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Analysis of Legal Voids in the Implementation of Public Private Partnerships as a Model for Financing Infrastructure Projects in Indonesia

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ABSTRACT

Public Private Partnership (PPP) has become a vital model for financing infrastructure development in Indonesia, addressing the limitation of state budget resources. However, the implementation of this model faces significant challenges due to legal voids and unclear regulations, leading to uncertainty and inefficiencies in infrastructure projects. This study aims to identify and analyze the legal gaps in the PPP framework, assess their impact on the cooperation process between the government and the private sector, and evaluate efforts by the government to address these gaps. Utilizing a normative legal approach and case study analysis, the research explores existing legal norms, identifies inconsistencies in regulations, and examines their effects on PPP project outcomes. The findings highlight the lack of synchronized regulations, unclear risk allocation, and gaps in contract termination and dispute resolution mechanisms. These issues contribute to investor hesitation and project delays. The study concludes that comprehensive regulatory reforms, including the establishment of a unified PPP law and clearer risk-sharing mechanisms, are necessary to create a more conducive investment climate and enhance the effectiveness of PPPs in infrastructure development. This research offers practical recommendations to improve legal certainty and policy implementation for future PPP projects in Indonesia.

INTRODUCTION

Infrastructure development is the main foundation for supporting national economic growth and improving people's welfare (Edison, 2023). Toll roads, ports, airports, electricity networks, and clean water systems not only reflect the physical progress of a country but also serve as indicators of the country's capacity to provide efficient and inclusive public services (Siahay, 2023). In the context of Indonesia, which is an archipelagic country with a large population and a vast area, the need for infrastructure is increasingly urgent, both to meet the demands of connectivity between regions and to create equitable development (Agustin, 2023).

However, the main challenge in accelerating national infrastructure development is the limited financing from the State Budget (APBN) (Ferlita, 2024). Limited fiscal conditions encourage the government to seek alternative financing outside conventional schemes. This is where Public-Private Partnerships (PPP) or Government Cooperation with Business Entities (KPBU) comes in as a collaborative mechanism between the public and private sectors to provide infrastructure services or projects with a proportional sharing of responsibilities, risks, and benefits (Surachman, 2021).

PPP provides a great opportunity for private sector involvement in financing, developing, and managing public infrastructure (Suhardi, 2025). This model is considered capable of increasing efficiency, accelerating project realization, and minimizing the state's fiscal burden (Yunusovich et al., 2021). However, the implementation of PPP in Indonesia is not free from various legal challenges, especially concerning the absence of norms, disharmony of regulations between agencies, and unclear implementation mechanisms (Manullang, 2024). This has an impact on the emergence of legal uncertainty that can hinder investor interest and slow down the infrastructure development process.

The absence of detailed regulations in several important aspects of PPP causes ambiguity in decision-making and project implementation. Foreign and domestic investors need strong legal guarantees to invest their capital in the long term (Untung, 2024). In the absence of this certainty, PPP agreements become vulnerable to conflict and unilateral interpretation. Therefore, an analysis of the regulatory aspects of PPP is important to answer the need for transparent, fair, and accountable project governance (Rahardjo, 2025).

Formally, the current regulation on PPP in Indonesia refers to Presidential Regulation Number 38 of 2015 concerning Government Cooperation with Business Entities in the Provision of Infrastructure (Mudiparwanto, 2022). In this regulation, PPP is defined as cooperation between the government and business entities in the provision of infrastructure for the public interest, which partly or wholly uses the resources of business entities by considering the sharing of risks between the parties (Maharani, 2024). This definition underlines the importance of the collaborative aspect and active involvement of the private sector in national strategic projects.

In practice, PPP has certain characteristics that distinguish it from other infrastructure financing models (Ariana, 2024). Some of the characteristics of PPP include a clear sharing of risks between the government and business entities, resource contributions from each party, a relatively long implementation period, and the ultimate goal of providing public services (Utomo, 2022). These characteristics require regulations that not only regulate the basic structure of cooperation but also ensure the project's sustainability during its operational period, which can last for decades.

The legal grounds for PPP in Indonesia do not stop at Presidential Regulation 38 of 2015. The implementation of PPP projects also directly intersects with several other regulations such as Law Number 2 of 2012 concerning Land Acquisition for Public Interest, which is key to ensuring certainty regarding land acquisition as one of the most crucial components in infrastructure projects (Suntoro, 2018). In addition, Government Regulation Number 42 of 2021 concerning the Facilitation of National Strategic Projects provides a legal basis for providing incentives and acceleration facilities for projects that are considered vital for national development (Herwin, 2023). The government, through Bappenas and the Ministry of Finance, has also issued various technical regulations and guidelines for implementing PPP to clarify the planning, bidding, and project implementation processes (Adam, 2014). These guidelines cover potential project identification, feasibility studies, and project guarantees through institutions such as PT Penjaminan Infrastruktur Indonesia (PII) (Hidayat, 2022). However, the lack of comprehensive integration between these regulations often creates confusion at the implementation level, especially in the regions.

In terms of schemes, PPP provides various cooperation models that can be adjusted to the needs and characteristics of the project. One popular scheme is availability payment, where the government pays a business entity based on the availability of infrastructure services, not the volume of users (Kartikasari, 2024). In addition, there are Build-Operate-Transfer (BOT) and Build-Own-Operate (BOO) schemes, which allow business entities to build and operate infrastructure for a certain period, then hand it back to the government or continue to manage it. Meanwhile, the Design-Build-Finance-Operate (DBFO) scheme unites all stages in one long-term contract financed by the private sector (Wibowo, 2022).

The variety of PPP schemes should open up opportunities for flexibility in financing and project implementation, but the success of this scheme is highly dependent on the clarity of the rules of the game, transparency of contracts, and the legal ability to resolve disputes fairly and quickly (Muhsin, 2025). Without a strong legal framework that is adaptive to market and technological dynamics, PPP risks becoming a policy that is only good on paper, but difficult to implement consistently in the field. Thus, understanding the basic concepts, legal basis, and various schemes in PPP is prominent as a starting point before discussing further the legal vacuum that occurs in the field. All of these aspects are interconnected and cannot stand alone. Existing regulations have provided an initial framework, but the development and complexity of infrastructure projects require continuous legal improvements so that PPP truly becomes an effective and sustainable development instrument in Indonesia.

The gap in the legal framework surrounding PPPs is a significant issue that needs urgent attention. Existing regulations, such as Presidential Regulation No. 38 of 2015 and Law No. 2 of 2012, provide a general framework for PPPs but lack the specificity needed for effective implementation (Mudiparwanto, 2022). This lack of comprehensive legal provisions hampers transparency, increases risks for investors, and stifles the growth of PPPs as a viable model for infrastructure financing. Given the critical role of PPPs in national development, it is essential to address these legal voids to ensure the successful execution of infrastructure projects.

This research aims to fill this gap by analyzing the legal voids in the implementation of PPPs in Indonesia. It seeks to provide a thorough examination of the regulatory challenges, explore their implications on government-private sector cooperation, and evaluate the government's efforts to address these issues. The novelty of this study lies in its focus on the legal inconsistencies and regulatory ambiguities that specifically affect the PPP framework, a topic that has not been fully explored in previous studies. This research will contribute to the formulation of more comprehensive and operational legal policies, ensuring that PPPs can function effectively as a model for sustainable infrastructure development in Indonesia.

By addressing these legal issues, this research also aims to provide practical recommendations for creating a more conducive and transparent investment climate, ultimately enhancing the effectiveness of PPPs in contributing to Indonesia's infrastructure goals.

METHOD

This research uses a normative legal approach, which focuses on the study of applicable positive legal norms and relevant legal principles in examining a legal problem. This approach was chosen because the research aims to analyze the legal gaps in the implementation of the Public-Private Partnership (PPP) scheme as a financing model for infrastructure projects, which is essentially a normative issue regarding legal certainty and regularity. The primary data sources in this study are primary legal materials in the form of laws and regulations governing PPP in Indonesia, such as Presidential Regulation No. 38 of 2015, Law No. 2 of 2012 concerning *Land Acquisition for Public Interest*, and *PP No. 42 of 2021* concerning

Facilitation of National Strategic Projects. In addition, secondary legal materials such as legal literature, academic journals, scientific articles, and policy documents from technical agencies such as *Bappenas* and the Ministry of Finance are also important references in supporting the analysis. This research also refers to specific case studies as illustrations to show how regulatory gaps or disharmony impact the implementation of PPP projects in real terms. The analysis technique used is descriptive-analytical, to systematically describe the existing legal structure, identify gaps or disharmony in regulations, and evaluate the effectiveness of the existing legal framework in creating legal certainty for PPP actors. Thus, the results of this study are expected to be not only theoretical but also provide practical contributions to improving policies and regulations in the field of government cooperation with business entities.

RESULT AND DISCUSSION

Analysis of Legal Gaps in PPP Implementation in Indonesia

In the Public Private Partnership (PPP) scheme in Indonesia, several legal gaps hinder the smooth implementation of infrastructure projects. One of the most striking gaps is the lack of synchronization of cross-sectoral regulations, both between the central and regional governments. For example, in terms of regulating licensing and land acquisition, regional governments are often not in line with policies that have been set by the central government, especially in terms of managing infrastructure projects involving the private sector. Presidential Regulation No. 38 of 2015 concerning Government Cooperation with Business Entities in the Provision of Infrastructure does provide general guidelines regarding PPP procedures, but its implementation is often hampered by differences in interpretation between related agencies. It causes uncertainty for investors regarding the obligations that must be met at the regional level. On the other hand, the preparation of more specific sectoral regulations by related ministries or agencies sometimes does not sufficiently address local issues encountered in project implementation, which further exacerbates the lack of synchronization.

Another legal void that is often found in the implementation of PPP is the absence of clear national standards regarding risk allocation and contract clauses. Although Presidential Regulation No. 38 of 2015 has provided general guidelines regarding risk sharing between the government and business entities, the regulations are not yet detailed enough and do not provide clear operational instructions for both parties. The risks create ambiguity about responsibilities in various situations, such as when a project experiences unexpected delays or losses. For example, in the case of changes in market conditions that affect construction costs, there are no regulations that explicitly regulate shared threats between the government and the private sector. The ambiguity, in this case, often forces an imbalance in the contract that can harm one party or worse, slow down the implementation of the project itself. Given the importance of this, more detailed regulations are needed to regulate risk sharing in the PPP scheme, including in terms of guaranteeing the project's sustainability during the operational period.

In addition, legal gaps are found in the regulation of contract termination and dispute resolution. Although Presidential Regulation No. 38 of 2015 mentions the contract mechanism, there are no regulations that specifically regulate how the contract termination process can be carried out if there is a failure in project implementation or an agreement is not reached between the government and business entities. It is influential to ensure that the project is not hampered or disrupted due to the inability of one of the parties to fulfill their obligations. The articles on dispute resolution in the context of PPP, as stipulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, are not sufficient to guarantee that dispute resolution between the government and business entities will run quickly and efficiently. Therefore, clearer and more specific regulations are needed on how the contract termination and dispute resolution process can be implemented without delaying project progress.

In addition to regulatory issues that are not yet fully harmonized, the mechanisms and stages of PPP project implementation are also not entirely clear, especially at the pre-feasibility study stage. Although Presidential Regulation No. 38 of 2015 regulates the project planning stages, the pre-feasibility study process is often not carried out to the same standards across regions and sectors. The risks of neglecting an in-depth analysis of the economic and social feasibility of the project to be implemented can affect the quality of the decisions taken. Furthermore, uncertainty about who is responsible for this stage—whether the central government, local government, or business entities—often leads to inefficiencies in the resources and time required to complete the feasibility study. It leads to the potential for projects to be unprepared or even fail midway due to decisions not based on adequate analysis.

Another ambiguity lies in the procurement mechanism for business entities involved in PPPs. Although existing regulations, such as Presidential Regulation No. 38 of 2015 and Government Regulation No. 42 of 2021, provide basic procedures for the procurement of business entities, in practice, this process often runs in a non-transparent and inefficient manner. This is due to the lack of clear guidelines on how the selection of business entities should be carried out, as well as the lack of transparency in the project assessment and evaluation mechanisms. In addition, several projects often face problems related to uncertainty regarding the requirements for business entities in implementing projects involving public financing. This opaque selection process may reduce investor confidence and slow down the flow of investment needed to fund urgent infrastructure projects.

On the other hand, the role of supporting institutions, such as PT Penjaminan Infrastruktur Indonesia (PII) and State-Owned Enterprises (BUMN), is also often unclear in the existing legal framework. PII is supposed to function as an institution that guarantees the smooth running and sustainability of PPP projects, but in practice, its authority to provide guarantees for large projects often overlaps with the role of BUMN, which is also involved in several infrastructure projects. Clarity regarding the division of roles and responsibilities between these institutions is essential to avoid confusion and potential conflicts that can slow the project execution. It creates losses for the private sector involved, as they become less confident in the supporting policies provided by the government.

Problems in financing and incentive arrangements also create significant legal gaps in the PPPs. One real example is the less-than-optimal utilization of the Viability Gap Fund (VGF), an instrument that aims to cover the difference between development costs and revenues that can be generated from the project, which is often used to attract private investors. Although the VGF has been regulated in Government Regulation No. 42 of 2021, its use in practice is still limited and constrained by the lack of clarity in the application procedures and complicated administrative requirements. In addition, provisions regarding taxes and customs for PPP projects have not been regulated in detail. The lack of clarity in this regard leads to a potential waste of resources and uncertainty that can reduce the attractiveness of PPPs for foreign investors.

The disharmony between government fiscal policy and the needs of private projects is often an obstacle to PPPs' implementation. Although the PPP scheme aims to mobilize private resources, government fiscal policies related to state budget management are often not in line with the long-term needs of infrastructure projects financed through PPPs. The long-term financing needed for these large projects is often hampered by fiscal policies that focus more on short-term spending and achieving state budget targets. It indicates an urgent need to formulate fiscal policies that are more supportive of PPP projects in a sustainable manner, by providing clearer incentives for the private sector to finance long-term infrastructure. Thus, although PPP has great possibility as a financing model for infrastructure projects, many legal gaps should be addressed to realize this goal. For this reason, revision of existing regulations and development of more integrated legal policies are urgently needed.

Impact and Efforts to Handle Legal Vacuum in PPP

The impact of legal vacuum on the effectiveness of Public Private Partnership (PPP) schemes is very large and can affect the entire infrastructure development ecosystem. One of the main impacts that can occur is legal uncertainty for investors and business actors. Regulatory vacuum or unclear regulations governing PPPs cause investors to hesitate to participate. They worry that the decisions taken may not be supported by clear legal provisions and can threaten the stability of their investments. This uncertainty creates long-term risks for projects that should be important resources for infrastructure development in Indonesia. Disrupted investment decisions can hinder the achievement of development targets set by the government. In addition, the unclear risk management in PPPs also increases the possibility of moral hazard and project failure. Without clear regulations regarding the risk sharing between the government and business entities, both parties can avoid their responsibilities if a project fails. Moral hazard can arise when the private sector feels can shift losses from their mistakes to the government, while the government may not be able to ensure that the private sector will fulfill its obligations. This adds to the social and financial losses that can hinder the sustainability of infrastructure projects that are vital to the community. Failed projects not only add to the burden on the state budget but also damage public trust in the PPP scheme as a solution for infrastructure financing.

One of the further impacts of unclear regulations is the declining interest of the private sector in participating in infrastructure projects. Legal uncertainty caused by the lack of regulations makes many private investors reluctant to get involved in large projects that require significant funds and a long time frame. Without any guarantee of legal certainty, investors feel that the risks they bear are too great. In this condition, the private sector tends to prefer investing in safer and more profitable sectors, such as the financial or consumer sectors, rather than getting involved in infrastructure projects that are full of uncertainty. This has a direct impact on infrastructure financing which is limited and insufficient to meet the needs of development that continues to grow.

To overcome this problem, the government has tried to fill the legal gap by taking various corrective steps. One of them is revising existing regulations. The Draft Law on PPP, if passed, is expected to provide a more comprehensive and clear legal framework. The regulatory revision process is also part of an effort to address issues that have emerged, such as unclear risk sharing, business entity procurement procedures, and dispute resolution. The PPP Bill, which will be part of the National Legislation Program (Prolegnas), is expected to provide a stronger legal basis by addressing gaps in existing regulations.

Apart from that, the government has also issued PPP implementation guidelines issued by the National Development Planning Agency (Bappenas) and the Ministry of Finance. These guidelines are intended to provide more detailed technical instructions on how PPP should be implemented, including regulations on business entity procurement, risk sharing, and dispute resolution. However, even though these guidelines already exist, the main challenge remains in enforcing these guidelines in the field, because there are no clear operational standards that link the guidelines to local practices in each region. Therefore, the government needs to continue to monitor and evaluate the implementation of these guidelines to ensure that PPP projects can run smoothly and by appropriate provisions.

Besides the regulatory efforts, increasing the role of the Indonesia Infrastructure Guarantee Fund (IIGF) is also a strategic step to fill the legal gap in PPP. IIGF is expected to provide guarantees for investors regarding the risks that arise in the implementation of infrastructure projects. However, the role of IIGF is still relatively limited because there are still many projects that do not utilize this guarantee facility optimally. The government must strengthen IIGF by providing greater authority to guarantee strategic projects while ensuring that the existing guarantee mechanism is more transparent and affordable for various types of projects, both large and small scale. Strengthening the role of IIGF will provide more certainty to the private sector in facing the potential for large risks in financing infrastructure projects.

To see how other countries handle similar issues, comparative studies of countries with long experience in managing PPPs are significant. One country that can be used as a reference is the United Kingdom, which has a PPP Code of Conduct that sets out basic principles for PPPs' implementation, such as transparency, accountability, and risk management. This code of ethics provides clear guidelines regarding the rights and obligations between the government and business entities, as well as more efficient dispute resolution procedures. The UK's experience shows that clear and consistently implemented regulations can increase private sector confidence and accelerate the implementation of infrastructure projects.

Other countries that can be used as references are Australia and South Korea, which have PPP schemes based on risk and efficiency. In both countries, the sharing of risk between the government and the private sector is regulated evidently and in detail and is supported by flexible regulations that still maintain accountability. Australia, for example, has a more structured approach to financing and incentives for projects involving the private sector and pays more attention to risk evaluation from the planning stage. Meanwhile, South Korea is known for its long-term supportive fiscal policy for PPP infrastructure projects, which provides a sense of security for investors to commit to project financing. The importance of analyzing best practices from these countries is so that Indonesia can formulate regulations that not only meet legal needs but are also able to create a conducive and sustainable investment climate. With clear regulations, based on legal certainty and accountability, Indonesia can increase private participation in infrastructure projects and reduce the risk of project failure caused by legal problems.

CONCLUSION

This study confirms that the legal vacuum in the implementation of the Public-Private Partnership (PPP) scheme in Indonesia occurs in various aspects, including contracts, institutions, and financing incentives. At the contractual level, there is still a lack of clarity regarding the division of risks that must be borne by the government and private parties, as well as clauses governing contract termination and dispute resolution. In addition, institutional problems related to the roles and responsibilities of supporting institutions such as *PT Penjaminan Infrastruktur Indonesia* (PII) and *State-Owned Enterprises* (*BUMN*) are also not well structured. On the financing side, the incentives offered are still less than optimal, especially in utilizing the *Viability Gap Fund* (VGF), which should be a bridge between projects that are not fully financially profitable for the private sector. The consequence of this legal vacuum is pronounced, with the emergence of legal uncertainty that hinders the entry of much-needed private investment, as well as the potential for inefficiency in infrastructure projects that should be a catalyst for national development. To overcome these problems, serious efforts are needed to improve existing regulations. One of the major recommendations is the establishment of a *Law on PPP* as the main legal umbrella that regulates all aspects related to government cooperation with the private sector in infrastructure projects. Besides, synchronization between sectoral regulations and between the central and regional governments must be carried out to avoid overlaps or inconsistencies that can hinder the implementation of PPP. The preparation of a model PPP contract or standardized PPP agreement is also an important step to create certainty and uniformity in project implementation. Finally, increasing the capacity of implementing institutions, including *IIGF* and *BUMN*, as well as strengthening guarantees for projects being implemented, is very important to create an ecosystem that supports the success of PPP in the long term.

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