# The Legal Certainty and Transparency in the Implementation of Government-Private Public Partnerships in Indonesia

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***Abstract***

*This study examines the challenges encountered in PPP execution, focusing on legal and transparency issues in project management. Based on the analysis of several case studies related to PPP, such as geotourism development in Belitong, the impact of the pandemic on export sectors, and the strengthening of immunization systems, the research identifies how public-private collaboration can significantly contribute to sectors like tourism, economy, and healthcare. However, major challenges include unclear regulations regarding the allocation of risks, rights, and responsibilities between the parties involved and a lack of effective transparency mechanisms in project management. This study also analyzes existing regulations, such as Law No. 2 of 2017 on Construction Services and Presidential Regulation No. 38 of 2015, and discusses the need for revisions and improvements. The findings suggest that, for PPP projects to succeed and be sustainable, strengthening legal frameworks and improving transparency are essential, ensuring that the collaboration between the government and the private sector operates more efficiently and maximally benefits Indonesia's development*

## I. Introduction

Public-Private Partnership (PPP) is a cooperation model widely used in various countries to accelerate infrastructure development and provide public services (BPK, 2017). In the Indonesian context, PPP is expected to overcome government budget limitations and introduce efficiency and innovation often owned by the private sector. This model, which involves the public and private sectors in planning, financing, building and managing projects, has great potential to support sustainable economic development (Ungusari, 2015). However, although this concept benefits both parties, its implementation is often faced with various challenges, especially regarding legal certainty and transparency.

Legal certainty is crucial in ensuring the smoothness and success of PPP projects. Without clear legal certainty regarding the rights and obligations of each party, the potential for disputes, confusion over the distribution of risks and uncertainty in project implementation becomes very high (Pemerintah Republik Indonesia, 2018). On the other hand, transparency in PPP project management is also the key to maintaining accountability and preventing irregularities or corrupt practices. If not handled well, these legal issues (Abubakar, 2022) can negatively impact the project's sustainability and public trust in the integrity of cooperation between the government and the private sector.

As a developing country with various ongoing infrastructure projects, Indonesia faces significant challenges in regulating and ensuring transparency and legal certainty in PPPs (Joudyian, 2021). Although there are regulations governing PPP, such as Law No. 2 of 2017 concerning Construction Services and several Presidential regulations, practice in the field still shows ambiguity and inconsistencies in their implementation (Khajuria, 2022). This raises various problems, both in terms of contractual law and risk sharing and in terms of monitoring and managing project finances.

This research examines in-depth legal certainty and transparency in implementing public-private government partnerships in Indonesia (Sirks, 2022). The main focus is to identify the legal challenges faced in implementing PPP projects and analyze the extent to which existing regulations can provide certainty for the parties involved. This research will also review the role of transparency in reducing potential irregularities and increasing accountability in PPP projects so that it can contribute to efforts to improve PPP implementation in Indonesia.

In light of the aforementioned evidence, the legality of peer-to-peer lending from a Shari'ah Economic Law perspective is questionable. This is particularly evident in the context of the profit withdrawal process, which is perceived as onerous for fund borrowers due to the application of an interest-based system (Nasari, 2022).

## 2. Research Method

This research uses a normative-empirical approach that combines legal theory studies with observations of implementation practices of government-private public partnerships (PPPs) in Indonesia (BPK, 2017). This approach was chosen because it allows the author to examine the normative legal aspects governing PPPs and analyze how these regulations are implemented in practice and the challenges that arise in their implementation.

### Normative Approach

The normative approach in this research focuses on analyzing the laws and regulations governing the implementation of PPP in Indonesia. With this approach, research will examine several relevant legal regulations, such as Law No. 2 of 2017 concerning Construction Services (BPK, 2017), Presidential Regulation No. 38 of 2015 concerning Government Cooperation with Business Entities in Providing Infrastructure, and various related implementing regulations. The main focus of the normative approach is to understand the legal principles that form the basis of PPP implementation and identify how far Indonesian law provides certainty for the parties

involved in this partnership.

**Empirical Approach**

This research's empirical approach aims to analyze the real practices of PPP implementation in the field, especially related to implementing legal certainty and transparency as regulated in legislation (Pemerintah Republik Indonesia, 2018). In this case, an empirical approach is carried out through case studies of several PPP projects implemented in Indonesia, such as toll road construction projects, hospitals, or energy infrastructure. Through this case study, the research will dig deeper into the legal challenges faced by the government and the private sector in implementing these projects.

**Qualitative Analysis**

After data from legal and practice sources has been collected, this research will qualitatively analyze the existing findings. This analysis will link the legal provisions in the regulations with their implementation in the field and evaluate whether the regulations effectively create legal certainty and transparency in PPP projects (Kaufman, 2020). This research will also compare the conformity between the legal objectives set by regulations and the results achieved in implementing PPP projects in Indonesia.

## 3. Results and Discussion

## 4. Conclusion

Indonesia's public-private partnerships (PPP) are crucial in supporting infrastructure development and other essential sectors such as healthcare, tourism, and the economy. Based on a summary of recent studies, it can be concluded that collaboration between the public and private sectors offers significant potential to address major challenges the country faces, such as resource management, economic resilience, and strengthening the healthcare system. This partnership has also proven to be capable of creating innovative solutions that can accelerate the achievement of sustainable development goals.

However, despite this significant potential, implementing PPPs in Indonesia still faces several challenges, particularly regarding legal certainty and transparency. Legal certainty regarding the rights and obligations of the parties involved in PPP projects is often unclear, leading to uncertainty in risk allocation and project management. Although Indonesia has established important regulations, such as Law No. 2 of 2017 on Construction Services and Presidential Regulation No. 38 of 2015 on Government Cooperation with Business Entities, revisions and improvements to these regulations are still needed to address existing ambiguities, especially regarding financing, funding, and risk allocation between the government and the private sector.

On the other hand, transparency in implementing PPP projects also presents a significant challenge. Without adequate transparency, the projects' success is at risk, and public trust in this partnership can also decline. Although there is a strong legal foundation to support transparency, such as Law No. 14 of 2008 on Public Information Disclosure and Government Regulation No. 70 of 2012 on the Management and Implementation of PPPs, their implementation is often hindered by weak oversight and a lack of data integration between the public and private sectors. Therefore, strengthening the oversight system, providing more transparent reporting, and ensuring open data management is crucial to improving accountability and ensuring the sustainability of PPP projects.

Overall, while public-private partnerships in Indonesia have great potential to drive sustainable development, legal certainty and transparency must be improved to ensure these projects are executed efficiently, effectively, and responsibly. The future success of PPPs depends heavily on how well the government and the private sector can work together to overcome these obstacles and ensure that all parties involved can fulfil their obligations and responsibilities. Thus, this research provides an important insight into the need for regulatory reforms and improved oversight, which will be key steps to enhance the quality and sustainability of PPP projects in Indonesia.

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