e-ISSN: 2775-5037
p-ISSN: 2614-3917

Original Article

Legal Analysis of PPP Regulations on Investor Flexibility in Undertaking Corporate Actions: A Case Study of the Trans Papua Road PPP Project (Jayapura–Wamena Section)

Kun Hartawan Adi Satria[1]✉, Anis Rifai[2]
[1,2]Fakultas Hukum, Universitas Al Azhar Indonesia
Correspondence Author: kun.74.kh@gmail.com✉

Abstract:

Public-Private Partnership (PPP) schemes, known in Indonesia as Kerja Sama Pemerintah dengan Badan Usaha (KPBU), have become a strategic solution for infrastructure development, yet they still face regulatory challenges, particularly regarding investor flexibility in undertaking corporate actions. This study examines the legal aspects of KPBU regulations on investor flexibility through a case study of the Trans Papua Road Project, Jayapura–Wamena section. The research employs a normative-empirical legal method with a qualitative approach, analyzing KPBU regulations, project contract provisions, and international comparative practices. The findings indicate that KPBU regulations provide legal certainty and a risk-sharing framework but continue to restrict investor flexibility due to rigid contractual obligations and mandatory approvals from the government contracting agency (PJPK). The Trans Papua case demonstrates that while contractual clauses ensure legal certainty, they also limit corporate maneuverability. This study recommends harmonizing KPBU regulations with corporate law to strengthen legal certainty while accommodating greater investor flexibility.

Submited	: 17 October 2025
Revised	: 10 November 2025
Acceptance	: 28 December 2025
Publish Online	: 24 January 2026

Keywords: Public-Private Partnership, corporate actions, investor flexibility, Trans Papua Road

Introduction

Public-Private Partnerships (PPPs) have emerged as a critical mechanism in Indonesia's infrastructure development, particularly in addressing the country's urgent need for improved infrastructure to sustain economic growth and social progress. The significance of PPPs lies in their capacity to mobilize private sector expertise and capital, thereby reducing the government's financial burden while enhancing service quality and operational efficiency. The increasing demand for infrastructure in Indonesia is driven by rapid urbanization and population growth, necessitating substantial investment in the transportation, water supply, and energy sectors. As Steelyana (Steelyana & Kinanti, 2023) emphasizes, the relationship between infrastructure development and urbanization is particularly strong; as urban populations expand, efficient transportation systems become essential to support economic activity and improve living standards. This condition highlights the necessity of innovative financing mechanisms such as PPPs, which can attract private investment to meet public infrastructure needs without overburdening government budgets (Mabuza, 2019).

One of the principal advantages of PPPs is their ability to minimize direct government expenditure. By engaging private entities in the financing, construction, and operation of infrastructure projects, governments can transfer part of the financial risks associated with such projects to the private sector. This is particularly relevant in Indonesia, where persistent budget deficits result from infrastructure expenditures outpacing tax revenue growth (Fauzan, 2023). The PPP model allows for more efficient allocation of resources, enabling the government to focus on other areas of public service delivery, while infrastructure projects are completed on schedule and within budget (Grafitanti & Ubed, 2022). Moreover, PPPs can enhance the quality and efficiency of infrastructure services through the adoption of private sector management practices and innovations. Empirical evidence shows that PPPs frequently deliver projects in a timelier and more cost-efficient manner compared to traditional public procurement approaches (Babatunde & Perera, 2017). In Indonesia, successful PPP implementation in toll road construction demonstrates the effectiveness of this model in achieving high-quality infrastructure outcomes (Endo et al., 2020).

Nevertheless, the implementation of PPPs in Indonesia is not without challenges. The complexity of PPP agreements, which often involve long-term contracts and multiple stakeholders, can result in delays and difficulties in achieving financial close (Endo et al., 2020). Furthermore, private investors' perception of risk may deter their participation, particularly in developing countries where regulatory frameworks are considered unstable (Auliya, 2023). To overcome these obstacles, a robust legal and institutional framework is required to foster trust and effective collaboration between public and private actors (Amin et al., 2022).

Key success factors for effective PPP implementation in Indonesia include stakeholder engagement, clear risk allocation, and strong government support. Research indicates that stakeholder involvement—ranging from community participation to the backing of relevant government agencies—is vital to the success of PPP projects (Grafitanti & Ubed, 2022). Additionally, establishing a well-defined risk-sharing framework between public and private partners is crucial to reducing potential conflicts and ensuring long-term project sustainability (Babatunde et al., 2018). The Indonesian government has acknowledged these factors and is actively creating a more supportive environment for PPPs through policy reforms and capacity-building initiatives (Kadang, 2022).

Beyond financial considerations, sustainability has become an increasingly prominent issue in PPP discussions. Integrating sustainability principles into PPP frameworks can enhance the long-term viability of infrastructure projects while addressing environmental and social concerns (Shen et al., 2016). This is particularly relevant in Indonesia, where environmental degradation and social inequality remain pressing challenges. By embedding sustainable practices within PPP projects, the government can ensure that infrastructure development contributes positively to sustainable development goals and social equity (Babatunde et al., 2020).

The role of PPPs in advancing infrastructure development in Indonesia is further underscored by their potential to stimulate innovation. Collaboration between the public and private sectors can introduce new technologies and practices that improve service delivery and operational efficiency (Lember et al., 2018). For example, the adoption of advanced construction techniques and project management methodologies by private partners can significantly enhance infrastructure quality, thereby benefit end-users and contributing to broader economic growth (Atapattu, 2019).

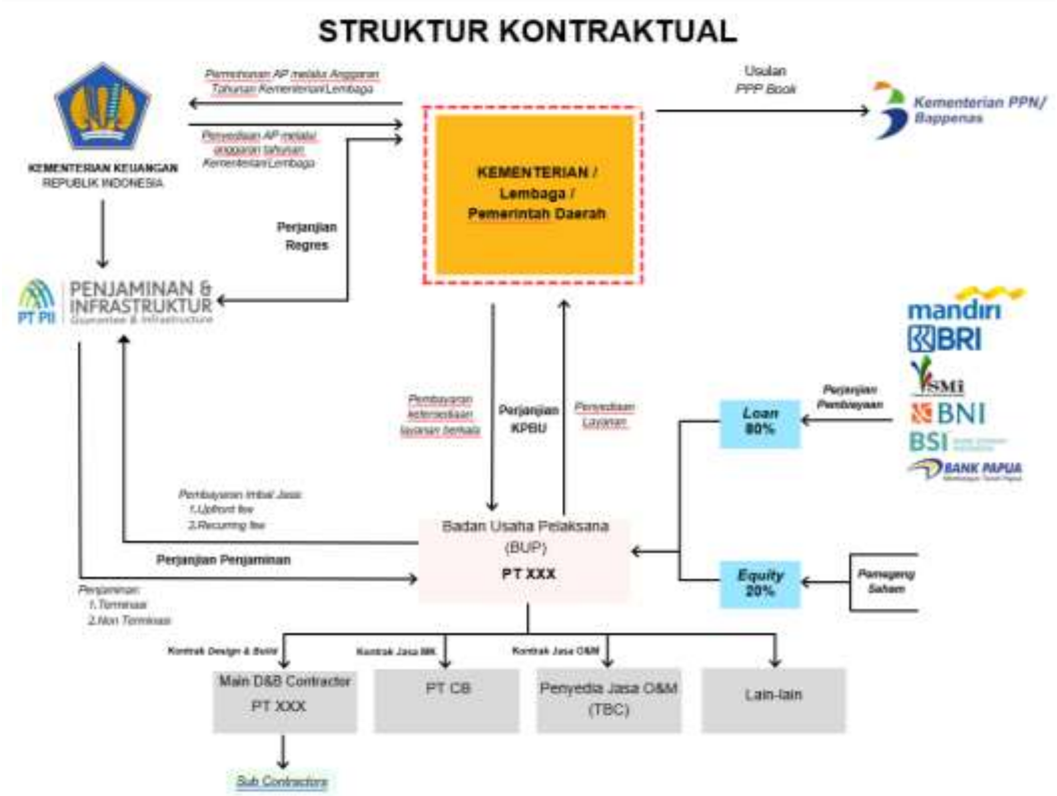

Figure 1. Contractual Structure

The contractual structure within the Public-Private Partnership (PPP) framework for infrastructure projects reflects a multiparty collaboration pattern that integrates the roles of government, guarantor institutions, financial institutions, and the implementing business entity. Institutionally, the Ministry of Finance of the Republic of Indonesia plays a strategic role as the provider of fiscal support. This support is channeled through the State Budget (APBN) to the Ministry of Public Works and Housing (PUPR) as the budget user. In addition, the Ministry of Finance establishes a contractual relationship with PT Penjaminan Infrastruktur Indonesia (PT PII) through a regress agreement mechanism. Under this arrangement, PT PII provides guarantees against potential risks, whether under termination or non-termination conditions, in return for upfront and recurring fee payments. This guaranteed mechanism functions as a catalyst to enhance financial institutions' confidence in the project's viability.

Furthermore, the Ministry of PUPR acts as the Government Contracting Agency (PJPK). In carrying out its mandate, the authority of the PJPK is delegated to the Directorate General of Highways (Direktorat Jenderal Bina Marga), which subsequently sub-delegates responsibilities to the National Road Implementation Agency (Balai

Pelaksana Jalan Nasional/BPJN). This delegation framework is designed to ensure that planning, implementation, and supervision processes are conducted in stages, while also guaranteeing that the project is prioritized through submission to the Ministry of National Development Planning (Bappenas) for inclusion in the PPP Book.

The primary contractual relationship is formed between the PJPK and the Implementing Business Entity (BUP), namely PT XXX. Under the PPP Agreement, PT XXX is obligated to provide infrastructure services in accordance with the established performance standards. In return, the government makes periodic service-availability-based payments (availability payments). This mechanism is reinforced by the guaranteed support of PT PII, thereby minimizing payment risks and enhancing the project's bankability.

Nonetheless, several implementation challenges remain. A critical issue is the absence of regulations that specifically govern the contractor selection process by the Implementing Business Entity. This gap carries the risk of inconsistent standards in the procurement of construction services and the selection of subcontracting partners. Moreover, the lack of explicit government-mandated standards concerning material specifications and construction quality creates potential inconsistencies in project outcomes. Such regulatory shortcomings may result in variations in construction quality, which, in turn, could undermine the sustainability of infrastructure services and the accountability of PPP implementation.

Accordingly, this research formulates two central problems:

1. How can the legal analysis of PPP regulations explain investor flexibility in undertaking corporate actions?
2. How are these regulations applied in the case study of the Trans Papua Road PPP Project, Jayapura–Wamena section?

The objectives of this study are: (1) to analyze the PPP legal framework related to investor corporate actions, and (2) to examine the legal obstacles encountered in the Trans Papua Road PPP Project, Jayapura–Wamena section.

Methods

This study employs a normative-empirical legal method. The normative approach is carried out by analyzing legislation governing PPPs and corporate law, while the empirical approach is applied by examining practical implementation in the field, particularly in the Trans Papua Road PPP Project (Jayapura–Wamena section).

3.1 Data Sources

The data sources in this research are categorized into primary and secondary data:

1. Primary Data

   This includes Presidential Regulation No. 38 of 2015, LKPP Regulation No. 29 of 2018, the Construction Services Law, the Company Law, the Investment Law, PPP contract documents, and the Bappenas PPP Book related to the Trans Papua Road Project.

2. Secondary Data

   This comprises legal literature, academic journals, and international case studies. Secondary data serves to contextualize findings from primary sources and provide comparative insights on PPP regulations in other countries. Such literature offers perspectives on best practices and critical success factors that can inform the development of a more effective PPP regulatory framework in Indonesia.

3.2 Method of Analysis

The analysis in this study is conducted qualitatively through a juridical approach. Each relevant regulation and legal document is examined to assess the alignment between PPP regulations and corporate law, particularly regarding investor corporate actions. The results of normative legal analysis are then linked to empirical findings from field practices, such as challenges in ownership restructuring or shareholder replacement within PPP projects. In addition, this research employs comparative analysis to study international practices (United Kingdom, South Korea, and Australia), thereby drawing lessons on how other jurisdictions accommodate investor flexibility in PPP schemes.

Accordingly, the analytical method adopted in this study is integrative, combining doctrinal review, empirical practice, and comparative perspectives to provide a comprehensive understanding of the research problem.

Results

Legal Analysis of PPP Regulations in Relation to Corporate Actions

1. Regulation and Restrictions on Changes in Ownership/Investors

Public-Private Partnership (PPP) regulations in Indonesia explicitly designate the Implementing Business Entity (BUP) as the central contractual subject entering into agreements with the Government Contracting Agency (PJPK). Given that the BUP is generally established as a *Special Purpose Vehicle (SPV)*, shareholder composition and investor ownership structure are critical elements in ensuring the project's sustainability. In practice, any change of ownership, whether through share transfer, merger, or restructuring, requires prior approval from the PJPK. This requirement is intended to safeguard the quality and consistency of project delivery, protect public interests, and minimize moral hazard risks if new investors lack sufficient technical or financial capacity.

2. Legal Gaps and Rigid Provisions

While such provisions provide legal certainty, the existing regulatory framework also creates challenges. First, the rigidity of restrictions on corporate actions, particularly regarding changes in BUP ownership, is frequently perceived as an obstacle to investor flexibility. The mandatory approval process often becomes burdensome for routine corporate actions such as internal group restructuring. Second, a legal gap exists because the regulations do not comprehensively set out standards for due diligence or criteria for evaluating shareholder changes. This creates uncertainty, especially for foreign investors, who require greater clarity regarding procedures and timelines for approval.

3. Potential Conflicts Between PPP Regulations and Company/Investment Laws

Potential regulatory conflict arises when PPP regulations are compared with the Company Law (Law on Limited Liability Companies) and the Investment Law. Under Company Law, changes in shareholder structure or other corporate actions are the internal rights of the corporation, provided they comply with procedural requirements such as approval through the General Meeting of Shareholders (RUPS). Similarly, the Investment Law provides broad discretion for investors to structure ownership in line with the principle of business freedom. By contrast, within PPP schemes such autonomy is curtailed by the requirement of approval from the PJPK or relevant authorities.

From a contractual perspective, this creates disharmony between corporate autonomy as protected by Company/Investment Law and administrative restrictions under PPP agreements. If not harmonized, conflicts of interest may emerge, for instance, when investors seek to restructure capital for efficiency but are impeded by bureaucratic approval processes.

Interim Conclusion

PPP regulations provide legal certainty and government oversight but, due to their rigidity and lack of harmonization with Company and Investment Laws, also constrain investor flexibility in undertaking corporate actions.

Case Study: Trans Papua Road PPP Project (Jayapura–Wamena Section)

1. Project Profile

The Trans Papua Road PPP Project on the Jayapura–Wamena section is classified as a national strategic infrastructure project and is listed in the Bappenas *PPP Book*. This project has high urgency as it connects Jayapura, the provincial capital, with Wamena in the highlands, where access has long been constrained and heavily dependent on air transportation.

The project is implemented under a PPP scheme using an *availability payment* model. The government acts as the Government Contracting Agency (PJPK) through the Ministry of Public Works and Housing (PUPR), with execution assigned to the Implementing Business Entity (BUP), PT XXX, established as an SPV by a consortium of investors. The SPV serves as the legal entity signing the PPP agreement with the PJPK, managing financing, construction, and operations. Project financing is sourced from a combination of investor equity and loans from domestic and international financial institutions, with risk guarantees provided by PT Penjaminan Infrastruktur Indonesia (PT PII).

2. Investor Barriers in Corporate Actions

Despite the regulatory framework, investors in this project face several barriers in undertaking corporate actions:

- Shareholder Changes. Investor consortia often require ownership restructuring due to business strategies or divestment needs. However, every shareholding change in the BUP requires written approval from the PJPK. The approval process is often lengthy, lacks clear timelines, and generates legal uncertainty.
- Financing Restructuring. Investors encounter obstacles in conducting refinancing or restructuring of long-term loans. Current PPP regulations provide no explicit guidance on refinancing mechanisms, leaving such matters to contractual negotiation among the BUP, PJPK, and financial institutions. This significantly limits investor flexibility in achieving financial efficiency.
- Lack of Uniform Standards. The absence of clear regulatory guidelines on contractor selection and construction standards creates potential inconsistencies, as investors must navigate the Construction Services Law and PPP provisions.

3. Legal Analysis of Investor Barriers

These barriers reflect a lack of alignment between PPP law and corporate law in Indonesia:

1. Conflict with Company Law. Company Law guarantees corporate autonomy in shareholder changes decided through the RUPS, whereas PPP agreements impose additional approval requirements, restricting this autonomy.

2. Legal Vacuum in Refinancing. Without explicit regulation on refinancing, investors face uncertainty and weaker legal protection when attempting financial restructuring for efficiency.
3. Risks of Non-Standardized Procurement. The absence of binding standards on contractor selection and material specifications increases risks of inconsistent quality, which undermines accountability and project sustainability.

Implications for Investor Flexibility

1. Restriction of Investor Autonomy

PPP regulations prioritize public interest by subjecting corporate actions to government oversight. However, the multilayered approval process, lack of procedural clarity, and absence of alternative mechanisms severely restrict investor autonomy. Investors cannot freely restructure ownership, change shareholders, or refinance without administrative intervention.

2. Impact on Investor Interest

Rigid restrictions affect investor appetite, especially among foreign private investors and international financial institutions. Globally, flexibility in corporate actions is a key determinant of *investment climate* and *ease of doing business*. The restrictive nature of Indonesian PPP rules introduces additional risk perceptions, prompting potential investors to demand higher fiscal incentives or avoid entry altogether.

3. Impact on Project Sustainability

Rigid approval processes may disrupt project continuity, particularly when investor consortia require ownership restructuring in response to financial challenges. Delays in obtaining approvals risk postponing construction schedules and hinder the achievement of national infrastructure goals.

4. Impact on Bankability

Investor restrictions also reduce project *bankability*. For lenders, bankability is tied to stable cash flow, effective risk allocation, and investor flexibility in corporate decisions. When ownership changes or refinancing are subject to uncertain and lengthy approval processes, credit risk rises, resulting in higher financing costs or difficulties in securing long-term funding. Thus, rigid regulations diminish the attractiveness of PPP projects to financiers and strategic investors.

Lessons from International Practice

1. United Kingdom

The United Kingdom's *Private Finance Initiative (PFI)* provides investors with relatively broad flexibility in corporate actions. Shareholding changes in the SPV are permitted provided they do not disrupt agreed service delivery. Public authority approval remains necessary but is regulated clearly in standard contracts, with explicit due diligence criteria and approval timelines. This enhances legal certainty for investors while safeguarding service quality.

2. South Korea

South Korea adopts *Build-Transfer-Operate (BTO)* and *Build-Operate-Transfer (BOT)* models in PPPs. Its regulatory system allows ownership restructuring and refinancing if these do not pose substantial risks to project continuity. Korea also employs a *refinancing gain sharing* mechanism, requiring that refinancing gains be shared between investors and government. This balances investor flexibility with public benefit.

3. Australia

Australia emphasizes clear *risk allocation* and flexibility in project management. Investors may alter ownership structures or consortium composition, provided technical and financial qualifications are maintained. National PPP Guidelines provide explicit procedures for ownership, restructuring and refinancing, ensuring transparency and predictability.

4. Relevance for Indonesia

International experience demonstrates that investor flexibility can coexist with strong public safeguards when governed by transparent and measurable mechanisms. Lessons for Indonesia include:

- Procedural Clarity: As in the UK, PPP rules should set clear evaluation criteria and approval timelines for ownership changes.
- Refinancing Gain Sharing: Adopting Korea's model would enable investors to restructure financing efficiently while ensuring fiscal benefits for the state.
- National Guidelines: Following Australia's approach, Indonesia should develop standardized PPP guidelines covering investor flexibility, risk allocation, contractor selection, and refinancing procedures.

By adopting such best practices, Indonesia's PPP framework can become more adaptive and bankable, while continuing to uphold public accountability and infrastructure sustainability.

Conclusion

This study demonstrates that Public-Private Partnerships (PPPs) in Indonesia have become a vital mechanism for addressing the nation's urgent infrastructure needs by mobilizing private sector expertise and capital. Nevertheless, the legal framework governing PPPs—particularly in relation to corporate actions of investors—remains rigid and, in some respects, underdeveloped. The analysis of normative regulations and the empirical case study of the Trans Papua Road PPP Project (Jayapura–Wamena section) reveal that the current system restricts investor flexibility in shareholder restructuring, refinancing, and corporate governance, creating legal uncertainty and reducing overall project bankability. The findings further indicate potential conflicts between PPP regulations and the principles enshrined in the Company Law and Investment Law, where corporate autonomy is guaranteed but constrained within PPP contractual arrangements. Such disharmony may discourage investment, delay project implementation, and undermine long-term infrastructure sustainability.

Comparative lessons from the United Kingdom, South Korea, and Australia show that greater investor flexibility can coexist with strong public safeguards when supported by clear procedural standards, refinancing mechanisms, and comprehensive national guidelines. These international practices highlight the importance of balancing legal certainty, public accountability, and investor adaptability.

Accordingly, the study concludes that Indonesia must move towards a more harmonized and adaptive PPP regulatory framework. Integrating PPP rules with corporate and investment law, establishing explicit guidelines for ownership restructuring and refinancing, and adopting best practices from international models are essential steps to enhance the bankability and sustainability of PPP projects. Such reforms would not only strengthen legal certainty but also attract broader private participation, thereby ensuring that PPPs continue to serve as an effective driver of economic growth and social development in Indonesia.

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