the private sector or business entities in determining which projects are feasible to develop;
4. It allows the government to select and assign responsibility to private parties that actually can carry out efficient management of the facilities or infrastructure built; and
5. Through this scheme, the government may opt and give responsibility to the private sector to carry out optimal maintenance of cooperated infrastructure, so that public services can be used sustainably.

Budget limitations in financing infrastructure development stipulated in the 2015-2019 RPJMN have resulted in a funding gap to meet. The government is required to use several funding alternatives to overcome the funding gap, one of which is using a development cooperation scheme involving the private sector (KPBU).

KPBU is a form of agreement between the public sector (government) and business entities (State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), private business entities in the form of Limited Liability Companies, foreign legal entities, or cooperatives) to provide facilities. public services bound by agreements divided into several arrangements depending on the contract and agreed risk sharing (Noor, 2019).

There are also organizations to form in the implementation of KPBU in addition to these institutions. The Head of Cooperation Projects (PJPK) is held by the Minister / Head of Institution / Head of Region. In the infrastructure division, the KPBU is regulated by state or regional enterprises. Also, a KPBU Node formed by the PJPK is assigned to each stage and is attached to the existing work units within the Ministry / Institution / Region.

The Procurement Committee is established to procure the Implementing Business Entity. Preparation Agency is a national or international business entity providing assistance or financing to the PJPK in the preparation stage up to the transaction made through KPBU. "Implementing Business Entity" is a Limited Liability Company

established by the winner of tender selection or appointed directly (Surachman *et al.*, 2021).

Types of economic infrastructure and social infrastructure include:

1. transportation infrastructure;
2. road infrastructure;
3. water resources and irrigation infrastructure;
4. drinking water infrastructure;
5. centralized waste management system infrastructure;
6. regional waste management system infrastructure;
7. Solid waste management system infrastructure;
8. telecommunications and informatics infrastructure;
9. electricity infrastructure;
10. oil and gas and renewable energy infrastructure;
11. energy conservation infrastructure;
12. urban facility infrastructure;
13. education facility infrastructure;
14. sports infrastructure facilities and infrastructure, as well as the arts;
15. regional infrastructure;
16. tourism infrastructure;
17. health infrastructure;
18. prison infrastructure; and
19. public housing infrastructure.

KPBU aims to:

1. Sufficiently fund sustainably in the provision of infrastructure through private endowments.
2. Achieve the provision of quality infrastructure, effective, efficient, right on target, and on time.
3. Create an investment climate that encourages the participation of business entities in the provision of infrastructure based on sound business principles.
4. Encourage the use of the principle that users pay for services, or by considering the user's ability to pay.

5. Provide certainty of return on investment for business entities in the provision of infrastructure through a periodic payment mechanism by the government to business entities.

The high risk and financially unfit project in terms of funding difficulties including and including at the preliminary study stage are the main obstacles in KPBU, for that the government provides facilities in the form of government support, government warrants, payment for services, and tax incentives, and potential disputes emerging from the starting stage from the design of the preliminary study to the financial close (Rifai, 2016).

PDF is a project preparation and transaction assistance facility that aims to harmonize and integrate the process of providing fiscal facilities by the Minister of Finance for KPBU projects in the form of Feasibility Support, Infrastructure Guarantee, and implementation of an investment return scheme in the form of Payment for Service Availability in a series of effective and efficient processes. Also, PDF aims to develop studies and documents needed in the preparation and implementation of financial project transactions, in particular, the Feasibility Study and PPP Agreement draft documents, which can attract the interest and participation of business entities in PPP projects and support the progress of PPP implementation in future.

Guarantee (Government warrant) can be in the form of financial compensation provided by the Minister of Finance to the Implementing Business Entity through a risk-sharing scheme. To provide guarantees, the Government of Indonesia established an infrastructure guarantee business entity, namely PT. PII with a special task in the field of underwriting for infrastructure projects in Indonesia (Noor, 2019).

There are three stages of KPBU: planning, preparation, and transactions. At the planning stage, the Minister / Head of Institution / Head of Region / SOE / BUMD directors compile a budget plan, identify, make decisions, compile a list of PPP plans.

The output of the planning stage is a list of project priorities and a preliminary study document submitted to the Ministry of PPN / BAPPENAS to be compiled as a KPBU List consisting of KPBU about to offer and financing in the preparation process. Furthermore, in the preparation stage the Minister / Head of Institution / Head of Region/director of BUMN / BUMD as PJKK is assisted by the a preparation committee and accompanied by public advice, producing pre-feasibility studies, plans for

Government support, and Government Guarantee, stipulating procedures for returning investment from implementing business entities, and land acquisition. The transaction stage is executed by the PJKP and consists of exploring a market interest, determining the location, procuring the executing business entity and signing the agreement, and meeting fees (Noor, 2019).

Concerning state assets in infrastructure development in this particular form of financing, this may raise various dilemmas, especially in terms of the use of state-owned goods (referred to as BMN). The potential obstacles are related to the arrangement of Utilization Cooperation (KSP), Built for Hand-over (BGS), Built Handover (BSG), or Cooperation for the Provision of Infrastructure (KSPI) since the forms of BMN utilization are regulated by the government through Government Regulation 27/2014 with the Public Private Partnership scheme, as the use of BMN can be approved by Minister of PPN / Head of BAPPENAS and included in the PPP Plan List.

There are three possibilities the DJKN will be directly involved in each stage. First, to solve the problem of PPP land acquisition, through the Public Service Agency of the State Asset Management Agency, the Directorate General of State Assets (BLU LMAN DJKN), assigned by the Government as a land bank. Second, in the case of submitting PPP to the government when the contract has ended, either in the form of Separated State Assets (KND) or BMN. Third, studies of the success of PPP in various countries such as South Korea and the UK are at the Special Institutions administering PPP.

An embodiment of the political ideals of the nation, infrastructure development has a very broad and complex dimension and substantial funds, therefore in its implementation carried out in stages and planned according to the urgency of priorities and available financial support (Sumantoro, 1983).

Based on Tusk Advisory'S findings, as of December 2017, the government had completed 62 projects with a value of up to US \$ 4.2 billion (or IDR 56.28 trillion). Also, 224 projects are listed as being under construction, with an estimation of US \$ 99.2 billion (Rp.1,329 trillion). In total, Indonesia's infrastructure projects completed or under construction reach US \$ 103.4 billion (IDR 1,385 trillion) (Ray, 2020).

They assessed, if the infrastructure project worth \$ 103.4 billion complete on time in 2019-2020, it will have a major impact on Indonesia's economic growth of 7.2% in

2023. However, due to the presence of the Covid-19 pandemic, there will be missed targets and a need for adjustments in the implementation of infrastructure development during the pandemic period and once the pandemic is over.

The government takes to notice the importance of improving the state of infrastructure for investment and business climate to be more attractive. Currently, there are not enough roads, ports, airports, and bridges in Indonesia (Southeast Asia's largest economy), whereas - not infrequently - the quality of existing infrastructure is inadequate. However, developing Indonesia's infrastructure (both hard and soft infrastructure) is not an easy task. The archipelago consists of about 17,000 islands (although many of these islands are uninhabited and show no economic activity). They are more complex (and more expensive) to improve connectivity and imply there is a need to focus on maritime infrastructure.

The government has repeatedly emphasized its preparedness to maintain stability and encourage national economic growth amid the current dynamics. Various means have been opted by the government to maintain stability. One of them is to take corrective steps from the regulatory, fiscal, and institutional perspectives. The existence of the Committee for the Acceleration of Priority Infrastructure Provision (KPPIP) leads to coordination of accelerating priority infrastructure and encouraging improvement in the quality of project preparation through the OBC Guidelines. This improvement is supported by the development of the capacity of the Ministry of National Development Planning / Bappenas in providing project preparation facilities and is continued by the PPP Unit at the Ministry of Finance by providing Project Development Fund (PDF) and Transaction Advisory for PPP projects, to draw attention for the investment.

Considering that Government support is to attract investment from business entities, it has consequently issued regulations related to the provision of VGF and the availability of payment. In addition to Government's support, this provision warrants has been expanded to provide SOEs assigned in infrastructure development.

4 CONCLUSION

The law oughts to regulate and, in a sense, to communicate with the legal subjects of its provisions and to the extent of the subjects' capabilities. To measure the

effectiveness of legislation, several factors in this line of thought must be put into consideration (Dunn, 1990):

1. A legal instrument in the form of statutory regulations to inform the public of its existence;
2. The policy must also have a clear executing structure and financing;
3. Public control needs a mechanism allowing the public to be informed of its limitation

The implementation of government cooperation with the private sector in infrastructure development projects has a strategic role in development, including a competitive return value. Appropriate risk allocation by both parties, as well as a guarantee through comprehensive regulations related to PPP implementation

Both must bear responsibilities to achieve the set goals. The ability to answer or fulfill each end of the bargain or obligations defines responsibility. This concept was born as a consequence of the development of the Welfare State.

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