

# **LEGAL FRAMEWORKS FOR PUBLIC-PRIVATE PARTNERSHIP FINANCING IN INFRASTRUCTURE DEVELOPMENT: A Comparative Study of Indonesia and the Philippines**

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## ***Abstract***

*Infrastructure development constitutes a fundamental driver of economic growth in developing countries; however, persistent fiscal constraints have compelled ASEAN states such as Indonesia and the Philippines to adopt Public-Private Partnership (PPP) schemes as alternative financing mechanisms. Despite the long-standing implementation of PPP in both jurisdictions, significant disparities in legal frameworks and institutional arrangements raise critical issues concerning regulatory efficiency, bureaucratic coordination, and legal certainty in infrastructure delivery. This study aims to comparatively examine the legal frameworks governing PPP implementation in Indonesia and the Philippines by applying the analytical standards set out in the World Bank's Public-Private Partnership Legal Framework Reference Guide. Employing normative legal research, this study utilises statutory, conceptual, and comparative approaches to analyse PPP-related legislation, institutional governance structures, contractual arrangements, and dispute resolution mechanisms in both countries. The findings reveal that Indonesia operates under a fragmented and multi-layered regulatory regime involving numerous institutions, offering stronger legal certainty through tiered dispute resolution mechanisms, whereas*

*the Philippines adopts a unified PPP legal code supported by a centralised PPP Center, resulting in greater procedural efficiency and investment facilitation. This article contributes to the optimal implementation of PPP through regulatory simplification and institutional centralisation for countries in the ASEAN region.*

Pembangunan infrastruktur merupakan prasyarat utama pertumbuhan ekonomi di negara berkembang, namun keterbatasan fiskal mendorong Indonesia dan Filipina sebagai negara ASEAN untuk mengandalkan skema Public-Private Partnership (PPP) sebagai alternatif pembiayaan yang berkelanjutan. Meskipun kedua negara telah lama menerapkan PPP, perbedaan kerangka hukum dan kelembagaan menimbulkan persoalan efektivitas, efisiensi birokrasi, serta kepastian hukum yang berdampak langsung pada keberhasilan proyek infrastruktur. Penelitian ini bertujuan membandingkan kerangka hukum PPP di Indonesia dan Filipina dengan menggunakan World Bank Public-Private Partnership Legal Framework Reference Guide untuk menilai efektivitas regulasi, struktur kelembagaan, dan mekanisme penyelesaian sengketa. Metode penelitian menggunakan pendekatan hukum normatif dengan teknik perundang-undangan dan komparatif, menganalisis peraturan PPP, struktur institusi terkait, serta pengaturan kontraktual dan penyelesaian sengketa di kedua negara. Hasil penelitian menunjukkan bahwa Indonesia memiliki kerangka regulasi yang kompleks dengan banyak institusi dan mekanisme penyelesaian sengketa berjenjang yang memberikan kepastian hukum lebih kuat, sedangkan Filipina menerapkan satu undang-undang terpadu dan satu lembaga khusus PPP Center yang menciptakan proses lebih efisien dan ramah investasi. Artikel ini berkontribusi pada bentuk optimalisasi implementasi PPP melalui penyerderhanaan regulasi dan sentralisasi kelembagaan untuk negara di kawasan ASEAN.

**Keyword:** *Public-Private Partnership, Infrastructure Development, Public Finance*

## Introduction

Infrastructure development serves as one of the fundamental pillars of national progress in the globalisation era. Through reliable infrastructure, economic equity can be achieved, ultimately improving the quality of life and

societal well-being.<sup>1</sup> Infrastructure and economic development are closely interconnected, as achieving economic growth through the expansion of goods and services production requires reliable infrastructure. In other words, poor infrastructure will hinder the equitable distribution of goods and services, thereby creating development disparities that slow down a country's economic growth.<sup>2</sup> As a key indicator of economic success, developing countries face issues in infrastructure development, primarily due to the high costs.<sup>3</sup> Data released by the United Nations Conference on Trade and Development (UNCTAD) indicates that by 2030, financing infrastructure projects will require at least \$2.6 trillion, particularly in G20 countries, to achieve the Sustainable Development Goals (SDGs), as mandated in Goal 9.<sup>4</sup>

The concept of Public-Private Partnership (PPP) has emerged as an alternative method for a financing mechanism to promote economic equity. Such a partnership scheme has become one of the preferred alternatives amid global issues and financing infrastructure difficulties, particularly in developing countries.<sup>5</sup> The PPP concept was first adopted in the United Kingdom, which introduced private-sector financing for long-term contract-based infrastructure projects during the administration of John Major.<sup>6</sup> By 2021, the financing concept for this partnership scheme had evolved from an alternative to a preferred policy approach for infrastructure development financing, as reflected in the growing international interest in PPP, particularly in the ASEAN region. The Organisation for Economic Cooperation and Development (OECD) released data indicating that ASEAN countries have received support from the OECD to develop new PPP frameworks, with the total potential project investment averaging \$3.3 trillion per year to support

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<sup>1</sup> Li Meng, "Political Economy and Cycling Infrastructure Investment," *Transportation Research Interdisciplinary Perspectives* 14 (June 2022): 100618, <https://doi.org/10.1016/j.trip.2022.100618>.

<sup>2</sup> Kathryn Furlong, "Geographies of Infrastructure 1: Economies," *Progress in Human Geography* 44, no. 3 (June 20, 2020): 572–82, <https://doi.org/10.1177/0309132519850913>.

<sup>3</sup> Jin Wu et al., "Government Accountability within Infrastructure Public-Private Partnerships," *International Journal of Project Management* 34, no. 8 (November 2016): 1471–78, <https://doi.org/10.1016/j.ijproman.2016.08.003>.

<sup>4</sup> Eric Christian Bruun, *Sustainable Infrastructure Investment* (New York: Routledge, 2022), <https://doi.org/10.4324/9781003245704>.

<sup>5</sup> Masyitoh Basabih, "Portrait Of Public Private Partnership Policy Substances In Regional Hospitals In Indonesia," *Journal of Indonesian Health Policy and Administration* 8, no. 1 (February 24 2023): 28 <https://doi.org/10.7454/jihpa.v8i1.6570>.

economic growth and provide essential services to communities across the ASEAN region.<sup>7</sup> The PPP concept in ASEAN countries is employed as an alternative solution to address the investment shortfall amid ongoing infrastructure development, with an annual gap of 11% or \$350 billion, particularly during global crises.<sup>8</sup>

Indonesia and the Philippines are ASEAN countries that have adopted Public-Private Partnership (PPP) financing. As cited at the Economics Insights 2025 meeting, Indonesia's National Development Planning Agency (Bappenas) reported that infrastructure development faces challenges, including reduced budget allocations from the State Budget (APBN).<sup>9</sup> Therefore, there is an urgent need for private-sector involvement in supporting infrastructure development through the PPP scheme. As of 2024, Indonesia, through the Ministry of Finance, has successfully developed and operated 23 PPP projects valued at IDR 134.78 trillion out of a total of 36 signed PPP projects worth IDR 316.38 trillion. The planning stage includes 91 projects, with the Ministry of Public Works targeting 34 PPP projects valued at IDR 301 trillion across various infrastructure sectors, including water resources, roads and bridges, and housing and settlements, by 2025.<sup>10</sup> However, failures in several infrastructure projects have also been inevitable, particularly those related to transportation, hospitals, and water resources. Indonesia also faces issues in business dispute resolution, which investors often criticise for its slow and inefficient processes. Meanwhile, in the Philippines, the PPP financing scheme for infrastructure development has evolved since the 1990s and continued through 2015, with 305 infrastructure projects completed across various sectors such as transportation, highways, ports, airports, waste management, water, and energy. The data from the PPP Center reported that, as of 2024, forty-seven strategic infrastructure projects have been financed under a PPP scheme, rendering the Philippines one of the countries with the largest projects financed by the Asian Development Bank.

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<sup>7</sup> Erna Nurhayati, Ersa Tri Wahyuni, and Evita Puspitasari, "Risiko Infrastruktur Jalan Tol Dengan Skema Public-Private-Partnership (PPP) Di ASEAN: Suatu Tinjauan Literatur," *Jurnal Manajemen Aset Infrastruktur & Fasilitas* 5, no. 1 (April 8, 2021), <https://doi.org/10.12962/j26151847.v5i1.8743>.

<sup>8</sup> Pornchai Wisuttsik, Chul Ju Kim, and Mia Mahmudur Rahim, "PPPs and Challenges for Competition Law and Policy in ASEAN," *Economic Analysis and Policy* 71 (September 2021): 291–306, <https://doi.org/10.1016/j.eap.2021.05.006>.

<sup>9</sup> Abdul Latif, "Penasihat Prabowo Minta Pembangunan Infrastruktur Tak Hanya Andalkan APBN," *Kumparan Bisnis*, 2025.

<sup>10</sup> Direktorat Jenderal Pembiayaan Infrastruktur Pekerjaan Umum, "Daftar Proyek Infrastruktur Skema KPBU," 2025.

Still, like in Indonesia, some projects in the Philippines have also encountered challenges and failures.<sup>11</sup>

The adoption of PPP financing frameworks in Indonesia and the Philippines is closely linked to the political and legal context of development, as reflected in the awareness of ASEAN governments regarding infrastructure gaps due to budgetary constraints, while demand for infrastructure continues to rise. The growing need for infrastructure in developing countries, particularly in ASEAN, has helped drive rapid regional growth, especially in Indonesia and the Philippines, which face significant infrastructure deficits across sectors, including transportation, electricity and energy, and water and sanitation. According to the Asian Development Bank, ASEAN countries are projected to require annual infrastructure investments of \$1.7 trillion through 2030, with an infrastructure development agenda aimed at sustaining growth momentum in the region, particularly in Indonesia and the Philippines, to combat poverty and inequality.<sup>12</sup> Indonesia and the Philippines face the same issue: a fiscal deficit, which has led policymakers to increasingly seek private-sector partnerships to help bridge the infrastructure gap through PPP schemes. PPPs have become an effective channel for mobilising private capital and funds to address broader development agendas. To support the success of this scheme in infrastructure development, the Asian Development Bank recommends reviewing and improving regulatory frameworks and governance structures specific to each sector (Asian Development Bank and Development Institute).

The PPP scheme, as an alternative method of global infrastructure financing, does not yet have a universally standardised definition.<sup>13</sup> The World Bank's reference guide defines a PPP as a long-term contract between the private sector and a government entity to provide public service assets, in which the private sector assumes significant risks and management responsibilities.<sup>14</sup> William J. explains that a PPP programme constitutes a contract between the public and private sectors, with several provisions, in

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<sup>11</sup> Asian Development Bank, “Pemantauan Kerjasama Pemerintah Dan Badan Usaha: Filipina,” n.d.

<sup>12</sup> Seungsook Moon, “Carving Out Space: Civil Society and the Women’s Movement in South Korea,” *The Journal of Asian Studies* 61, no. 2 (May 26, 2002): 473–500, <https://doi.org/10.2307/2700298>.

<sup>13</sup> Robson de Faria Silva et al., “Public-Private Partnerships and Value for Money,” *Public Works Management & Policy* 27, no. 4 (October 10, 2022): 347–70, <https://doi.org/10.1177/1087724X221108149>.

<sup>14</sup> World Bank, “Public-Private Partnership Reference Guide” (Washington DC, 2017), [www.worldbank.org](http://www.worldbank.org).

which the private sector performs government functions for a specified period, assumes the associated risks, and receives compensation, either directly or indirectly.<sup>15</sup> Many countries, particularly developing ones, have adopted the PPP concept as an alternative to traditional infrastructure financing. This programme involves collaboration in infrastructure development. The benefits of utilising the PPP scheme include budgetary efficiency, financial facilitation, technology adaptation, and innovation.<sup>16</sup>

Historically, the PPPs are not a new concept in development. The practice of involving private entities to assist the public sector dates back to the ancient Roman Empire, beginning with the postal service known as 'mancipes,' which provided horses, carriages, and couriers to deliver letters, taxes, goods, and services to government officials. The government would then compensate the *mancipes* for their services, including the upkeep of the horses, as payment for the services rendered by the private entities.<sup>17</sup> In its development, particularly after the Industrial Revolution in the 18th century, private-sector participation in public services expanded into infrastructure, including transportation, toll roads, bridges, and electricity. A further advancement in the modern era was the introduction of the Public-Private Partnership (PPP) concept by UK Prime Minister Tony Blair, featuring an enhanced approach known as Value for Money (VfM), which was considered a groundbreaking idea during his term. At the end of the 20th century, Prime Minister Tony Blair refined the PPP concept through the VfM approach, an improvement on the UK's Private Finance Initiative (PFI), originally launched by John Major.<sup>18</sup> Following its introduction in the UK, the PPP concept rapidly developed and spread worldwide, particularly as an alternative infrastructure financing method in developing countries, including Indonesia and the Philippines.

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<sup>15</sup> Nwokelme Onyebuchi Ambrose and Abdul Hamidu Abdullahi, "Effect of Public-Private Partnership Policy on Affordability of Housing in Federal Capital Territory," *Zamfara International Journal of Humanities* 2, no. 3 (December 30, 2023): 8–18, <https://doi.org/10.36349/zamijoh.2023.v02i03.002>.

<sup>16</sup> Anthony E. Boardman, Carsten Greve, and Graeme A. Hodge, "Comparative Analyses of Infrastructure Public-Private Partnerships," *Journal of Comparative Policy Analysis: Research and Practice* 17, no. 5 (October 20, 2015): 441–47, <https://doi.org/10.1080/13876988.2015.1052611>.

<sup>17</sup> Chandra Emirullah dan Muhammad Azam, "Menelaah Kemitraan Pemerintah Swasta Di Negara-Negara ASEAN: Peran Iklim Investasi," *Ekonomi Teoritis Dan Terapan* XXI, no. 2 (2014).

<sup>18</sup> de Faria Silva et al., "Public-Private Partnerships and Value for Money."

The decision to utilise the PPP scheme in developing countries is driven by the urgent need to accelerate economic development, address poverty and inequality, and create employment opportunities. According to the World Bank, reliable infrastructure yields significant social benefits that positively impact the well-being of communities in developing countries,<sup>19</sup> while inadequate infrastructure has long been a problem impeding economic growth and resulting in a low quality of life for the population. The Global Quality Infrastructure Index (GQII) released infrastructure index data for countries worldwide in 2023, indicating that ASEAN countries, including Indonesia and the Philippines, still rank above 20.<sup>20</sup> According to the Asian Development Bank, which assists with regulatory reforms in many Asian countries, the urgency of PPPs in development is to ensure economic equity in developing countries, notably through effective regulation.

The implementation of the PPP scheme is expected to serve as an alternative solution to infrastructure financing issues, particularly in developing countries. According to the World Bank's PPP Reference Guide, several key success factors for PPPs include the regulatory or legal framework. The World Bank's PPP Reference Guide states that a comprehensive legal framework for PPPs typically includes several components. First, it encompasses policy direction, which defines the rationale for using the PPP scheme, primarily to provide public services, and outlines the principles of its implementation. This first component also involves the legal and regulatory framework for PPP implementation, including public financial management regulations, sector-specific regulations, and dispute-resolution regulations. Second, it involves the institutional framework responsible for identifying, assessing, implementing, managing, and accounting for projects, as well as the business processes within PPPs. Third, it ensures clarity of regulations within PPP contracts to guarantee that business processes comply with PPP principles.<sup>21</sup>

Several studies have been conducted on the PPP scheme for infrastructure advancement. Firstly, according to a working paper published by the Asian Development Bank, PPPs have played a role in increasing infrastructure investment in the Philippines; however, challenges and issues

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<sup>19</sup> World Bank, "Public-Private Partnership Reference Guide."

<sup>20</sup> Wahyu Widayat, Heru Subiyantoro, and Machfud Sidik, "Influence of Logistic Performance on Global Competitiveness," in *Proceedings of the First Multidiscipline International Conference, MIC 2021, October 30 2021, Jakarta, Indonesia* (EAI, 2022), <https://doi.org/10.4108/eai.30-10-2021.2315843>.

<sup>21</sup> World Bank, "Public-Private Partnership Reference Guide."

continue to be a subject of discourse, particularly regarding the expansion of infrastructure financing and investment through PPPs.<sup>22</sup> Furthermore, a similar study was conducted on PPP systems in the Republic of Korea, the Philippines, and Indonesia, focusing on how the PPP business models are implemented in the respective countries to address infrastructure gaps, as well as the financing approaches utilised in infrastructure projects in the two Southeast Asian countries.<sup>23</sup> Further research on public-private partnerships in Southeast Asia concerning infrastructure development has examined numerous issues, including population density, overpopulation, and equitable distribution. The findings indicate that problems arise in the implementation of PPPs across various Southeast Asian countries, particularly related to political factors and government policies.<sup>24</sup> According to the World Bank, the success of infrastructure development through PPP projects is significantly influenced by the legal framework.<sup>25</sup> According to Lasswell and McDougal, a legal framework is necessary not only for the formulation of laws but also as a guiding instrument, as it underscores the importance of collaboration between theoretical legal scholars and practical legal specialists (those involved in decision-making) in the public policy formulation process, ensuring that it is politically effective and enlightening.<sup>26</sup> Based on the research conducted to date, no study has specifically focused on the legal framework as a significant determining factor of PPP success, particularly in Southeast Asia. Thus far, research on PPPs has concentrated on business models, types of PPPs, and technical evaluations, without emphasising the legal framework as outlined in the World Bank's Public-Private Partnership Reference Guide. Moreover, there appears to be a lack of research on legal comparisons within the ASEAN region that uses a legal framework to implement PPP schemes. Therefore, this study aims to contribute to the discourse through a comparative legal analysis

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<sup>22</sup> Stephen Schuster et al., "Scaling Up Infrastructure Investment in the Philippines: Role of Public-Private Partnership and Issues" (Manila, Philippines, July 1, 2017), <https://doi.org/10.22617/WPS178887-2>.

<sup>23</sup> Kang-Soo Kim et al., "Public Private Partnership Systems in the Republic of Korea, the Philippines, and Indonesia," ADB Economics Working Paper Series (Manila, Philippines: Asian Development Bank, October 2018), <https://doi.org/10.22617/WPS189594-2>.

<sup>24</sup> K. S. Yap, Moe Thuzar, and Institute of Southeast Asian Studies, eds., "Urbanization in Southeast Asia: Issues & Impacts," *Singapore: Institute of Southeast Asian Studies*, 2012.

<sup>25</sup> Yong-Shik Lee and Andrew Harding, "Law and Development: A Comparative Law Aspect," *Law and Development Review* 17, no. 2 (June 25, 2024): 393–415, <https://doi.org/10.1515/ldr-2024-0003>.

<sup>26</sup> Oksana V Zakharina dkk., "Model Kemitraan Pemerintah-Swasta Yang Efektif Dan Aplikasinya Dalam Implementasi Kebijakan Publik," *Jurnal Ekonomi Dan Administrasi Bisnis* VIII, no. 1 (2020).

of Indonesia and the Philippines—two ASEAN countries that have implemented PPP financing schemes for infrastructure development, with both fruitful and unsuccessful outcomes, and each with distinct legal systems. This article compares the legal frameworks in Indonesia and the Philippines for implementing PPP financing schemes for infrastructure development, using the legal framework approach outlined in the World Bank's reference guide. Indonesia and the Philippines are two ASEAN countries facing similar infrastructure development issues, particularly due to financing constraints. However, the Philippines has demonstrated an advantage by completing more projects under the PPP scheme. It is therefore of great interest to compare these two countries due to their shared regional context within ASEAN, their application of PPP schemes in infrastructure financing, and the legal systems governing PPP implementation. This study aims to provide a perspective on the legal framework for implementing PPPs in infrastructure development, enabling a comparative analysis to enhance PPP systems in both countries. This research aims to discover how the legal frameworks in Indonesia and the Philippines function in implementing PPP schemes, thereby drawing lessons from the application of legal structures in each country.

### **Research Methods**

This study employs normative legal research, also known as doctrinal legal research, using statutory, conceptual, comparative, and grammatical interpretation approaches. Normative legal research is applied to analyse the legal framework governing Public–Private Partnership (PPP) schemes in infrastructure financing. The statutory approach examines the legal and regulatory structures of PPP schemes in Indonesia and the Philippines. The relevant regulations analysed include Law No. 17 of 2003 on State Finance; Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation; Government Regulation No. 28 of 2020 amending Government Regulation No. 27 of 2014 on the Management of State/Regional Property; Presidential Regulation No. 7 of 2005; Presidential Regulation No. 38 of 2015 on Public–Private Partnerships in Infrastructure Provision; Presidential Decree No. 7 of 1998; Minister of Finance Decree No. 248/KMK.04/1995 on Income Tax Treatment for Parties Engaged in Build–Operate–Transfer and Build–Transfer–Operate schemes; Republic Act No. 6957, Republic Act No. 7718, and Republic Act No. 11966 of the Philippines; as well as Executive Order No. 8, as subsequently amended by Executive Order No. 136 of the Philippines. In addition, this study applies a grammatical

interpretation of statutes<sup>27</sup>, as articulated by legal scholars, to interpret statutory provisions based on the ordinary meaning of legal terms, phrases, and sentence structures as expressed in the text of legislation. This method is employed to ensure textual clarity and legal certainty in understanding the normative content of PPP-related regulations, particularly where ambiguities arise in the formulation of rights, obligations, and institutional authority. The conceptual approach is employed to clarify key concepts underlying PPP arrangements, including risk allocation, procurement mechanisms, and dispute resolution. Furthermore, a comparative approach is applied to assess the effectiveness of PPP systems in Indonesia and the Philippines by identifying their respective strengths, weaknesses, and best practices. This study relies entirely on secondary data, comprising legislation, policy guidelines, and official documents, which are analysed using the World Bank's PPP Reference Guide as the analytical framework. The findings are presented through descriptive and analytical methods to provide a comprehensive understanding of the regulatory strengths and limitations influencing PPP-based infrastructure financing.

## Discussion

### The Legal Framework of Public-Private Partnerships in Infrastructure Development in Indonesia

Historically, infrastructure financing involving private sector collaboration in Indonesia began in the 1970s, specifically in 1978, when the government developed the Jagorawi toll road, spanning 59 kilometres. The government entrusted its operation to PT Jasa Marga under a concession agreement. Subsequently, from 1987 to 2007, Indonesia built and operated 553 kilometres of toll roads, with 418 kilometres operated by PT Jasa Marga and the remaining 135 kilometres managed by other private business entities.<sup>28</sup> The official introduction of financing through the PPP scheme in Indonesia began in 2005 as an alternative infrastructure financing method under the name PPP, introduced during the Indonesia Infrastructure Summit I, and was institutionally operated by the Committee for Accelerating Infrastructure

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<sup>27</sup> Muwahid, "Metode Penemuan Hukum (Rechtsvinding) Oleh Hakim Dalam Upaya Mewujudkan Hukum Yang Responsif," *Al-Hukama The Indonesian Journal of Family Law* 7, no. 1 (2017), <https://doi.org/10.15642/al-hukama.2017.7.1.224-248>.

<sup>28</sup> Joubert B. Maramis, "Faktor Faktor Sukses Penerapan Kpbu Sebagai Sumber Pembiayaan Infrastruktur: Suatu Kajian," *JMBI UNSRAT (Jurnal Ilmiah Manajemen Bisnis Dan Inovasi Universitas Sam Ratulangi)*, 5, no. 1 (April 17, 2018), <https://doi.org/10.35794/jmbi.v5i1.19149>.

Provision Cooperation (KKPPI). Initially, 91 government projects were offered under the PPP scheme; however, not all succeeded due to various obstacles, including land acquisition. The PPP scheme was later renamed *Kerjasama Pemerintah dengan Badan Usaha* (KPBU), with significant developments in planning, implementation, and the number of projects financed through it.

The Indonesian government has chosen PPPs as an alternative financing model outside the state budget (APBN) to promote equitable development and overcome the middle-income trap. In general, the mechanism for private-sector investment in infrastructure provision through the PPP scheme in Indonesia operates on two models: user-pay and government-pay.

The financing scheme for private-sector involvement in infrastructure development in Indonesia is driven by budgetary constraints and the need to adapt infrastructure technologies through private-sector participation. Since its introduction in Indonesia, both institutionally and regulatory-wise, infrastructure development through the PPP financing scheme has successfully administered more than 92 projects. Fifty-seven ongoing infrastructure projects started in 2024, utilising the PPP scheme, comprising 36 connectivity projects, 11 urban facility projects, 10 social infrastructure facility projects, and eight projects still in the planning stage. These infrastructure development projects under the PPP financing scheme are part of the National Strategic Projects, including toll roads, energy, water resources, telecommunications infrastructure, transportation, and hospitals.<sup>29</sup>

Based on the legal framework analysis in the PPP reference guide published by the World Bank, the following is an overview of the legal framework governing the implementation of the PPP financing scheme in Indonesia.

The first is the legal framework or regulations concerning the implementation of PPP, including regulations on infrastructure financing management, public finance, and sector-specific regulations. In Indonesia, which follows a civil law tradition, the primary characteristic of the law is 'legal certainty.' Law is considered binding because it is codified in regulations and systematically structured. This written law is then reflected in human legal actions within social interactions.<sup>30</sup> Influenced by the civil law tradition, the legal framework governing PPPs in infrastructure development is reflected in

<sup>29</sup> Direktorat Jenderal Pembangunan Infrastruktur Pekerjaan Umum, "Daftar Proyek Infrastruktur Skema KPBU."

<sup>30</sup> Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar* (Yogyakarta: Liberty, 2009).

the formulation of written regulations. According to the World Bank's reference guide on comprehensive PPP regulation, achieving a successful PPP scheme for infrastructure development requires sound regulations, starting with laws that address the country's fiscal policy, including PPP financing. In Indonesia, under a hierarchical system of legislation, this matter is enshrined in the 1945 Constitution of the Republic of Indonesia as the fundamental state norm. This Constitution outlines the concept of economic democracy in Article 33, where the state controls key sectors of production vital to the people's prosperity.

Within the concept of economic democracy, the state actualises the national economy with the aim of societal welfare, which is expressed through the formulation of development regulations, including infrastructure development. Regarding the country's fiscal policy, Law No. 17 of 2003 concerning State Finance, which governs the structure of state finances, allows financing from other legitimate sources, in this case, the private sector.

Concerning sector-specific regulations on financing through PPP schemes, Indonesia does not yet have a law specifically regulating such partnerships. However, financing schemes for infrastructure projects are set out in Article 13 (1) of Law No. 6 of 2023 concerning the Establishment of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation, with the following regulatory details:

- (1) Financing for the development and maintenance of infrastructure within Special Economic Zones (SEZs) may originate from:
  - a. The central government and/or regional governments;
  - b. Private parties;
  - c. Cooperation between the central government, regional governments, and private parties; and/or
  - d. Other legitimate sources in accordance with the provisions of the laws and regulations.

The provisions of Article 13 of Law No. 6 of 2023 concerning the Ratification of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law indicate that infrastructure development and maintenance projects, particularly within Special Economic Zones (SEZs), may be financed through cooperation between the government and business entities. The legal system in Indonesia adheres to a hierarchical normative system, in which laws, as part of the national legislative system, serve to implement the Constitution. Therefore, specific laws governing financing for development play a crucial role in the success of PPP projects. From a national political and legal perspective, the enactment of the Job

Creation Law aims to accelerate national economic development and absorb labour through infrastructure development projects, which are then integrated into the national strategic project policies. Since the ratification of the Job Creation Law, the government has planned 208 national strategic projects, several of which, such as toll roads and drinking water supply systems (SPAM), are being financed through the PPP scheme. By 2025, ten national strategic programmes utilising the PPP financing scheme will have been completed, leaving some other projects financed through the PPP scheme incomplete. According to data from the Directorate General of Debt and Risk Management, Ministry of Finance of the Republic of Indonesia, the percentage of PPP in infrastructure projects stands at 23.8%, which is lower compared to traditional financing schemes, with an average escalation rate of 52%. The Indonesian PPP Professionals Association has revealed that the low performance of the PPP scheme in infrastructure financing in Indonesia stems from a suboptimal regulatory framework.<sup>31</sup>

As outlined in the World Bank's PPP Reference Guide, sector-specific regulations enhance the comprehensiveness of PPP implementation. In Indonesia, the concept of financing through public-private partnerships, with internationally applied PPP principles, has existed since 1995, particularly through the Decree of the Minister of Finance No. 248/KMK.04/1995 concerning Income Tax Treatment for Parties Engaging in Cooperation under Build-Operate-Transfer (BOT) and Build-Transfer-Operate (BTO) Agreements. The terminology used in this ministerial decree is 'Build-Operate-Transfer' (BOT), which is still referenced today in government regulations on the management of state/regional assets, specifically Government Regulation No. 28 of 2020 as an amendment to Government Regulation No. 27 of 2014 concerning the Management of State/Regional Assets. This regulation governs the utilisation of state/regional assets through mechanisms such as leasing, borrowing, utilisation cooperation, Build-Operate-Transfer (BOT) or Build-Transfer-Operate (BTO), or infrastructure provision cooperation. Furthermore, the legal framework specifically regulating financing schemes under the PPP system surfaced with the issuance of Presidential Decree No. 7 of 1998 concerning Government-Private Sector Cooperation in Infrastructure Provision. This Presidential Decree emerged from the recognition of the importance of infrastructure development for equitable economic growth amid limited state finances, through the participation of private sector in infrastructure development across sectors,

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<sup>31</sup> Perkumpulan Ahli Profesional KPBUI Indonesia, "KEMENTERIAN PUPR

such as electricity, gas transmission and distribution, oil and gas processing, water resources, waste and sewage management, transportation, roads and bridges, airports, and the provision and operation of telecommunications infrastructure. In addition to outlining types of infrastructure, Presidential Decree No. 7 of 1998 also regulates procedural frameworks covering planning, preparation, tendering, contract signing, and agreement execution. The Presidential Decree also marked the opening of infrastructure project financing involving the private sector, which was later explicitly detailed in Presidential Regulation No. 7 of 2005, and subsequently updated by Presidential Regulation No. 38 of 2015 concerning Public-Private Partnership in Infrastructure Provision. Presidential Regulation No. 38/2015 became the technical guideline for implementing the PPP scheme in Indonesia. This regulation was enacted to accelerate infrastructure development and improve Indonesia's investment climate.

One significant update in Presidential Regulation No. 38 of 2015 was the expansion of the types of infrastructure eligible for partnership with business entities or the private sector, now encompassing 19 types of infrastructure: transportation, roads, water resources and irrigation, drinking water, centralised waste management systems, local wastewater management systems, waste management, telecommunications and informatics, electricity, oil, natural gas and renewable energy, energy conservation, urban facilities, educational facilities, sports and arts facilities, regional infrastructure, tourism, health, penitentiary infrastructure, and public housing. In addition to these 19 types of infrastructure, the regulation permits financing through the PPP scheme under conditions stipulated by the Minister of National Development Planning. The infrastructure financing scheme through PPP constitutes solicited and unsolicited proposals.<sup>32</sup>

The second aspect in the World Bank's reference guide on a comprehensive regulatory framework for implementing PPP in infrastructure financing concerns institutional responsibility for managing PPP business processes. In Indonesia, the institutional framework for PPP implementation is set out in Presidential Regulation No. 38 of 2015, Article 1, which delegates to Ministers/Heads of Agencies the authority to represent their respective ministries/agencies. According to Presidential Regulation No. 38/2015, the

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<sup>32</sup> Ricca Anggraeni and Indah Mutiara Sari, "MENGUNGKAP MATERI MUATAN PERATURAN PRESIDEN NOMOR 38 TAHUN 2015 TENTANG PERJANJIAN KERJASAMA PEMERINTAH DAN BADAN USAHA DALAM PENYEDIAAN INFRASTRUKTUR," *Masalah-Masalah Hukum* 49, no. 2 (April 30, 2020): 125–35, <https://doi.org/10.14710/mmh.49.2.2020.125-135>.

Project Cooperation Officer (PJPK) is the Head of the Agency/Regional Head, or a State-Owned Enterprise (BUMN)/Region-Owned Enterprise (BUMD) as the provider or operator of infrastructure, based on applicable laws and regulations.

The ministers or agency heads delegated by law include, among others, the Minister of National Development Planning, the Minister of Finance, the Minister of Home Affairs, and the Head of the Government Goods and Services Procurement Policy Agency (LKPP). The lack of centralisation in institutional governance for PPPs in Indonesia has become an obstacle and remains a key factor hindering the success of PPPs in the country. A module developed by the State Administration Agency (LAN) on PPP implementation in Indonesia reveals that the multi-agency approach to managing PPPs, or the lack of centralisation, is one of the problems hampering the execution of infrastructure projects.

In Indonesia, each PPP scheme is managed by different institutions responsible for different stages, such as planning, contracting, and implementation, leading to inefficiencies. This inefficiency stems from differing regulations at each stage of infrastructure development, as well as from unclear authority delegation in Indonesian legislation, further complicating the implementation process. Table 2 is an overview of the institutionalisation process of PPPs in Indonesia:

**Table.** Overview of the Regulatory Process for Public-Private Partnerships (PPPs) in Indonesia

Phase	Institutional Authority	Role	Regulatory Mandate
Planning	National Development Planning Agency (BAPPENAS)	Screening and selection of projects through proposal identification and preliminary studies	Regulation of the Minister of National Development Planning/Head of the National Development Planning Agency No. 4 of 2015
Project Preparation	National Development Planning Agency (BAPPENAS)	BAPPENAS provides assistance in the preparation of the Outline Business Case (OBC)	Regulation of the Minister of National Development Planning/Head of the National Development Planning Agency No. 2 of 2020

BKPM (Indonesian Investment Coordinating Board)	BKPM ensures investor eligibility and oversees the market sounding process	Minister of Investment/Head of the Investment Coordinating Board Decree No. 177 of 2024
Ministry of Home Affairs (Kemendagri)	The Ministry of Home Affairs (Kemendagri) provides recommendations for regional-level PPP procurement projects.	Law No. 23 of 2014 concerning the Regional Government and the Ministry of Home Affairs Regulation No. 77 of 2020
Ministry of Finance	Preparation of Project Development Facility (PDF) and Viability Gap Fund (VGF) documents	Regulation of the Minister of Finance Number 265/PMK.08/2015
Transaction	Ministry of Finance	Preparation of documents, Project Development Facility (PDF) and Viability Gap Fund (VGF)
National Public Procurement Agency (LKPP)	Acts as Transaction Probity	LKPP Regulation No. 1 of 2025 Strengthening Public-Private Partnerships
Indonesia Infrastructure Guarantee Corporation (PT PII)	Conducting the government guarantee process	Presidential Regulation Number 78 of 2010

Source: Processed by Researchers from the Indonesian Legal Documentation Network

Regarding the second indicator on the institutional framework of the KPS process for infrastructure development in Indonesia, it is evident that the process is lengthy and involves numerous institutions, resulting in

inefficiency. All the institutions involved are grouped into a forum called the Joint KPS Office of Indonesia, established through a Memorandum of Understanding (MoU), with unclear and poorly documented institutional governance, and each institution performs its role under different regulations. Existing literature highlights the rigidity of institutional arrangements through various arguments. This has indeed become a serious issue within Indonesia's bureaucratic process. According to the Government Effectiveness Index released by the World Bank, Indonesia ranks 58th globally with a score of only 0.58. This indicates that Indonesia's bureaucracy remains suboptimal and inefficient.<sup>33</sup> This is also influenced by excessive, unclear regulations. Gratton et al. argue that the poor quality of bureaucracy may stem from excessive lawmaking, which ultimately leads to overlap and poor regulatory implementation.<sup>34</sup> Williamson states that excessive bureaucracy arises from the presence of numerous institutions addressing the same issues, which in turn creates agency problems and erodes trust.<sup>35</sup> This is highly relevant to the implementation of PPPs in Indonesia, where the processes of project planning, preparation, and transaction tend to be convoluted and involve numerous agencies, resulting in suboptimal PPP project outcomes. This is evident in several unsuccessful PPP projects and in investors' failure to commit to infrastructure investment in Indonesia. It is clear that at each stage of the PPP process, many institutions are involved, each operating under its own legal framework that has yet to be consolidated. As a result, there is frequent overlap and misalignment between different processes. Therefore, the PPP process in Indonesia urgently requires de-bureaucratisation to guarantee the efficacy of infrastructure development through PPPs.

The third point in the World Bank reference guide concerns the legal framework governing contracts or agreements in Public-Private Partnership (PPP) arrangements. In Indonesia, the provisions for such partnerships are regulated under Presidential Regulation No. 38 of 2015, which stipulates that a PPP agreement must at least comprise work, duration, tariffs, rights and obligations, service performance standards, share transfers, sanctions, termination clauses, asset ownership, dispute resolution mechanisms,

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<sup>33</sup> World Bank, "Government Governance Indicators Worldwide" (Washington DC, n.d.).

<sup>34</sup> Mark Turner, Eko Prasojo, and Rudiarto Sumarwono, "The Challenge of Reforming Big Bureaucracy in Indonesia," *Policy Studies* 43, no. 2 (March 4, 2022): 333–51, <https://doi.org/10.1080/01442872.2019.1708301>.

<sup>35</sup> Timothy Besley et al., "Bureaucracy and Development," *Annual Review of Economics* 14, no. 1 (August 12, 2022): 397–424, <https://doi.org/10.1146/annurev-economics-080521-011950>.

performance monitoring of the Implementing Business Entity (IBE), force majeure conditions, and contract guarantees in accordance with applicable regulations. With regard to contract schemes and procurement under Presidential Regulation 38/2015, PPPs in Indonesia may be conducted through direct appointment in cases where infrastructure has previously been developed and/or operated by the same developer, the work can only be performed using new technology, and only one developer is capable of providing such technology. Additionally, the developer/bidder/private entity must control a majority, or the entirety, of the land required to implement the PPP project. There is also a public tender process to determine the Implementing Business Entity (IBE). Following the tender process, the PPP agreement for infrastructure development must be signed within six months of the announcement of the winning bidder, and the winner must establish an IBE to carry out the project.

Based on an analysis of the legal framework for implementing PPP financing schemes in Indonesia, the Asian Development Bank (ADB) suggests that Indonesia needs to streamline its bureaucracy by deregulating PPP-related regulations to avoid inconsistencies.<sup>36</sup> Currently, Indonesia has more than 12 discordant regulations governing PPPs, thereby hindering the PPP process. This regulatory inconsistency is further exacerbated by the involvement of numerous institutions in managing PPPs, each with distinct roles and functions at different stages of the process, resulting in inefficiencies despite the urgent need to implement infrastructure development projects. According to the Asian Development Bank (ADB), establishing a dedicated unit to manage PPPs can facilitate their implementation and improve the performance of infrastructure projects. This requires a restructuring of existing regulations in Indonesia to ensure that the national development agenda for equitable distribution and economic growth can be realised through PPP financing schemes, especially amid the country's fiscal constraints.

### **The Legal Framework for Public-Private Partnerships in Infrastructure Development in the Philippines**

The implementation of PPPs for infrastructure development in the Philippines historically began in 1989 in Navotas, with a project involving the National Power Corporation and Hopewell Energy Management Ltd. In addition, in 1993, the Philippines developed a market in San Jose de

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<sup>36</sup> Development Banks and Development Institutions, “Realizing the Potential of Public-Private Partnerships to Advance Infrastructure Development in Asia,” n.d.

Buenavista, the capital of Antique Province.<sup>37</sup> These two projects were among the earliest to adopt the PPP scheme without requiring funding from local governments or Local Government Units (LGUs). Following this, PPP implementation in the Philippines grew significantly, beginning in the 1990s, with the development of 305 infrastructure projects. These included highways, airports, railways, ports, energy, water, information technology, agriculture, fisheries, social infrastructure, and waste management. All of these projects were financed through PPP arrangements. Currently, the Philippines is undertaking at least 176 infrastructure development projects with an estimated total value of 1.289 trillion pesos.<sup>38</sup>

According to a World Bank report, the Philippines is one of the leading ASEAN countries in implementing infrastructure financing through PPP schemes, both in terms of regulation and institutional framework. The World Bank recognises the Philippines' experience in PPP financing for infrastructure projects as a best practice model that meets international standards. When analysed using the World Bank's Reference Guide on the Legal Framework for PPPs, the Philippine legal framework for implementing such a partnership in infrastructure projects is considered a benchmark for an effective PPP scheme.

First, the legal framework governing its implementation includes laws on infrastructure financing management, public financial management, and sector-specific regulations. Second, according to the World Bank, the Philippines is regarded as having strong regulatory and institutional frameworks governing institutional arrangements for PPP financing schemes.

The Philippines adopts a mixed legal system combining civil law and common law, with the 1987 Philippine Constitution as the supreme law. Unlike Indonesia, which does not explicitly mention private sector involvement in its Constitution, the Philippine Constitution explicitly includes the role of the private sector, particularly in Article 20, which states, "The State recognises the indispensable role of the private sector, encourages private enterprise, and provides incentives for needed investments."

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<sup>37</sup> Varsolo Sunio et al., "Long-Term Service Contracts for the Mobilization of Private Financing for the Reform of the Informal Public Transport Sector in the Philippines," *Case Studies on Transport Policy* 15 (March 2024): 101166, <https://doi.org/10.1016/j.cstp.2024.101166>.

<sup>38</sup> Jesus Felipe, Gemma Estrada, and Matteo Lanzafame, "The Turnaround in Philippine Growth: From Disappointment to Promising Success," *Structural Change and Economic Dynamics* 62 (September 2022): 327–42, <https://doi.org/10.1016/j.strueco.2022.03.016>.

As the highest source of law in the country, the Constitution's inclusion of provisions recognising the role of the private sector and providing investment incentives is one of the legal framework's core strengths.

Technical regulations for PPP development in the Philippines, in alignment with the constitutional mandate recognising the role of the private sector, began with the enactment of Republic Act No. 6957, which authorised the private sector to finance, construct, operate, and maintain infrastructure projects, and for other purposes. This was later amended by Republic Act No. 7718, also known as the Build-Operate-Transfer (BOT) Law, which expanded the types of PPP schemes and introduced provisions for project proposals, negotiations, and special incentives for registered projects.

In 2010, the Philippine government issued Executive Order (EO) No. 8, later amended by EO No. 136, outlining provisions for alternative dispute resolution mechanisms for all PPP contract schemes. In addition, several internal policy circulars were issued throughout the PPP process in the Philippines.

Due to the large number of existing regulations, the Philippine government reformed its PPP regulatory framework by enacting Republic Act No. 11966 in December 2023, known as the Philippine Public-Private Partnership (PPP) Code.

The reform of the PPP regulatory framework, involving the comprehensive consolidation of PPP regulations, was undertaken by the Philippine government with three primary objectives: to address multiple interpretations leading to ambiguity in current laws, to respond to issues in implementing PPP projects that previous regulations could not resolve, and to accelerate economic growth and create a competitive economy through PPP schemes in infrastructure development. Republic Act No. 11966 serves as the consolidating regulation of the legal framework for PPPs to support the investment climate in the Philippines.

The new provisions introduced in RA 11966 pertain to public utilities subject to Filipino citizenship requirements. This regulatory relaxation aims to stimulate medium- and long-term economic growth in the Philippines. To further encourage investment and development through PPP schemes, the Philippine government also amended several laws, including the Public Service Act, the Right-of-Way Act, the Securities Regulation Code, the Long-Term Lease Act for foreign investors, and the Electric Power Industry Act.

Previously, various laws and regulations applied to PPP projects in the Philippines, often confusing investors. Under the newly enacted Philippine PPP Code, RA 11966, all legal frameworks now uniformly apply to PPP

projects at both national and local levels. The PPP Code mandates that no government agency may issue regulations contrary to it, as the PPP Code in the Philippines encompasses all PPP projects between the government and the private sector at both the national and local levels.

The PPP law explicitly regulates alternative financial instruments, green financing, and land valuation strategies to optimise the PPP scheme. The PPP Code also addresses investment recovery schemes, particularly concerning revenue from tolls, fees, leases, availability payments, and asset transfer compensation. Prior to the enactment of the PPP Code, repayment schemes were governed by contract arrangements; however, the PPP Code no longer restricts the types of repayment schemes based on contractual provisions. Instead, the PPP Code allows private partners to employ alternative investment recovery mechanisms to complement existing schemes, provided they adhere to fair valuation and constitutional principles. Furthermore, the PPP Code limits legal actions against the Government Infrastructure Agency (GIA) and the PPP Center during the PPP project process by prohibiting the issuance of temporary restraining orders, preliminary injunctions, mandatory preliminary orders, and other provisional legal actions in any court except the Supreme Court. With the enactment of the PPP Code, all ongoing provisional legal remedies are automatically nullified and have no legal effect. Previously, under the BOT Law, legal restrictions applied only to unsolicited proposals that conflicted with government projects. An important provision of the PPP Code is the more dynamic project approval threshold, which is expected to encourage greater private sector participation in infrastructure project financing in the Philippines. Additionally, the PPP Code mandates dispute resolution through alternative dispute resolution (ADR) mechanisms, which is anticipated to foster a more favourable investment climate for infrastructure development. Overall, the reform of the PPP Code has resulted in a more effective and efficient PPP project process in the Philippines.<sup>39</sup>

The second analysis of the legal framework in the Philippines concerns the institutional responsibility for managing PPPs. Institutional responsibility for managing PPPs lies with the PPP Center, whose roles and duties include policy formulation, project coordination and facilitation, providing technical assistance to government agencies and local government units with PPP projects, and managing the data and information centre. The PPP Center also operates a revolving fund facility for pre-project activities to

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<sup>39</sup> Development Banks and Development Institutions, "Realizing the Potential of Public-Private Partnerships to Advance Infrastructure Development in Asia."

ensure project preparation and monitoring of project facilities. The PPP Center operates under the direction of the PPP Governing Board and is institutionally led by the National Economic and Development Authority (NEDA). In terms of the institutional relationship between these two bodies, the PPP Center issues a list of PPP projects along with the identification and management of its database, while NEDA publishes a list of Infrastructure Flagship Projects (IFPs) funded through government allocations based on the General Appropriations Act (GAA), Official Development Assistance (ODA), and/or PPP schemes. As of 2024, the NEDA Board has approved 186 IFPs, with an estimated total infrastructure project cost of ₱9,680.33 billion (approximately \$166.02 billion). The regulatory framework governing the Public-Private Partnership (PPP) process in the Philippines, highlighting the roles and mandates of the PPP Center across key project phases. During the planning phase, the PPP Center is responsible for identifying and preparing projects, securing funding, issuing the Consolidated List of Investment Programs (CLIP), and providing technical assistance, while implementing agencies are required to align their proposals with national and sectoral development plans and submit them to NEDA in accordance with the Implementing Rules and Regulations (IRR) of Republic Act No. 11966. In the project preparation phase, the PPP Center issues detailed guidelines, forms, and templates to ensure that all proposed PPP projects are consistent with the Philippine Development Plan and properly reported to NEDA. Finally, in the transaction phase, the PPP Center facilitates project transactions, oversees implementation, and reports progress to the President, with all stages firmly grounded in the IRR of Republic Act No. 11966.

In terms of the institutional regulatory framework, PPPs in the Philippines are generally managed under the PPP Center, which holds institutional responsibility before, during, and after the process and transaction of the project. NEDA acts solely as a reviewer and provides approval of the project list to ensure that the projects align with the Philippines' medium- and long-term development plans. The centralised institutional structure and regulatory reforms of the PPP scheme are measures taken by the Philippine government to ensure infrastructure development that supports the economy. This is particularly important given that in 2015, the Philippines' competitiveness ranking remained low, at 61st place. Consequently, the National Economic and Development Authority (NEDA)

approved 75 flagship infrastructure projects (IFPs) under the PPP scheme to stimulate economic growth.<sup>40</sup>

### Comparison of the Legal Framework for PPP between Indonesia and the Philippines

Robert Howse views that the role of law in a country's economic development is highly significant. A clear legal framework enables a country's economic development to ensure the transparent and measurable welfare of its citizens. The legal framework provides a structure for economic activities and social justice, and fosters an economic climate by attracting or securing investments for national development.<sup>41</sup> A complex legal system will hinder economic growth, as the intrinsic relationship between law and the economy is highly dynamic; thus, a well-functioning economy must be supported by a sound legal system<sup>42</sup> According to the World Bank, an efficient and straightforward legal system supports a healthy economic landscape, particularly in developing countries facing issues hampering economic development, such as poverty, uneven infrastructure development, and low human development index scores.<sup>43</sup> Limited fiscal capacity for development has been a major challenge for developing countries, hindering economic growth and necessitating investment to address these issues. Indonesia and the Philippines are two developing countries in Southeast Asia with fiscal constraints amid the push for infrastructure development. In response, both countries have adopted policies to utilise the PPP scheme to finance infrastructure projects.

The legal frameworks governing Public–Private Partnerships (PPP) in Indonesia and the Philippines exhibit both structural similarities and significant differences. In Indonesia, PPPs are regulated by a complex set of eight sectoral and technical regulations rooted in Article 33 of the 1945 Constitution, including multiple laws, presidential regulations, ministerial regulations, and agency-level rules that govern different stages of PPP implementation. This multi-layered regulatory structure reflects Indonesia's civil law tradition and hierarchical legal system, which extends to regional

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<sup>40</sup> Development Banks and Development Institutions.

<sup>41</sup> R. Howse, "Human Rights, International Economic Law and Constitutional Justice: A Reply," *European Journal of International Law* 19, no. 5 (November 1, 2008): 945–53, <https://doi.org/10.1093/ejil/chn060>.

<sup>42</sup> Adi Sulistiyo dan Muhammad Rustamaji, *Hukum Ekonomi Sebagai Panglima* (Surakarta: Masmedia Buana Pustak, 2009).

<sup>43</sup> Global Investment World Bank Group, *Competitiveness Report 2019/2020* (World Bank Publications, 2020).

regulations and often results in regulatory overlap and institutional inefficiency. By contrast, the Philippines regulates private sector participation under Article 20 of its Constitution through a single, unified legal instrument, the Implementing Rules and Regulations of Republic Act No. 11966. Although the Philippines also follows a civil law system with certain common law elements, its legal hierarchy is more streamlined, recognising only statutes, jurisprudence, and international agreements below the Constitution. This regulatory simplicity enhances efficiency and coherence in PPP implementation and has led to international recognition, including by the Asian Development Bank, as a best-practice model for PPP governance, particularly due to its clear legal framework and explicit constitutional support for private sector participation in development-related investments.

From an institutional perspective, Indonesia involves numerous governmental bodies in the PPP process, including BAPPENAS, the Ministry of Finance, the Ministry of Home Affairs, BKPM, LKPP, regional governments, and the Indonesia Infrastructure Guarantee Fund (IIGF), each operating under separate legal mandates. This fragmented institutional arrangement often contributes to coordination challenges and procedural inefficiencies. In contrast, the Philippines adopts a centralised institutional model in which the PPP Center serves as the primary authority responsible for PPP planning, preparation, and implementation, while the National Economic and Development Authority (NEDA) functions mainly as an approving body, all within the framework of the IRR of Republic Act No. 11966. With respect to contractual arrangements, Indonesia recognises several PPP contract models, including Operation and Maintenance, Construction Financing, Design-Build-Finance Maintain, Design Build-Finance-Maintain-Operate, and concession-based schemes. Meanwhile, the Philippines adopts a broader range of contract structures, such as Build-Transfer, Build-Lease-Transfer, Build-Operate-Transfer, Build-Own-Operate, Build-Transfer-Operate, Contract-Add-Operate, Develop-Operate-Transfer, Rehabilitate-Operate-Transfer, and Rehabilitate-Own-Operate. Despite this diversity, both jurisdictions incorporate dispute resolution mechanisms within PPP agreements. Indonesia mandates a tiered dispute resolution process beginning with deliberation and mediation and potentially escalating to arbitration or court proceedings whereas the Philippine approach grants contractual discretion to the parties, with a strong emphasis on compensation for non-performance rather than punitive measures. These differences illustrate contrasting legal philosophies in

managing risk, accountability, and enforcement within PPP-based infrastructure development.

A summary can be obtained from the comparison presented in Table 4. First, both Indonesia and the Philippines recognise a hierarchical system of legislation under their respective constitutions. However, in the Philippines, PPP regulations are centralised within a single legal framework that governs the entire process. In contrast, Indonesia has numerous different regulations covering all stages, from planning to dispute resolution. The advantage of the Philippine system lies in its regulatory efficiency, which avoids overlaps throughout the planning and implementation phases. Meanwhile, Indonesia's economic democracy ensures that private-sector involvement in PPP management is not automatic, unlike in the Philippines. The Philippines constitutionally acknowledges the private sector's role in infrastructure development for economic growth.

Second, institutionally, the Philippines centralises PPP authority within a single agency under the approval of the National Economic and Development Authority (NEDA). Conversely, Indonesia has a multi-bureaucratic institutional framework, with various agencies performing distinct roles and functions from planning through PPP transactions. The institutional advantage of the Philippines lies in its centralised and focused structure. In administrative institutional theory, as explained by Herbert Simon, emphasis is placed on decision-making within organisations to maximise efficiency through de-bureaucratisation. Furthermore, the New Institutional Economics, developed by Douglass North and Oliver Williamson, highlights the role of institutions in minimising uncertainty and risk by defining legal rules and regulations. In comparison, the Philippines excels in bureaucracy due to its legal framework and institutions that reduce uncertainty, whereas Indonesia faces a lengthy process involving multiple institutional authorities and regulations, indicating a need to adopt aspects of the Philippine model. However, Indonesia has an advantage in dispute resolution, employing a tiered process that provides legal certainty and protection under the law, allowing disputes to be resolved through deliberation up to court proceedings. In contrast, the Philippine system primarily emphasises penalty payments.

From this comparison, the Philippines demonstrates superior regulatory and institutional efficiency, evidenced by its status as one of the largest clients of the Asian Development Bank (ADB) in 2024 and its recognition as a best-practice model for PPP implementation by the World Bank. Based on this comparative analysis of legal frameworks, necessary

reforms for Indonesia's PPP scheme, drawing lessons from the Philippines, include regulatory and institutional reform.

## Conclusion

Infrastructure development in developing countries, particularly in the ASEAN region, such as Indonesia and the Philippines, faces financing constraints as the main challenge that slows development. The Public-Private Partnership (PPP) scheme comes as a solution to address such infrastructure financing issues. Although both Indonesia and the Philippines have adopted the PPP scheme for infrastructure development, each country encounters different challenges in its implementation. In Indonesia, extensive regulations and fragmented bureaucracy result in inefficiencies in the execution of PPP projects. The involvement of multiple institutions managing the PPP scheme, each with distinct regulations and authorities, slows down processes and hinders project effectiveness. Therefore, Indonesia needs to de-bureaucratize and simplify regulations for more efficient PPP processes. However, Indonesia benefits from its more structured legal system and detailed regulations, which provide strong legal certainty for investors, particularly in dispute resolution. The multiple stages offered allow for clear and accountable legal protection. Conversely, the Philippines benefits from greater efficiency due to a single, comprehensive legal framework and centralised institutions responsible for managing PPP projects. A simpler institutional structure and more concise regulations enable the Philippines to implement infrastructure projects more efficiently. The Philippines' success in implementing the PPP scheme is recognised as a best practice by the World Bank and the Asian Development Bank (ADB), serving as a model for PPP implementation in the ASEAN region. Overall, to enhance the efficiency and success of PPP projects, Indonesia should learn from the Philippines' experience in regulatory and institutional simplification and improve its tiered dispute resolution system. Adopting a more centralised and coordinated approach, as implemented in the Philippines, would greatly assist Indonesia in achieving more effective and efficient infrastructure development goals. Nonetheless, Indonesia retains strengths in legal protection, which is crucial for attracting long-term investment, as its comprehensive regulations provide investors and other stakeholders with assurance.

Indonesia needs to simplify its regulatory framework and reduce bureaucratic fragmentation in the implementation of Public-Private Partnership (PPP) schemes, as overly complex regulations and the involvement of multiple institutions affect the effectiveness of infrastructure

projects. By adopting the efficiency demonstrated by the Philippines, which benefits from a unified legal framework and centralised institutional oversight, Indonesia can enhance coordination, accelerate project processes, and strengthen its tiered dispute resolution mechanisms. Nevertheless, Indonesia should maintain its advantages in providing strong legal certainty and investor protection, while simultaneously enhancing institutional capacity to ensure more effective PPP implementation and greater attractiveness for long-term investment.

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