

LEGAL CLARITY AND RISK MITIGATION IN PPP PROJECTS



(M. Idris F. Sihite)

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Public Private Partnership

- Is one of the alternatives to the infrastructure financing plan, outside of the state/regional budget and non-state budget.
- A collaboration between a government agency and private enterprise, often on large infrastructure projects that can be used to finance, plan, build or execute and operate projects.

Public Private Partnership

- Is not a new concept in Indonesia. It was first introduced during the New Order era under President Soeharto's time and was utilized for infrastructure provision such as toll road and electricity.
- Similarly, Municipal PPP was also introduced during the same period. One of the pioneers of Municipal PPP was the Jakarta Drinking Water Supply System where the Drinking Water Company owned by the Provincial Government of Jakarta (PAM Jaya) signed a 25-year PPP agreement in June 1997 with two private consortiums, namely PT PAM Lyonnaise Jaya (Palyja) and PT Thames PAM Jaya.
- Although PPP has been around in Indonesia for quite some time, PPP was only centrally regulated since 1998 through the **Presidential Decree** Number 7 of the Year of 1998 on PPP in Infrastructure Development and Management. Later, this Decree was revoked and replaced by **Presidential Regulation** Number 67 Year 2005 and its subsequent revisions and then substituted with latest Presidential Regulation Number 38 Year 2015.

PPP Based on Presidential Regulation No. 38/2015

Public Private Partnership, hereinafter referred to as PPP, is the cooperation between **government** and **Business Entity** in **infrastructure provision for the public interest** in accordance with the **specification previously determined by the Minister/Head of Institution/Head of Region/State Owned Enterprise/Regional Owned Enterprise**, which **partially or fully uses Business Entity's resources**, with particular regard to the **allocation of risk between the parties**.

Relevant Principles of PPP

- Partnership
- Benefit
- Competition
- Control and risk management
- Effectiveness
- Efficiency

In line with Good governance Principles and
Procurement Principles



Types of PPP, among others:

Build Operate
Transfer (BOT)

Build Operate
Own (BOO)

Design – Build
– Finance –
Operate (DBFO)

Design-Build
(DB)

Build – Lease –
Operate –
Transfer (BLOT)

Buy Build
Operate (BBO)

LEGAL FRAMEWORK OF PPP REGULATION

Presidential Regulation No 38/2015

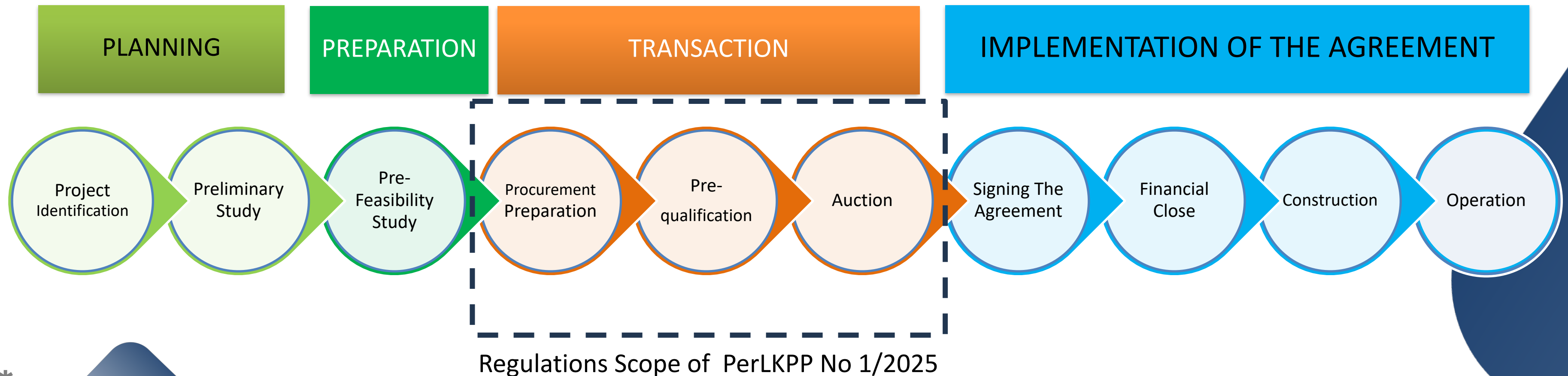
Regarding Public-Private Partnership in providing infrastructure

Give A Mandate



Regulation of the Government Goods/Services Procurement Policy Agency (LKPP) No. 1/2025

Regarding Procurement Procedures for Public-Private Partnership in providing infrastructure



KRONOLOGI

KASUS

BAKTI

KOMINFO

2 NOVEMBER 2022

- Kejagung meningkatkan status perkara dugaan korupsi BTS 4G Bakti Kominfo ke penyidikan.

4 JANUARI 2023

- Tiga orang ditetapkan sebagai tersangka:
- Direktur Utama Badan Aksesibilitas Telekomunikasi dan Informasi (Bakti) Kementerian Kominfo, **Anang Achmad Latif**.
- Direktur Utama PT Mora Telematika Indonesia Tbk (PT Moratelindo), **Galumbang Menak Simanjuntak**.
- Tenaga ahli dari Human Development (Hudev) Universitas Indonesia, **Yohan Suharyanto**.
- Anang diduga mengatur sedemikian rupa agar vendor tertentu bisa memenangkan proyek pembangunan BTS 4G.
- Anang mendapat **masukan dari Galumbang**.
- Yohan diduga** merekayasa kajian teknis yang disusun lembaganya.

18 JANUARI 2023

- Kejagung mencegah 23 orang**, yang diduga terlibat dalam kasus itu, ke luar negeri.

25 JANUARI 2023

- Direktur Akuntansi PT Huawei Tech Investment (PT HWI), **Mukti Ali ditetapkan sebagai tersangka ke-4**. Ia diduga berkongkalikong dengan Anang sampai akhirnya PT HWI dinyatakan menang tender.

7 FEBRUARI 2023

- Komisaris PT Solitech Media Sinergy (PT SES) **Irwan Herawan dijadikan tersangka**. Diduga juga berkongkalikong dengan Anang untuk mengarahkan ke perusahaan tertentu menjadi pemenang tender di semua paket proyek.

14 FEBRUARI 2023

- Plate diperiksa pertama kali sebagai saksi oleh Kejagung. Ia dicecar 51 pertanyaan selama lebih dari 10 jam.
- Plate ditanya soal pengawasan dan pengendalian proyek; peran menteri selaku pengguna anggaran, proses perencanaan hingga evaluasi.
- "Selaku pengguna anggaran dia memiliki kewajiban melakukan evaluasi dan pengawasan penggunaan anggaran satuan kerja di bawahnya,"* jaksa.

15 MARET 2023

- Plate kembali diperiksa Kejagung. Selama 6 jam, ia dicecar jaksa terkait peran sebagai Pengguna Anggaran, terutama soal tanggung jawabannya atas keuangan karena ada indikasi mark up.
- Kebijakan yang bersangkutan terkait perencanaan pembangunan BTS yang seharusnya dilaksanakan dalam jangka waktu 5 tahun, akan tetapi dilaksanakan dalam jangka waktu hanya 1 tahun.
- Adanya indikasi manipulasi pertanggungjawaban kemajuan atau progress proyek sehingga seolah-olah pencairan 100% dapat dilaksanakan terlebih dahulu.
- Klarifikasi perihal adik kandung yang bersangkutan yaitu **GAP**, yang diduga menikmati fasilitas terkait dengan jabatan **JGP**, kakak kandungnya.
- Jaksa mengumumkan telah **menyita Rp 543 juta dari GAP**, adik Plate dalam kasus dengan tersangka Anang.

Desain: Ema | Olah data: Reza | Sumber: Suara

Arkad digital media

Learn from BAKTI CASE

- ❑ The Public-Private Partnership (PPP) scheme using Availability Payment is considered to better uphold accountability and project governance compared to the procurement of goods/services currently applied in the BAKTI BTS project. In the BTS project, the Government must allocate the budget in advance, whereas in the Palapa Ring Project and the SATRIA-1 Satellite Project, it is the Implementing Business Entity that is required to allocate the budget.
- ❑ As the party responsible for budget preparation, the Implementing Business Entity will expend its budget effectively and efficiently.
- ❑ Mark-ups, bribery, and other corrupt practices are factors contributing to project cost inflation, which is clearly undesirable for the Implementing Business Entity. An inflated project cost will reduce the revenue it receives from the Availability Payment.

Learn from BAKTI CASE

Lessons Learned from the 4G BTS Case – Legal & Risk Mitigation Focus

Lessons Learned	Recommended Actions
Weak compliance with procurement laws (Perpres No. 16/2019)	Make legal compliance checks mandatory before contract signing; integrate compliance audits into each project stage.
Incomplete and easily amended PPP contracts	Require comprehensive contract drafting with clear performance, risk, and penalty clauses; mandate independent legal review before signing.
No feasibility study or data-based needs assessment	Legally require feasibility studies and needs analyses as preconditions for project approval.
Absence of market price surveys in budget estimates	Make market price surveys a legal requirement for HPS preparation to prevent mark ups.
Poor risk identification and mitigation	Implement structured risk assessments covering technical, financial, political, and environmental risks; maintain a risk register updated throughout project.
Weak internal control (SPIP) implementation	Fully implement SPIP with independent audits; strengthen internal Compliance Units to function as effective early warning systems.
Lack of real-time budget monitoring	Integrate and mandate use of digital monitoring tools (e.g: MONSAKTI) for live budget verification.
Low transparency in contracts and amendments	Publish all project documents and amendments on an open-access government portal, require public disclosure of procurement decisions.
No secure whistleblowing system	Establish a protected; anonymous whistleblower platform with legal safeguards and potential incentives

Common Legal Risks in PPP Projects

- Ambiguities in contract terms (scope, payment mechanisms, termination)
- Unclear land acquisition & permits
- Regulatory/policy change risk during project lifecycle
- Insufficient risk allocation and bankability issues
- Dispute resolution gaps and weak enforcement

What is Legal Risk ?

- Legal risk is the risk arising from failure to comply with statutory or regulatory obligations
- Generally all laws in the host country will apply to an entrepreneur's local business operations (from A to Z).
- Non – compliance/failing to adhere with laws and regulations potentially leading to legal penalties (inc corruption cases), financial loss, fines and reputational damage, etc

Key Areas of Legal Risk

Contract Risk

Regulatory
Compliance
Risk

Compliance
Risk

Data Privacy
Risk

Intellectual
Property Risk

Legal Risk Mitigation

“ Legal risk mitigation involves identifying, assessing, and controlling the potential negative legal consequences that an organization might face” (ACFE).



Essential Practices for Mitigation

Strong Legal Framework

Regular Legal Audits/Review

Employee Training

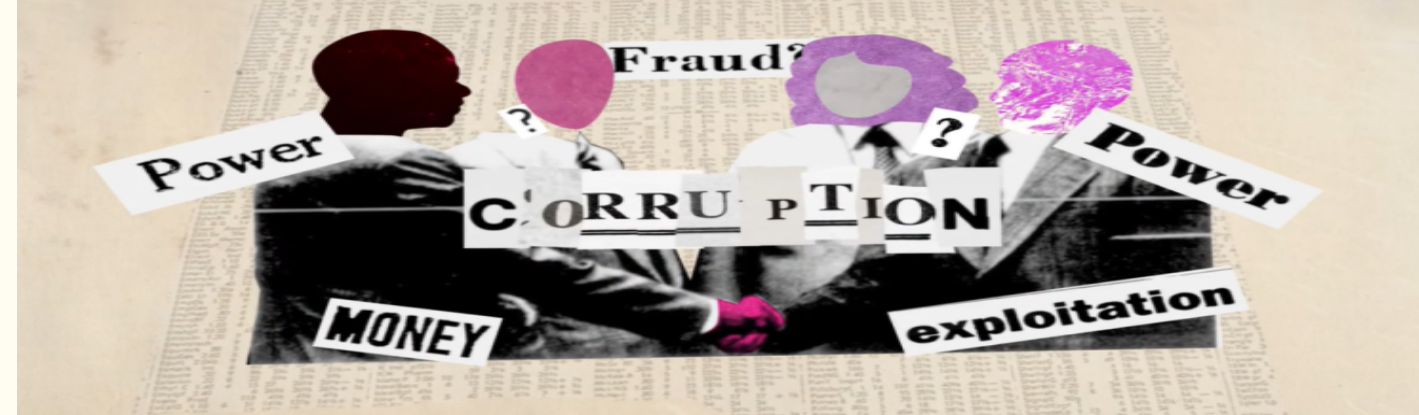
Crisis Management Plan

Technology Integration

External Legal Experts

Compliance Culture

Regular Review and Update



Common Corruption Cases in PPP

Project selection and preparation	<ul style="list-style-type: none"> → Lack of transparency in project selection → Political Interference and create corruption
Tendering and procurement	<ul style="list-style-type: none"> → Inadequate advertising of tender calls, insufficient time for bid preparation, Selection of partners, contract negotiation, project design.
Contract execution, Monitoring and Oversight	<ul style="list-style-type: none"> → Poorly planned maintenance, inadequate monitoring of contract compliance, bribery of officials that favor the private partner
Post-transfer phrase	<ul style="list-style-type: none"> → Weak mechanisms for oversight and accountability → Misallocation of resources (not viable or beneficial)

Legal Risk Mitigation

- **Strong legal framework and Early Legal Due Diligence** – review project feasibility, permits, land rights, and sectoral regulations.
- **Clear Contract Drafting** – unambiguous terms on scope, payment, termination, and dispute resolution.
- **Transparency and accountability** – open procurement processes, public access to information, robust oversight mechanism
- **Risk Allocation Clauses** – follow Perpres 38/2015 provisions for proportional risk-sharing between government and private sector.
- **Regulatory Stability Mechanisms** – include clauses for compensation or adjustment if policies change.
- **Dispute Settlement Clauses** - Include robust dispute resolution (arbitration, escalation clauses).
- **Expert and Community involvement** - Engage legal experts and government legal advisory bodies early

PPP Agreement Shall Include, among others:

1. Scope of work;
2. Duration;
3. Performance security;
4. Tariff and adjustment mechanism;
5. Rights and obligations including risk allocation;
6. Standards of service performance;
7. Transfer of shares before the PPP operates commercially;
8. Sanctions in the event the parties fail to meet the terms of the agreement;
9. Termination of agreement;
10. Ownership status of the assets;
11. Dispute resolution mechanism arranged in stages, namely deliberation and consensus, mediation, and arbitration/court;
12. Mechanism to monitor performance of the implementing Business Entity in the procurement implementation;
13. Mechanism for variations in the works and/or services;
14. 'Step-In' right mechanism by the government and lenders;
15. Use and ownership of the infrastructure assets and/or its management to the GCA;
16. Return of the infrastructure assets and/or its management to the GCA;
17. Force majeure;
18. Claims and warranties of the parties that the PPP agreement is valid and binding in accordance with the laws and regulations;
19. Applicable law

Government Support Mechanism

- Legal advisory from state legal offices (e.g., JAMDATUN)
- Government guarantees for revenue/payment security
- Viability Gap Funding (VGF) to improve bankability
- Inter-agency coordination to expedite approvals
- Access to PPP facilitation resources (PPP Book, Bappenas guidelines)

Example:

Risk Category	Example	Mitigation Strategy	Responsible Party
Legal	Ambiguous termination clauses	Clear drafting & government legal review	Government & Private Partner
Financial	Revenue shortfall	Government guarantee / VGF	Government
Technical	Construction delays	Independent engineer oversight	Private Partner
Environmental/Social	Community opposition	Early stakeholder engagement	Government & Private Partner
Political	Policy changes	Stability clauses & compensation mechanisms	Government
Force Majeure	Natural disaster	Comprehensive insurance coverage	Private Partner



For Smoother Project Execution

- Early stakeholder engagement and consensus building
- Transparent and timely communication between parties
- Monitoring and compliance with legal obligations
- Contingency planning for unforeseen legal or political risks
- Periodic contract reviews to adapt to evolving conditions

Key Takeaways:

- Legal clarity is the foundation for successful PPP execution
- Early legal engagement prevents costly disputes
- Government support mechanisms strengthen project resilience
- Proactive risk mitigation leads to timely, on-budget delivery



**THANK
YOU**