



Legitimacy of the Build, Operate, and Transfer (BOT) Agreement between the Indonesian Navy Marine Corps and PT Karya Tumbuh Bersama Indo

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ABSTRACT

This study examines the validity of the Build, Operate, and Transfer (BOT) Agreement between the Indonesian Marine Corps and PT Karya Tumbuh Bersama Indo regarding the construction and management of Plaza Cilandak, as well as the impact of the implementation of the Minister of Finance Regulation No. 54/PMK.06/2015 concerning the management of State-Owned Assets (BMN) on the existing agreement. Using a normative legal approach, this research analyzes the agreement's compliance with the essential elements of validity as regulated in the Civil Code and the implications of the new regulations on the already signed contract. The findings indicate that the BOT agreement is legally valid, but the implementation of the new regulation requires renegotiation between the private sector and the government. This study also highlights the importance of applying the *Pacta Sunt Servanda* principle to maintain legal certainty in the BOT agreement, and the necessity of dialogue between the private sector and the government to avoid disputes and ensure the project's sustainability.

A. INTRODUCTION

In an effort to accelerate infrastructure development, the Indonesian government has adopted the Build, Operate, and Transfer (BOT) model as a solution to address the limitations of national budget funding. This BOT model facilitates collaboration between the government and the private sector, where private entities finance, build, and operate infrastructure projects, subsequently transferring them back to the government after a predetermined period. This approach alleviates the financial burden on the state while allowing the private sector to generate profits from managing the assets over the agreed period. Notably, large infrastructure projects, such as toll roads and shopping centers, including Plaza Cilandak, have been implemented using the BOT system. This not only offers financial benefits but also contributes to the equitable distribution of infrastructure development across various regions in Indonesia (Kamilah, 2016; Yuniarti & Junita, 2017).

The implementation of the BOT system involving the utilization of State-Owned Assets (BMN) presents several legal challenges that must be addressed, particularly concerning the legal status of the assets used in such projects. One of the primary issues is the change in land rights status, such as the conversion of ownership rights into building rights (*Hak Guna Bangunan*). This transformation may create legal uncertainties for both

investors and the government. The complexity of these uncertainties is further exacerbated by varying interpretations of existing regulations and administrative procedures, which could potentially lead to disputes between private sector entities and the government. In this context (Idrus, 2023), highlights that the transition from ownership to building rights in Batam has demonstrated efficiency, although the regulations in Batam may differ from those in other regions.

On the other hand, the administrative regulations governing the management of BMN within the Indonesian National Army (TNI), such as the Minister of Finance Regulation (PMK) No. 54/PMK.06/2015 and PMK No. 115/PMK.06/2020, provide crucial guidelines to ensure that BMN is managed in a transparent and efficient manner. Mumpuni & Mudiparwanto highlight that these regulations cover the procedures for management, valuation, and evaluation of BMN, which promote the efficient use of state assets while ensuring consistency between national fiscal policies and the strategic needs of the TNI (Mumpuni & Mudiparwanto, 2021). However, with the issuance of these regulations, existing BOT agreements, such as the one concerning Plaza Cilandak, must be adjusted to comply with the more stringent provisions related to the management of BMN.

The implementation of PMK No. 54/PMK.06/2015 and PMK No. 115/PMK.06/2020 necessitates changes in the financial structure and risk allocation within existing BOT agreements, potentially affecting the agreements between private entities and the government. Muhajir & Najih highlight that these regulatory changes prompt the need for renegotiations among the involved parties to achieve a balanced outcome and prevent potential future disputes (Muhajir & Najih, 2022). This harmonization process is crucial to ensure that the utilization of State-Owned Goods (BMN) remains efficient, accountable, and in compliance with applicable legal frameworks.

Furthermore, studies on BOT agreements highlight how the principles of private and public law can complement each other within the context of infrastructure development. Primadianti explains that the BOT agreement is an innominate contract that combines government regulatory authority with a clear risk allocation mechanism (Primadianti, 2022). In this regard, the study by Yuliyanti & Santoso also emphasizes the importance of legal certainty and transparency in the implementation of BOT agreements, which not only regulate the technical management of assets but also reflect the dynamics of fair and efficient governance (Yuliyanti & Santoso, 2022). Therefore, the study of BOT agreements plays a crucial role in bridging public and private law, fostering regulatory reforms, and enhancing dispute resolution mechanisms.

This study aims to critically examine the legitimacy of the BOT agreement between the Indonesian Navy Marine Corps (Korps Marinir TNI AL) and PT Karya Tumbuh Bersama Indo regarding the development and management of Plaza Cilandak. Additionally, it explores the impact of newly implemented regulations on the rights and obligations of the involved parties. By understanding the existing legal dynamics, this research seeks to ensure that the agreement is executed in accordance with the principles of justice and legal certainty, while contributing positively to the efficient and accountable management of BMN.

B. METHOD

This research employs a normative legal research method, utilizing two primary approaches: the statutory approach and the conceptual approach. This method was selected because the focus of the study is on the legal validity of the Build, Operate, and Transfer (BOT) agreement within the context of regulations governing the utilization of state-owned assets by the Indonesian National Army (TNI), particularly following the enactment of Ministry of Finance Regulations (PMK) No. 54/PMK.06/2015 and PMK No. 115/PMK.06/2020.

A legislative approach was employed to analyze the legal framework governing the creation, implementation, and resolution of disputes in BOT agreements, referring to relevant laws, government regulations, and policies. This approach enables the researcher to explore the legal norms that regulate the structure and mechanisms of BOT agreements, while providing a clear interpretation of the rights and obligations of the parties involved. Therefore, this study examines in depth the various related legal regulations, such as:

- 1) The Civil Code (*KUHPerdata*), particularly Articles 1320 and 1338, which regulate the validity of agreements and their binding nature for the parties involved.
- 2) Law No. 5 of 1960 on the Basic Agrarian Law, which governs land rights.
- 3) Government Regulation No. 27 of 2014 on the Management of State/Regional-Owned Goods.
- 4) Minister of Finance Regulation No. 54/PMK.06/2015 on the Utilization of State-Owned Goods in the Indonesian National Armed Forces, and PMK No. 115/PMK.06/2020, which regulates the Utilization of State-Owned Goods.

A conceptual approach is employed to understand the underlying theories and fundamental concepts that govern contractual practices in BOT agreements. This approach is crucial for analyzing the characteristics of BOT agreements, which are considered innominate—meaning they are not specifically regulated under positive law but exhibit characteristics derived from various types of existing contracts. Therefore, this approach helps assess how BOT agreements function in balancing public interests with the contractual freedom of the private sector. The theories and concepts to be analyzed include: 1) the principle of *Pacta Sunt Servanda* (Agreements must be honored), which underpins the obligation to comply with valid contract terms, and 2) the principle of *Consensualism*, which states that a contract is only valid if there is mutual consent between the involved parties.

This conceptual approach is also valuable for analyzing the legal dynamics involved in BOT agreements, where there is tension between the regulatory authority of the government and the commercial interests of the private sector. In this context, states that BOT agreements are innominate contracts that must balance public interests (related to the management of state assets) with the contractual freedom of the private sector ([Primadianti, 2022](#)). This balance requires careful attention during the implementation of the law.

C. RESULTS AND DISCUSSION

Legitimacy of the BOT Agreement Based on Article 1320 of the Civil Code

Based on the analysis of the Build, Operate, and Transfer (BOT) agreement between the Indonesian Navy Marine Corps (TNI) and PT Karya Tumbuh Bersama Indo, it can be concluded that the agreement meets all the necessary legal requirements outlined in Article 1320 of the Civil Code, which sets forth four fundamental elements for the formation of a valid contract: (1) mutual consent of the parties, given freely and knowingly; (2) legal capacity; (3) a clear and defined object of the agreement; and (4) a lawful cause that does not contravene public interest.

- 1) Agreement between the Parties: This agreement clearly demonstrates a mutual understanding between the TNI and PT Karya Tumbuh Bersama Indo regarding the construction and management of Plaza Cilandak. Both parties have agreed to collaborate on the project with a shared understanding of their respective rights and obligations. This agreement has been formalized in writing in a legally binding contract, reflecting the commitment of both parties to execute the project in accordance with the agreed terms (Kamilah, 2016).
- 2) Legal Capacity: The Indonesian government, through the Indonesian Navy Marine Corps, and PT Karya Tumbuh Bersama Indo, as a private entity, possess the legal capacity to enter into this agreement. Both parties have the legal authority to implement the terms of the contract, ensuring both administrative and operational compliance (Yuliyanti & Santoso, 2022).
- 3) Clear Object of the Agreement: The object of this BOT agreement is clearly defined, specifically the construction and management of Plaza Cilandak along with its various detailed facilities. Additionally, the terms regarding the transfer of assets to the government after the contract period expires have been thoroughly outlined in the agreement, providing certainty regarding the rights and obligations of each party (Kamilah, 2016).
- 4) Lawful Purpose: The purpose of this agreement does not conflict with any prevailing laws or norms. The development of Plaza Cilandak aims to accelerate infrastructure development and provide economic benefits, not only for the private sector but also for the government and the general public. This ensures that the agreement is legally valid and does not infringe upon public interests (Dewi, 2022).

The implementation of Minister of Finance Regulation No. 54/PMK.06/2015 on the Management of State-Owned Goods (BMN) within the TNI has had a significant impact on the existing BOT agreements. This regulation introduces stricter procedures for the management and utilization of BMN, including enhanced transparency and accountability in oversight. As a result, there is a requirement for the evaluation of the alignment between these agreements and the new regulatory standards.

However, the implementation of PMK No. 54 does not automatically annul existing agreements. On the contrary, this regulation encourages the parties involved to make adjustments to ongoing contracts, as exemplified by the BOT agreement for Plaza

Cilandak. For instance, the management of BMN related to this agreement needs to be aligned with the assessment and utilization standards set forth in the regulation (Yetti et al., 2020). This necessitates renegotiation between the private sector and the government to ensure that the agreement remains valid and in compliance with the prevailing regulations.

The principle of *Pacta Sunt Servanda*, which asserts that agreements must be honored by the parties involved, holds significant implications within the context of BOT agreements. While recent regulations have introduced changes to the management mechanisms of BMN, this principle continues to obligate both parties to adjust the contract to ensure its validity and enforceability, even amidst the dynamics of legal changes (Cahyo & Kurnianingsih, 2023).

This demonstrates that the application of the principle of *Pacta Sunt Servanda* in BOT agreements fosters dialogue and cooperation between the government and the private sector, ensuring that the terms of the agreement remain consistent and relevant, even in the face of regulatory changes. Failure to fulfill the agreed obligations may lead to a breach of contract, potentially resulting in legal disputes and harming the involved parties (Syamsiah et al., 2023).

BOT agreements involving the state, particularly in the management of State-Owned Assets (SOA), present significant legal challenges, especially in reconciling public law and private law. In this context, the government acts as a public law entity responsible for serving the public interest and adhering to regulations governing the management of SOA, while the private sector, as a private law entity, focuses on managing and operating the project for financial gain.

In practice, this tension often arises due to the differing objectives between the government, which prioritizes sustainability and long-term benefits for the public, and the private sector, which tends to focus on achieving rapid returns on investment. When government regulations, such as PMK No. 54/PMK.06/2015, introduce stricter controls on the management of BMN, the private sector may perceive these measures as hindrances to their ability to operate efficiently and maximize profits. For instance, restrictions on the use of BMN for commercial purposes that do not align with the government's initial objectives can disadvantage private companies that have already made significant investments. Therefore, it is essential to strike a balance between government oversight of BMN and the autonomy of the private sector in managing the projects they are involved in.

The Role of Regulation in Resolving Legal Conflicts

The implementation of Minister of Finance Regulation (PMK) No. 54/PMK.06/2015 and PMK No. 115/PMK.06/2020, which govern the utilization of State-Owned Assets (BMN) within the Indonesian National Armed Forces (TNI), provides a clearer and more stringent legal framework. However, in practice, the application of these regulations to existing BOT agreements often leads to tensions, particularly concerning changes in the management mechanisms and evaluation of BMN under these agreements. These regulatory changes require the renegotiation or amendment of existing BOT contracts to ensure alignment with the new provisions. The misalignment between the existing

agreements and the updated regulations can lead to disputes, both at the legal and operational levels.

The authors argue that while regulatory changes are crucial for achieving more efficient and accountable management of BMN, such changes must be implemented with careful consideration of the rights of private sector entities that have made significant investments in the project. Unilateral adjustments to contracts by the government or any other party may disadvantage the involved stakeholders, especially if such changes negatively affect investment returns or the operational sustainability of the project. Therefore, resolving conflicts of this nature requires constructive dialogue and collaboration between the government and private entities to reach a fair agreement and prevent potential disputes in the future.

Legal certainty is a crucial element in BOT agreements, as these contracts often involve long-term commitments that bind the parties to act in accordance with the agreed terms. In this context, the principle of *Pacta Sunt Servanda* serves as the guiding norm, requiring each party to adhere to the terms of the agreement that have been duly and validly executed. While regulatory changes introduced by the PMK may impact the implementation of BOT agreements, this principle still obligates both parties to endeavor to adjust the contract to ensure its validity and enforceability despite any legal dynamics.

The author analyzes that the application of *Pacta Sunt Servanda* in BOT agreements, particularly those involving the government and private entities, is essential for ensuring legal stability and investment certainty. Without this principle, parties may hesitate to enter into long-term agreements in the future, as there would be no guarantee that the terms of an agreement would be honored. Therefore, despite regulatory changes affecting specific aspects of the agreement, it is critical for both parties to engage in renegotiation based on the spirit of fairness and mutual respect for each other's interests. If the renegotiation is conducted in good faith, it can mitigate the risk of disputes and enhance legal certainty for both parties.

Legal conflicts arising from the implementation of BOT agreements often stem from tensions between the obligations of the government as a public legal actor and the private law obligations between the government and private entities. While government regulations are designed to protect public interests, they frequently conflict with the flexibility sought by the private sector in contract agreements.

To mitigate these tensions, clearer regulations and policy harmonization are necessary to accommodate the needs of both parties. Existing regulations should be adaptable, considering the specific characteristics of BOT agreements involving state assets (BMN), and their impact on private sector investment. Moreover, dispute resolution mechanisms within BOT agreements should ensure a fair and transparent process, where both parties have the opportunity to present their perspectives and reach mutually beneficial agreements.

To mitigate the potential for disputes arising from conflicts between public and private law, as well as regulatory changes affecting the implementation of BOT agreements, the author proposes several solutions. First, there is a need for the drafting of more detailed and explicit agreements, particularly concerning provisions related to

regulatory changes and their impact on the obligations of the parties involved. Second, more effective dispute resolution mechanisms should be implemented, such as mediation or arbitration, which allow for swift resolutions without the time-consuming and costly process of litigation. Finally, both parties should enhance cooperation and communication to ensure that any regulatory or policy changes can be effectively incorporated into the existing agreements, minimizing potential losses or negative impacts on the project.

D. CONCLUSION

This study concludes that the Build, Operate, and Transfer (BOT) agreement between the Indonesian Navy Marine Corps and PT Karya Tumbuh Bersama Indo regarding the development and management of Plaza Cilandak meets all the legal requirements for the validity of a contract under Article 1320 of the Civil Code, which includes mutual consent of the parties, legal capacity, a clear object of the contract, and a lawful cause that does not contradict public interest. Furthermore, the implementation of the Minister of Finance Regulation No. 54/PMK.06/2015 on the Utilization of State-Owned Assets (BMN) within the Indonesian National Army (TNI) significantly impacts the ongoing BOT agreement; however, it does not automatically invalidate the contract. While the new regulation introduces stricter standards for the management of BMN, the principle of *Pacta Sunt Servanda* still obliges the parties to amend the agreement to ensure its continued validity and enforceability. The conflict between public and private law that arises in the BOT agreement can be resolved through renegotiation based on legal certainty and clear communication between the parties. Dispute resolution and contract adjustments made in good faith can prevent potential losses for the parties involved and ensure the successful continuation of the BOT project.

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