



Reconceptualising Good Faith in Indonesia's Public-Private Partnership Infrastructure Contracts: A Welfare State Perspective

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Article	Abstract
<p>Keywords: Good faith; Public-Private Partnership (PPP); Infrastructure contracts; Welfare State.</p> <p>Article History Received: Jan 6, 2026; Reviewed: Jan 21, 2026; Accepted: Apr 12, 2026; Published: Apr 15, 2026.</p>	<p><i>This study aimed to reconceptualize good faith in Indonesia's public-private partnership infrastructure contracts from a welfare-state perspective. Public-Private Partnership in Indonesia can accelerate the provision of infrastructure to meet the state's welfare obligations. Still, legally it remains an instrument of public policy, not a transfer of the state's constitutional obligations. Using normative legal methods through legislative and conceptual analysis, as well as limited comparison, this article finds that PPP contracts should be understood as administrative contracts (bestuurscontract) that derive from public authority and are oriented towards service and the public interest. Therefore, good faith should not be viewed merely as a moral norm at the time of signing, but rather as an ongoing obligation and corrective principle (redelijkheid en billijkheid) throughout the project cycle. The normative contribution of this article is a reform model that codifies the obligation of good faith, oriented towards the public interest, in laws and their implementing regulations, including cooperation, disclosure of information, and renegotiation. This aims to prevent abuse of authority, protect the public interest, and strengthen legal accountability for project failures.</i></p>



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INTRODUCTION

Public-Private Partnership (hereinafter, PPP) is not novel in Indonesia's constitutional framework. This concept is often applied to expedite development by involving non-government sectors (Irwanugroho, 1945). Prior to the application of PPP, in the 1980s, the government implemented Build-Operate-Transfer (hereinafter BOT) and Independent Power Producer (hereinafter IPP) in the state development process, which involved the private sector to accelerate development (Jendral & Yani, 2022). However, the government chose not to retain these two models, given unclear regulations that led to varied ad hoc negotiations regarding the state's development.

Following the issues hampering the development process and acts calling for equitable development and development acceleration in all sectors for people's welfare, the PPP framework officially began to surface in accordance with Law No. 25 of 2004 concerning the National Development Planning System (UU SPPN) (Degesya, 2020). Although not specifically mentioned in the UU SPPN, the primary objective of the national development mechanism is explicitly set out in this statutory law (Degesya, 2020). Furthermore, PPP is also regulated by Government Regulation No. 42 of 2021 concerning National Strategic Project Facilities (PP KPSN).

The inception of the PPP scheme was initially triggered by inadequate state budget and regional budget required to fund national development projects, particularly state infrastructure (Ilmar, 2007). A rapidly growing population is a trigger for the state to expedite infrastructure development as the primary foundation for improving the quality of life (Rosana, 2025). Indonesia is lagging in infrastructure development, hindering equal and sustainable development.

Data retrieved from the National Development Planning Agency (Bappenas) (*Badan Perencanaan Nasional*, 2025) show that underdeveloped infrastructure is an obstacle to development equality and sustainable development. The need for investment in national infrastructure from 2020 to 2024 has reached Rp. 6,445 trillion, outweighing what the state budget could cover (only 37%). Departing from this issue, the government began drafting regulations on PPP, as the scheme was intended to expedite development in Indonesia. PPP is considered the strategic solution to public funding, accelerating development and increasing efficiency through partnerships between the government and the private sector. Despite comprehensive legislation and government regulations, PPPs still face implementation issues. These issues include contract complexity, potential for abuse, and an imbalance in institutional capacity between central and regional governments.

Furthermore, inconsistencies, poor oversight, and suboptimal coordination across institutions exacerbate the implementation of PPP. Conceptually, PPP reflects a shift from a central to a collaborative development model. Governance and

evolutionary governance theory (Cheng et al., n.d.) highlight the essence of collaboration among multiple actors, institutional adaptation, and dynamic governance. However, in Indonesia, PPP practices remain heavily affected by bureaucratic, top-down approaches, low transparency, formalistic public participation, and fragmented policies.

Ideally, the PPP scheme should focus on policy options and represent the constitutional mandate reflected through the implementation of the conception of the welfare state as set out in the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution) (Muhammad Baidarus, Dicky Febriano, Danang Andrian Mubarok, 2023). In other words, this constitutional mandate to ensure public access to primary infrastructure through a PPP scheme, as it should be understood, is no longer within the private law, despite the contract between the government and the PPP that complies with it. This contract is regulated by Article 32 of Presidential Regulation No. 38 of 2015 concerning Public-Private Partnership in Infrastructure Procurement.

The PPP contract must also take into account the risk analysis in the fiscal sector arising from the contingency responsibility under the contract. This may include the responsibility of the Cooperation Project Manager (PJPK) to pay financial compensation to business entities due to risks arising from infrastructure development. This responsibility is based on risk allocation agreed upon in the contract. The extant contract on the infrastructure in the PPP project will not eliminate the responsibility that the PJPK carries in the first place. In other words, to help achieve development under the PPP scheme, the state cannot overlook its responsibility to expedite national development. Despite specific regulations regarding what is set forth under the development contract between the public and private sectors in PPP, the government, which is bound to material responsibility, and the private sector, which serves as both the implementer and extension of the government, are required to carry out the government programme appropriately and in good faith.

Therefore, every project agreed upon under the PPP scheme must comply with the provisions set out in Article 32 of the Presidential Regulation concerning Public-Private Partnership. Under such a contract, every party involved, including the government, must abide by the agreement contained therein. Compliance by all parties with the contract concerned is an act of good faith. Any party failing to perform the contract appropriately will result in a breach of contract. In terms of how the term good faith should be defined and how it develops, Mariam Darus (USU, 2014) asserts that good faith exists within the scope of private law. Under Article 1338, paragraph (3) of the Civil Code, every contract or agreement must be carried out in good faith. In other words, good faith can be described as a person's conduct performed properly without any indication of manipulation or intent to meddle in the affairs of other parties (USU, 2014).

In a simplified sense, every contract must be carried out properly, without any intention to manipulate or confuse other parties involved. These parties are bound to the implementation of the PPP contract between the government and the private sector (Huala, 2008). Although not entirely included in pure private law, the PPP contract remains compliant with the Civil Code (Huala, 2008). Despite its detailed regulatory scheme under the legislation, PPP is not issue-free. For instance, in the drinking water system project for the regional area of Jatiluhur I, the interpretation of the contract regarding the asset following the concession's cessation caused problems, leading to lengthy discussions (Wijayanta et al., 2025). As a result, the project was delayed, particularly in the financial close and construction stages.

When the state is involved in the PPP contract, the term defined in this agreement becomes more problematic, simply because it overlooks the public dimension involving both the state and its citizens. The term good faith can be seen as something that carries two meanings: 1) integrity in performing all the assigned tasks while abiding by what has been set out in a contract, and 2) compliance and justice. To put it simply, good faith serves to protect the public interest, ensuring that the state fulfils all social rights, maintains transparency, and is accountable in utilising the PPP scheme.

The existence of official regulations regarding the matters set out in the contract under the PPP scheme should not be interpreted as a contract that overlooks applicable public law. In other words, not only does it comply with the private law, as voiced by the doctrine of contract law in Indonesia, which tends to categorise agreed contracts into the scope of pure private law. Under the PPP scheme, we observe a non-absolute shift in responsibility from the government to the private sector in the execution of the government's infrastructure development programme. Compliance and good faith, as governed by the Presidential Regulation concerning PPP, must not overlook the public dimension, particularly in the relationship between the state and its citizens.

Reformulating the principle of good faith within the legal framework governing Public-Private Partnership (PPP) contracts in Indonesia is crucial to strengthening the contract system in infrastructure development. Good faith as regulated in article 1338 (3) of the ICC is that every agreement must be formed with a sense of fairness and equality yet application to PPP contracts still remains vague and lack of exploration (Sanjaya, 2019; Nugraheni & Hernawan, 2024). The lack of clarity and the lack of clear threshold about good faith in Indonesian contract law have created a myriad number of different interpretations, leading to legal uncertainties, which may substantially hinder effective application of any PPP contracts (Nugraheni & Hernawan, 2024). In the context of infrastructure development, PPPs are essential for overcoming budget constraints and bureaucratic obstacles, as they facilitate private sector involvement in strategic projects (Kurdi & Polem, 2025). However, the ethical

and practical challenges of PPP implementation, such as concerns over privatization and the need for an appropriate ethical framework, underscore the importance of embedding the principle of good faith throughout the contracting process (Ariana, 2024). This concept is particularly relevant to the unique case of Indonesia, a country in which government seeks to continue drawing significant levels of foreign direct investment by creating PPP as an effective vehicle for financing large-scale ambitious infrastructure projects, one most notably being Ibu Kota Nusantara (IKN) also known as the new capital city (Costa, 2023; Kartikasari & Retnaningsih, 2024). The integration of good faith into PPP contracts can increase legal certainty and encourage fairer partnerships between the government and private entities, which ultimately contributes to more sustainable infrastructure development (Kusmiati et al., 2020; Khairani & Mannas, 2023)

Departing from the above considerations, this research seeks to discuss the reconstruction of the principle of good faith as set out in the PPP contract to help realise the vision of the state, as in line with the welfare state concept, which is no longer understood as an act within the purview of pure private law. It should be understood that this article contributes to the study of public-private partnerships implemented through PPP schemes by reconceptualising good faith not only as a private contractual norm, but as a constitutional standard of state behaviour and a sustainable public obligation embedded in administrative contracts within the framework of the welfare state. Furthermore, this research also elaborates on how the welfare state and the state's responsibility are connected in infrastructure development. It also outlines the reformulation of the good-faith principle within the legal framework governing PPP contracts in the context of infrastructure development in Indonesia. The main argument of the researchers in this article is the emphasis on the principle of good faith in the PPP scheme. This emphasis is at the core of the researchers' proposal to strengthen the PPP contract system within the Indonesian legal system. Ultimately, this research presents an interpretation of the constitution in the context of the PPP, grounded in the welfare state principle.

PPP studies in Indonesia have continued to develop since the issuance of the regulations on PPP in the country, encompassing the technical aspects of infrastructure projects (Mandasari & Wahyuni, 2019), the role of Bappenas in strengthening the capacity of PPP stakeholders (Kurdi & Polem, 2025), the expansion of PPP to the non-traditional sector (Wicaksono & Karniawati, 2023), the complexity of PPP regulations (Amin et al., 2022), and institutional capacity and inclusive PPP collaboration (Taufiqurrachman et al., 2024). However, these studies, particularly those on the principle of good faith in PPP contracts oriented towards the public interest, as the responsibility of the state within the framework of the welfare state, remain limited. It can also be said so for studies on the principle of good faith in PPPs, which limits the abuse of power in contract law. Therefore, the hybrid nature of PPPs indicates that

the principle of good faith cannot be restricted to a civil-law doctrine. In government contracts, standards of propriety must be combined with procurement integrity (probity) and the principles of public administration.

Departing from the hybrid nature of PPP contracts, this article takes a different position, in which contracts initially established with private instruments are directed towards fulfilling the state's welfare obligations in the provision of infrastructure. This study offers a new theoretical contribution by reconceptualising the principle of good faith in public-private partnership contracts from the perspective of the welfare state. By integrating welfare state theory into PPP contract theory, this study reconstructs the work of good faith throughout the PPP contract life cycle, thereby challenging the dominance of contractual autonomy and efficiency-based approaches. This article further positions the principle of good faith in infrastructure PPP contracts as a public-interest-oriented governance principle derived from welfare-state obligations. This is to ensure that good faith appropriately serves as a standard of state behaviour and a continuous obligation throughout the contract cycle, thereby protecting the public interest in long-term infrastructure contracts. From this point, this article updates the theoretical understanding of good faith as a principle of public governance that binds the government as a standard of conduct and functions as an ongoing obligation throughout the PPP contract cycle. This change is implemented through normative parameters that connect contractual propriety to the demands of integrity and accountability in administration. Therefore, research on good faith extends from mere private contract morality to a normative tool for structuring long-term infrastructure contracts in the context of the welfare state.

METHODS

This research employs a normative-juridical method, as well as conceptual and statutory approaches (Marzuki, 2014), which is to critically examine and reconstruct the meaning of the principle of good faith in PPP infrastructure contracts within the framework of the welfare state. In addition, this study revisits the principle of good faith in hybrid public infrastructure contracts and re-evaluates its suitability when the State acts as a party to the agreement while remaining bound by constitutional values and public responsibility. The approach used in this legal study employs three approaches, namely: First, a conceptual approach is used to examine and reformulate the principle of good faith in contract law and integrate it into the character of PPP as a relational contract and welfare state theory, in order to develop an understanding of good faith oriented towards the public interest as a principle of governance (Soerjono Soekanto, 2018). Second, the legislative approach is used to map and examine the coherence, consistency, and adequacy of Indonesia's PPP regulatory framework and its supporting norms in accommodating good faith oriented towards the public

interest, including identifying legal ambiguities that could create legal loopholes (Ibrahim, 2007).

Legal materials were collected through library research (Yudiono, 2021). This study uses primary legal materials as binding sources for doctrinal analysis, including, among others: (1) the 1945 Constitution of the Republic of Indonesia; (2) Law No. 25 of 2004 concerning the National Development Planning System; (3) Government Regulation No. 42 of 2004 concerning Facilities for National Strategic Projects; and (4) Presidential Regulation No. 38 of 2015 concerning Public-Private Partnerships in Infrastructure Procurement. These primary materials provide a normative basis for assessing how Indonesian law regulates state responsibility and whether the existing PPP system sufficiently integrates the requirements of good faith consistently with the welfare state perspective. Secondary legal materials (academic books, journal articles, and expert commentary) complement the primary sources by offering theoretical, contextual, and critical interpretations of welfare state obligations, the doctrine of good faith, and PPP governance.

The analysis is conducted through systematic and teleological (purpose-oriented) interpretation, supported by legal reasoning, to produce a coherent normative reconstruction and practical direction for reform. The analysis is conducted by: 1) elaborating the conceptual and normative relationship between the principle of the welfare state and the state's responsibility in infrastructure development and positioning PPP as an instrument for implementing these public obligations; 2) reconstructing and interpreting the principle of good faith in PPP contracts through the constitutional perspective of the welfare state, emphasising good faith as a standard of state behaviour and a continuous pro-public interest obligation; 3) elaborating a reform model to embed 'public-oriented good faith' into the PPP legal framework through the formulation of normative standards and directions for strengthening regulatory and contractual design. By doing so, the procurement and implementation of infrastructure projects can proceed in line with public accountability and the protection of the public interest. To ensure coherent arguments, this study employs deductive reasoning, drawing conclusions from general premises (welfare state theory, constitutional responsibility, and the doctrine of good faith) to the specific context of infrastructure under PPP contracts in Indonesia (Citrawan, 2023).

However, as a normative study, this article does not use empirical data, such as interviews, surveys, or evidence of project performance. Therefore, it does not claim to establish empirical effectiveness or patterns of compliance in PPP implementation. The findings are doctrinal and prescriptive in nature, aiming at conceptual clarification and normative reconstruction. Furthermore, the analysis focuses on Indonesian law with a limited comparative scope. Broader implications for other jurisdictions are presented as conceptual insights that require further validation through more extensive comparative and/or empirical research.

RESULTS AND DISCUSSION

The Nexus between the Welfare State Concept and the State's Responsibility in Infrastructure Development

The welfare state is an old theory, but it remains relevant to current thinking among legal experts (Marbun, 1997). This theory is generally believed to adequately address the state involvement in fulfilling societal needs and realising people's welfare (Nurdin et al., 2022). The trust in this welfare state theory is reinforced by the empirical fact of market and government failures in improving the people's welfare (Firmansa et al., 2020). The welfare state is the antithesis of the night-watchman state, as a state of formal law that upholds individual interests more oriented to the needs of noble society, rendering the state's role narrower and more passive (Ansori, 2018; Hamlin, 2008; Sukmana, 2017).

Under the 1945 Constitution, Indonesia claims to be a welfare state. This is evident in several provisions of the Constitution, compared to those of other countries, such as Norway and Japan (Hari Kristianto, 2020). The US and Malaysia have relatively high human development index (HDI). Indonesia, despite its 14 statutory articles on welfare in the 1945 Constitution, lacks the power to build a welfare society compared to Norway, Japan, America, and Malaysia, which have high HDI (Anggraeny, 2025). The consequence of implementing the welfare state theory is that the public is legitimised to call for what the state must carry out as its responsibility. Mac Iver sees the state not merely as an instrument of power, but rather as an agency of services. From such a pragmatic perspective, the welfare state concept can be characterised as follows: 1) primarily guaranteeing human rights and people's socioeconomic rights; 2) efficacy of government management of power distribution that is more politics-oriented; 3) non-absolute ownership; 4) the state as an instrument that is responsible for public safety and order, and as an instrument in socioeconomic endeavour; 5) administrative law that leans more toward socioeconomic management and leaving particular responsibility to citizens; and 6) the role of public law that tends to push the private law as a result of increasingly extensive role of the state (Iver, 1950).

The state adhering to the welfare state concept, therefore, carries the responsibility to fulfil the welfare of its citizens (Martin, 2004). The state's responsibility in the context of the welfare state remains positive, active, and sustainable. This responsibility includes, *first*, ensuring that citizens' basic needs are met. This responsibility encompasses guaranteeing decent living standards, which comprise food, clothes, housing, health, and education for all (Marshall, 1950). The state must not stay passive and rely heavily on the market system, since the market can fail to meet the basic needs of the citizens, particularly the vulnerable. In this context, the state's presence through public policies, subsidies, and social services is required. *Second*, the state is obliged to protect its citizens from any social conflict (*Guidebook on Financing of Highway Public-Private Partnership Projects*, 2016; Alsuwailan, 2019).

This second responsibility requires the state to be present, while forcing it not to blame individuals for extant poverty, unemployment, diseases, disabilities, and old age; rather, the state must recognise these issues as social risks (Ritonga et al., 2021). In other words, the state is responsible for administering the social security programme, providing social insurance, and providing social assistance. Third, the state is also responsible for promoting social justice and equal development. In this context, the state should not aggressively focus on economic growth, as this may lead to an uncontrolled price war. Given this negative potential, the state is allowed to intervene in the market for social justice (Hijriani et al., 2022). However, economic neutrality contradicts the logic of the welfare state, which tends to lean toward equal and just development.

Fourth, public services should be seen as fulfilling rights, not as an indicator of sympathy. Public services should be based on the service state paradigm. *Fifth*, equal opportunities are essential. In this responsibility, the welfare state is responsible for guaranteeing equal rights for all, enabling them to develop their potential. The state must be morally, politically, and legally responsible for both regulating and guaranteeing the quality of life of its citizens. Specifically, the state's responsibility within the welfare state framework for infrastructure development encompasses active planning, directing, and controlling development to realise just, inclusive, and sustainable well-being for all.

The Constitutional Court and Indonesian Constitution recognise the welfare state as the mandate of the 1945 Constitution, which requires the state to actively guarantee the social welfare through a populist economy as set out under Article 33 of the 1945 Constitution, through the responsibility for protecting those living in poverty, abandoned children, and through health and social security as governed under Article 34. These measures are implemented in accordance with the state's laws and policies to achieve social justice for all citizens, with the people's participation as the key. The above elaboration indicates that the state plays a vital role in bringing about welfare. Expediting development that involves the state as the single actor or in partnerships with the private sector under varied schemes represents a serious initiative by the government to realise welfare for its citizens. This research, which elaborates on PPP as an alternative scheme to expedite infrastructure development, is consistent with the constitutional interpretation of realising welfare for all.

Although PPP is not explicitly mentioned in the 1945 Constitution, systematically and theologically, the PPP is constitutionally legitimised as an instrument responsible for the development of a welfare state. PPP is within the framework of "controlled by the state" as mentioned under Article 33 of the 1945 Constitution. According to the Constitutional Court (Putusan Mahkamah Konstitusi Nomor 001-021-022/PUU-I/2003, 2003), the phrase "controlled by the state" is not entirely comparable to the term "under the ownership of the state". The controlling function

is determining. Although PPP is based on a contract, the PPP scheme cannot be automatically categorised into pure private law. At the PPP stage, the state owns strategic assets and, therefore, the state is authorised to determine both service standards and tariffs.

The business entity in the PPP scheme is positioned as an implementing partner. According to the 1945 Constitution, the PPP serves as an instrument of constitutional development policy so long as the state holds power, takes control of, and oversees the sector involved in the partnership, while guaranteeing that the development is considerably intended for people's well-being. The scheme of PPP is understood as an instrument that provides infrastructure and public services, which requires funding, the involvement of experts, and the private sector, while saving the state budget, improving quality and efficiency, and proportionally distributing risks, encompassing some sectors in transportation, energy, water, and social facilities.

A fundamental aspect in this regard is that the concept of the welfare state has direct implications for the legal nature of PPP infrastructure contracts in Indonesia and the meaning of good faith therein. The provision of infrastructure is part of the state's responsibility to guarantee public services and welfare. The interpretation of good faith within the scope of PPP contracts should not be restricted to the classical private-law sense set out in the Civil Code; instead, it should be interpreted in a public and constitutional manner (Budiono, 2024). The PPP scheme incorporates elements of state administrative law, including public interests and state finance, and involves the government exercising public policy. In other words, the state does not act as a private party seeking efficiency in procurement, but rather as the holder of constitutional obligations. Therefore, the choice of PPP contracts must remain aligned with public service outcomes and community interests.

It can also be said that the contractual obligations of infrastructure PPPs are not confined to reciprocal performance and risk allocation between the parties. Rather, they also include governance-oriented welfare obligations, such as ensuring the continuity and quality of services, maintaining affordability and fair access, and protecting the legitimacy of public expenditure. In addition, the state also maintains the certainty necessary for long-term private investment.

In this context, the principle of good faith cannot be understood solely as a doctrine of pure justice in private law; it must also serve as a standard oriented towards the public interest, limiting the state's discretion and guiding contract governance throughout the PPP stages. As stated in Presidential Regulation 38/2015 Articles 3 and 4, which positions the objectives and principles of PPPs as prerequisites for good faith behaviour and the concretisation of good faith in government and business relations throughout the pre-contract, contract, and post-contract phases, this requires the integration of good faith in private law with the requirements of integrity and accountability in public law. Based on Law 30/2014, the use of discretion and the

general principles of good governance also involve good faith in its implementation to create conditions of legal certainty, benefit, impartiality, accuracy, non-abuse of authority, openness, and public interest, so that administrative actions related to PPPs are also tested against these standards of public good faith. Therefore, the integration of good faith in public law also includes integrity in procurement and contract management, transparency and timely disclosure of material information and risks, reasons for decisions that affect the balance in any contract changes or terminations, and cooperative performance by the parties, without overlooking the public interest.

The fulfilment of welfare state values through the principle of good faith changes contractual obligations in PPP infrastructure projects in at least four ways:

1. Service continuity and quality become the main performance benchmarks, so that the principle of good faith in the PPP contract stage includes the obligation to cooperate and manage risks in a manner consistent with public service outcomes;
2. Contract governance standards in the selection of partners and contract drafting must be based on integrity and fairness. Therefore, the principle of good faith in this case includes standards of integrity, transparency, auditability, and conflict of interest management during the procurement and contracting process;
3. The long and adaptive term of PPP contracts makes the principle of good faith function as an ongoing obligation to deal with changes in a transparent, proportional, and clearly reasonable manner, especially in renegotiations and performance adjustments;
4. The use of regulatory power and administrative discretion by the State in PPP projects must not be arbitrary but must be based on the general principles of good governance, so that the principle of good faith implied in private law norms can serve as an objective standard for public legal behaviour.

Such cross-sectoral collaboration presents a positive challenge. This collaboration creates a healthier climate among the parties, in this case, the government and the private sector. The PPP scheme addresses recent problems in state management, particularly in infrastructure development for equal distribution and people's welfare. Projects carried out under the scheme of PPP in Indonesia have involved many strategic sectors of infrastructure, including toll roads (Pandaan-Malang, Batang-Semarang, Serang-Panimbang, Solo-Yogyakarta), transportation (LRT Bandung Raya, Train connecting Makassar-Parepare, Dhoho Airport, Kediri), water resource (Drinking Water Supply System (SPAM) Umbulan, SPAM Jatigede), energy (Steam-Electric Power Station (PLTU) Batang), and telecommunication (Palapa Ring), including social projects such as hospital (Regional General Hospital Wangaya) and waste management (Integrated Waste Treatment Station (TPPAS) Legok Nangka).

Furthermore, the PPP scheme has successfully helped the government expedite development. For instance, the Palapa Ring project developed the national fibre-optic backbone (broadband), connecting all regencies/cities across Indonesia (*Kisah Sukses Proyek KPBU*, n.d.). The commitment of the Ministry of Communication and Digital Affairs of the Republic of Indonesia contributed to the success of the project. The PPP team involved had direct access to the minister, enabling them to address any delays at each project stage through appropriate policies/responses.

Projects with the Minister of Communication and Digital Affairs include projects with SPAM Umbulan executed under the PPP scheme. This partnership scheme has been prepared since the 2000s. In 2010, the development of the Umbulan Drinking Water Supply System (SPAM Umbulan) was agreed upon under a PPP scheme, within the responsibility of the Governor of East Java. With the investment value reaching up to Rp. 4.495 billion, this project affected five regencies/cities in East Java, with a 25-year project concession after COD. Following the investigation in a pre-study stage, the author found that this project required VGF assistance from the government to help enhance project viability and attract private companies. The party in charge of the project submitted a proposal to VGF for financial support in the amount of RP. 895.73 billion to the finance minister. This application was later approved, and the letter of project viability amount was issued.

However, based on the bid documents submitted by the business entity, the auction results determined a VGF value of Rp. 819 billion, while negotiations with the winning consortium resulted in a final VGF value of Rp. 818 billion. The provision of VGF in this project contributed significantly to the successful completion of the long preparatory process of the SPAM Umbulan Project, which began in 1988, culminating in the project's financial close in December 2016 and the commencement of construction in July 2017. This success was followed by other unsuccessful projects under the PPP scheme. Most of these failures resulted from a lack of good faith in executing the project responsibility, as in the project involving PT. Waskita Karya (Persero), Tbk v. PT ITC Polonia. In this case, the conflict arose from the procurement contract for the project between the two parties. This case was settled at the Indonesian National Board of Arbitration (hereinafter BANI). The Supreme Court Decision No. 1371 B/Pdt.Sus-Arbt/2022 declared this conflict around the construction/infrastructure development executed under the PPP scheme. The decision of BANI is highly protected and can only be annulled for specific grounds under Article 70 of the Arbitration Law. In this case, courts cannot intervene to reassess the conflict.

Furthermore, under the Supreme Court Decision No. 477 B/Pdt.Sus-Arbt/2022, PT Boustead Maxitherm Industries won a case at an appeal court. This decision set aside an arbitration award that harmed the industries and required the National Electricity Company (PLN) to pay the costs of the appeal adjudication

process (Adolf, 2024). This case shows the project's failure under the PPP scheme. As observed in this research, issues arose primarily from misunderstandings between the two parties about how a partnership between the government and the private sector should be defined (Adolf, 2024).

Further, the government later delegated the authority to develop infrastructure to the private sector under the PPP scheme, which triggered misunderstanding. Some of the cases presented above suggest that not all projects under the PPP scheme have been fruitful (Isnaeni, 2013). This failure also underscores the importance of prudence. The Constitutional Court Decisions No. 001-021-022/PUU-I/2003, No. 111/PUU-XIII/2015, No. 17/PUU-XIV/2016, and No. 39/PUU-XXI/2023 allowed the involvement of the private sectors in the national development, including projects executed under the PPP scheme. However, the Constitutional Court distinguishes privatisation of authority from partnership based on limited operation. In other words, under the PPP scheme, the state is fully authorised to control project execution. The PPP principle primarily lies in funding and infrastructure procurement/public services, involving business entities without overlooking the responsibility that the state carries (Peraturan Presiden Nomor 38 Tahun 2015 Tentang Kerjasama Pemerintah Dengan Badan Usaha, 2015). The PPP scheme is legally defined as an instrument of public policy, not as an act of ceding the state's role to other parties. The PPP contract involving both the government and private sectors should not be categorised into a pure private matter (privatisation), simply because in this contract scheme, the constitutional responsibility remains fully attached to the state.

Based on the above description, a welfare state has a role as the controller of strategic sectors in the provision of infrastructure. This position makes PPP contracts hybrid government contracts, meaning that they are drafted on the basis of civil law agreements but involve public officials and are implemented to fulfil public service objectives. Therefore, the principle of good faith needs to be reconceived not only as private law but also as a sustainable public obligation so that it can limit the use of state authority and guide the governance of PPP contracts. This sustainable public obligation integrates contractual justice with integrity, transparency, justification, and accountable administrative behavior. The following section develops a constitutional reconstruction of good faith and explains its normative content for PPP contract governance in Indonesia.

The Principle of Good Faith in the Contract of PPP in Infrastructure Development: Welfare State Perspective

The failure of PPP contracts in government projects often stems from an inappropriate interpretation of the good-faith principle that every party must comply with. Like most contracts, a partnership involves the government and the private sector in a development project and should be based on good faith. However, the PPP

scheme is a contract-based partnership allowed by the Constitution (Prim Haryadi, 2017). The state's role in state development remains in place and is governed by related laws. According to the Presidential Regulation on PPP and some statutory laws, there is no single legal norm for ownership transfer of public assets to the private sector or for delegation of public authority to a business entity (Wijayanta et al., 2025).

The above elaboration indicates that the PPP scheme within the framework of the welfare state, as in Indonesia through its Constitution, provides that any policy does not contravene the Constitution so long as the contract between the government and the private sector concerns only management-related matters (*beheersdaad*). The PPP scheme is a strategic step by the state amid insufficient budgetary resources to fulfil people's social rights, particularly in infrastructure development (Baporikar, 2023). In other words, the compliance of the PPP scheme with the Constitution does not immediately transfer the entire responsibility of the state to the private sector (Noho & Lumbanraja, 2023); the authority to oversee, make policies, and regulate remains with the state. Consequently, the state can be juridically held liable for the failure of the project under the PPP scheme (V. et al., n.d.; Zavyalova & Inshakova, 2020).

The Constitutional Court Decisions No. 001-021-022/PUU-I/2003, No. 111/PUU-XIII/2015, No. 17/PUU-XIV/2016, and No. 39/PUU-XXI/2023 imply that PPP contracts are essentially administrative (*bestuurscontract*) rather than pure private contracts. Despite its form as a private contract, the contract under the PPP scheme arises from the public authority of the government, the objectives of public services, and the utilisation or management of public interests (Kurdi, 2025). Although contextually governed under Indonesian legislation, breach of contract between parties remains. This can be traced to existing problems involving court intervention, the government, and the private sector (Kurdi, 2025).

The cases arising from issues under the PPP scheme often involve a faith defect, resulting in risk-allocation abuse. This potential includes changing permit policies, regulations, and government tariffs. Moreover, the position of business entities in Indonesia involved in the PPP contract has been too weak. As the author observes, the settlement of problematic projects under the PPP scheme, with the interference of arbitration institutions or courts, indicates this weakness. However, the fact that settling such a conflict often involves both institutions has led to differing interpretations of good-faith obligations between the government and business entities (Wijayanta et al., 2025). The good-faith principle is not interpreted symmetrically between the government and business entities.

For instance, the government adheres to policy standards based on legality, public interest, and proportionality. As a consequence, the government is seen as acting with bad faith in performing its public authority. On the contrary, legal entities can be seen as not acting in good faith when they focus primarily on gaining commercial benefits by undermining public services and taking advantage of contracts only to limit

state policy. This paradox, then, creates additional empirical problems for government and business entities bound by PPP contracts. This example shows that the contract with business entities under the PPP scheme is constitutionally valid so long as such a partnership is not an act of pure privatisation of the contract. The constitutionality of a contract, in this context, is not determined by the form of the contract, but rather by the substantive matter of the state control therein. As long as the state holds the normative and functional power to control, the PPP contract, therefore, can be understood as a constitutional instrument to carry out national development. However, when the contract ruins the state's role, it contravenes the constitution.

The growing number of recent issues arising from PPP contracts is closely related to the understanding of the concept of good faith as set out in such contracts. The term good faith, when not symmetrically interpreted between the government and legal entities, principally undermines legal entities' position in growing their businesses without ruling out public interests (Budiono, 2024).

In principle, the term good faith is not defined in the legislation. Under the Civil Code, contracts only govern the agreements therein. Wirjono Projodikoro (Projodikuro, 1985) compares good faith with integrity, implying that the practice of good faith in a contract must be based on appropriateness and justice. Basically, good faith is divided into two types: good faith that arises when a legal relation begins to be effective and good faith that occurs when all obligations and rights arising from the legal relation are performed (Suryadi, Marwa et al., 2024). The first type is linked to the assumption of the legal subject believing that all requirements to construct a legal relation are fulfilled. In this context, the law protects those who act in good faith; on the contrary, parties who fail to show good faith (*te kwader trouw*) must be held accountable for all the risks caused. In the second type, objectively, good faith involves what the two parties will execute to perform an obligation. The principle of good faith is essential to the execution of a contract. Conflict arising from a contract often departs from the good faith between parties involved in a contract they have agreed upon (Kartikasari & Retnaningsih, 2024). Article 1338 of the Civil Code explains that all parties are required to be honest in executing a contract they have agreed upon in good faith. Similarly, in an agreement involving both the government and the private sector, the development in this context must also involve good faith between the government and private institutions, since the absence of good faith will create a conflict.

The principle of good faith in PPP contracts cannot be understood merely as subjective integrity or a moral obligation on the part of the parties. The principle of good faith, derived from Article 1338(3) of the Civil Code, requires that the entire contractual process be conducted in accordance with reasonableness, propriety, and equality, thereby embodying integrity, courtesy, and justice (Nugrahenti & Hernawan, 2024). Furthermore, as PPP contracts are long-term in nature and involve the exercise of public authority, good faith needs to be reconceptualised as an ongoing obligation

from the pre-contractual stage through to the post-contractual stage, and to function as a corrective principle against arbitrary and non-transparent conduct in the partnership between the government and business entities.

This reconstruction is termed 'Public-Oriented Good Faith', integrating contractual propriety/fairness with the integrity and accountability of governance. The standards of conduct for Public-Oriented Good Faith are examined based on:

- 1) The principle of good faith under Article 1338(3) of the Civil Code;
- 2) The principles and objectives of PPP under Presidential Regulation No. 38 of 2015, which require partnership, fair competition, risk management, effectiveness and efficiency (Presidential Regulation No. 38 of 2015) as the implementation of the principle of good faith in the public sector;
- 3) The norm of probity in the Circular Letter of the Head of the National Public Procurement Agency (LKPP) No. 15 of 2022 concerning the Model Procurement Document for Public-Private Partnership Implementing Entities in the Provision of Infrastructure for the Generic Sector, as procurement ethics and contract management calling for transparency, audit history, and control of conflicts of interest; and
- 4) Standards of good faith and the General Principles of Good Governance in the exercise of discretion by government officials (Government Administration Law).

Based on these legal sources, the Principle of Public-Oriented Good Faith can work through the following four normative elements:

- 1) Duty to Cooperate

The duty to cooperate is reflected in Article 1338(3) and Article 1339 of the Civil Code. In the context of PPPs, these provisions establish that the parties must not hinder the other party's performance, must provide reasonable facilities, and must not impose unnecessary additional burdens or costs. This is further reinforced by Presidential Regulation No. 38 of 2015, which defines a PPP as a collaboration between the government and a business entity to provide infrastructure in the public interest. This regulation also establishes partnership principles and other principles supporting the governance of such collaborations. This matter is also mentioned in Circular Letter No. 15 of 2022, issued by the Head of the National Public Procurement Agency (LKPP), which regulates the prerequisites for fair collaboration in procurement and contract management. From an administrative law perspective, decisions made by officials in PPPs must comply with the the general principles of good governance and the principle of good faith so that cooperative standards based on public-oriented good faith can be implemented. This Duty to Corporate also aligns with the development of long-term reciprocal contracts applied in the UK, as reflected in UK court rulings (Giliker, 2022; Tarr, 2015): 1) the High

Court decision in *Yam Seng Pte Ltd v International Trade Corporation Ltd* (2013) Wales High Court 111 (QB), which explains that long-term, reciprocal contracts require communication, cooperation, and performance based on trust, even if this is not explicitly stated in the contract; 2) the decision in *Bates v Post Office Ltd* (No. 3) [2019] EWHC 606 (QB), which explains that good faith is not merely integrity but also the obligation of the parties not to engage in acts that could harm the other party within the contractual relationship. Based on these two decisions, it is affirmed that courts in common law countries (which are known to be very cautious regarding good faith) can operationalise good faith in long-term contracts as a reciprocal obligation.

2) Duty of transparency

The transparency obligation in PPP contracts requires the disclosure of information from the preparation stage through to the contract's implementation. This is consistent with the principle of good faith (Saran & Akbarineh, 2024), as stipulated in Article 1338 and expanded upon in Article 1339 of the Civil Code. Article 1339 of the Civil Code expands the content of the agreement to include reasonableness, custom, and law. Therefore, the duty of transparency influences the proper fulfilment of the contract. Additionally, Presidential Regulation No. 38 of 2015 emphasises the importance of partnership, fair competition, and risk management, all of which require a duty of information transparency. Transparency must be ensured so that evaluation, risk allocation, and investment decisions are fair and bankable. The duty of transparency is also reinforced procedurally through the probity norms in the Circular Letter of the Head of the National Public Procurement Agency (LKPP) No. 15 of 2022 regarding the Procurement Document Model for Public-Private Partnerships in the generic sector, which requires transparent, accountable, and auditable procurement processes and contract management, while maintaining an audit history, identifying and managing conflicts of interest. The principle of transparency, which is also part of the general principles of good governance under Law No. 30 of 2014, provides transparency indicators in PPPs as a guide to good governance. Based on these standards, the transparency indicators in PPPs include:

- a. Disclosure of technical risks, land/permitting risks, service assumptions, and fiscal commitments/government support;
- b. Consistency of tender criteria;
- c. Documentation of the rationale for decisions;
- d. The existence of an audit history;
- e. Accountable, transparent, and auditable processes, including the management of conflicts of interest; and
- f. Clear conflict of interest management.

Conflict of interest management, which is part of the duty of transparency, is also applied in National PPPs in Australia (Departement of Infrastructure and Regional Government, 2015), emphasising the importance of addressing conflicts of interest from the outset to ensure transparency and integrity in partner selection. Thus, indicators of state violations may include concealment of material risks during the preparation/tender stage, covert changes to criteria, or decision-making practices lacking an accountable audit history.

3) Duty of Good-Faith Renegotiation

The duty of good-faith renegotiation is an obligation of the parties during the contract adjustment phase when changes in circumstances affect the performance of the contract, including changes in regulations or permits, tariff policies, service standards, or fiscal support structures. The purpose of this renegotiation is to restore the contractual balance while taking public interest into account. The obligation to renegotiate in PPP contracts is a legal implication of Article 1338(3) of the Civil Code, which mandates the opening of a renegotiation process to restore the contract's performance proportionately. Furthermore, Presidential Regulation No. 38 of 2015 implicitly establishes mechanisms for contractual adjustments to ensure that the project's bankability is maintained and public service outcomes remain protected. Article 24(f) and Article 10 of Law No. 30 of 2014 clearly stipulate that discretionary changes leading to contract renegotiation must be accompanied by justifiable, transparent, and proportional reasons and must not involve an abuse of authority. At the level of PPP document governance, LKPP Head Circular No. 15 of 2022 provides a procurement document template that ensures that the process of changes/renegotiations remains well-documented and maintains auditability and probity. Thus, the duty of good-faith renegotiation can be affirmed as a continuous public obligation to manage changes transparently, reasonably, and proportionally, thereby creating contractual balance. Indicators of a breach of this obligation include the refusal to renegotiate without cause, the unilateral imposition of changes to terms through regulatory instruments, permits, or tariffs, or renegotiations that lack transparency and auditability, resulting in a disproportionate allocation of risk.

4) Prohibition of Opportunistic Regulation

The prohibition on opportunistic regulation is a key indicator of the principle of public-oriented good faith in PPPs. This indicator aligns with the state's dual role as both a contracting party and a holder of regulatory authority; thus, while the state retains the authority to regulate in the public interest, it must not exercise that authority opportunistically to evade contractual obligations or unilaterally shift risks. The prohibition on opportunistic regulation can be derived from Articles 1338 and 1339 of the Civil Code, meaning that regulatory

changes intentionally designed to create an imbalance in the contract may constitute a breach of good faith. This is also consistent with the PPP principles in Presidential Regulation No. 38 of 2015, which focus on governance stability and fair risk allocation rather than unilateral regulatory changes. Its limitations are also explicitly regulated in the Government Administration Law, thereby establishing appropriate parameters for operationalising this principle. Such an operation must consider the following: 1) government actions must comply with the general principles of good governance, and 2) the exercise of discretion must be based on objective grounds, comply with the general principles of good governance, and be carried out in good faith to ensure accountable procedures and proportional remedial mechanisms, thereby preventing an abuse of regulatory power.

Based on this, the researcher provides an explanation of the indicators of a breach of good faith. To avoid confusion, within the PPP framework, when establishing indicators of a breach of good faith, the state cannot be treated as an ordinary private party. This is because the state holds public authority, acts in the name of the public interest, and bears a duty of welfare. Thus, the state's good faith carries heavier consequences and is of a public-constitutional nature, not merely a private moral obligation. Having understood the state's position, the researcher provides normative parameters that can be used in legal analysis to identify breaches in the application of the good faith principle within the PPP framework in Indonesia.

Indicators of breaches of good faith in PPP contracts can be outlined as follows: (1) the abuse of the state's dominant position (abuse of public dominance) implies that the state is considered violating the principle of good faith when it exercises regulatory, fiscal, or administrative authority while evading obligations or shifting burdens onto the private partner. A concrete example is changing technical regulations or tariffs without a compensation mechanism; (2) frustration of the public purpose of the contract means that the state is considered violating the good faith provision when it undermines or destroys the welfare objectives that form the basis of the PPP contract. Concrete examples of this point include diverting the function of infrastructure that may disrupt public services; (3) inconsistent and unpredictable behaviour (*inconsistent state conduct*) can be reflected when the state acts in a manner contradictory to its previous stance. Finally, breaches of good faith by the state in PPP contracts are demonstrated by the abuse of public dominance, the thwarting of public objectives, inconsistent behaviour, refusal to renegotiate under extraordinary circumstances, and excessive contractual formalism. Such breaches entail not only contractual consequences but also public law implications, including the obligation to rebalance contractual obligations, state liability, and the erosion of the legitimacy of state actions under welfare state theory.

The implementation of this PPP scheme shall be oriented toward the public as a form of ongoing obligation. In line with this, the public orientation within the KPBU/PPP scheme as a form of ongoing obligation can be understood as the fulfilment of the elements of public good faith, namely: 1) the obligation to cooperate, 2) the obligation of transparency, 3) the obligation to renegotiate in good faith, and 4) the prohibition against opportunistic regulation.

A Reform Model for Embedding Public-Oriented Good Faith in PPP Law

Projects carried out under the PPP scheme also take place in other countries. What is applied in the UK with the Private Finance Initiative (PFI) model, later reformed into PF2, is similar to the PPP in Indonesia (Zavyalova & Inshakova, 2020). However, its difference lies in the nature of the contract, which tends to be lengthy. Other differences include that the contract payment often relies on availability and that construction and operational risks are transferred to the private sector. Countries that follow common law recognise no good faith as the general principle of a contract. Therefore, the good faith in the PPP scheme, as in the UK, is not accounted for, although it must remain explicitly stated in a contract. Unlike in the UK, Australia, as a common law country, does not recognise good faith as a general principle applicable to all contracts (Anggraeny, I., & Al-Fatih, 2020).

Australian courts tend to view good faith as an implied obligation, meaning its implementation in a PPP-based contract is not merely a private law issue; it is embedded in the governmental function as a public entity. The Australian government adheres to the good faith principle, which is often demonstrated through fair, reasonable, and non-arbitrary acts (Nurhayati, 2025). Therefore, through judicial review in Australia, this state provides extra protection for business entities, treating them equally without undermining the state's role in achieving its objectives.

As a civil law country like Indonesia, the Netherlands has set unique regulations concerning PPP. Public and private laws in the Netherlands intersect rather than rigidly separate. It indicates that the Netherlands cannot use public authority only to evade civil obligations (Nurhayati, 2025). Several countries also have different perspectives on the principle of good faith. However, the Netherlands and Australia can serve as references to help formulate contracts under the PPP scheme in Indonesia, particularly in the context of applying good faith.

With the above elaboration, this research seeks to formulate the good faith principle in the context of PPP contracts to guarantee certainty for contracts involving both the government and legal business entities within the PPP scheme. In general, the success of the Netherlands and Australia in implementing the good faith principle has developed, and it has evolved into a legal principle rather than a mere clause. In this case, the state is no longer compared to ordinary business entities, while potential conflict can be prevented with proper contract design and governance (Guntara, 2016).

However, the countries that have successfully implemented the good-faith principle in PPP contracts are not always pro-market, treating the contracts as instruments of public interest. Good faith can be said to be fruitful when it is embedded in a legal system and governance, not merely as written words in a contract.

Normatively, as the author believes, Article 1338 of the Civil Code can be normatively explained as “*all agreements made according to legislation serve as the statutory regulations for the parties involved in the making. This agreement cannot be withdrawn unless the two parties agree to it or there are causal factors set out in statutory regulations. An agreement must be performed in good faith.*” In PPP practices, as elaborated earlier, the state has unilaterally changed policies without considering the contract. This step involved public discretion in modifying the contract, leading to legal uncertainty affecting business entities.

Based on this comparative study on the policy regarding the good faith principle in the PPP scheme, the author has found that the Netherlands and Australia place good faith as the standard of conduct for the government and good faith as a corrective principle (*redelijkheid en billijkheid*). Furthermore, the analysis of several constitutional court decisions implies that the state remains bound to the Constitution despite the private mechanism it adheres to. Therefore, good faith in the context of PPP must be understood as the state's responsibility for its conduct, not merely as a contractual moral norm. The consequence is that reformulating the good faith principle in the PPP in Indonesia requires shifting the paradigm from passive to active as the standard of the state's conduct. Without this reformulation, the issues in the PPP will remain, even as the PPP regulatory standards become more complex.

Policy formulation offered by this researcher can certainly be understood in practical terms through normative policy, namely at the stage of long-term and relational PPP contracts. When the principle of good faith is understood only as a subjective obligation at the stage of signing a PPP contract, the state loses its corrective instruments when changes in public needs occur during the concession period. For example (J. Luis Gyasch, 2004): deviations in demand projections (Bae et al., 2019), changes in the public's ability to pay (European PPP Expertise Centre, 2018), changes in service standards, or technological changes that affect service design. As a result, public interests are trapped in the rigidity of long-term contracts, while business entities continue to hide behind formal legal certainty. Thus, it is difficult for the government to adjust contracts without the risk of excessive compensation claims, and public oversight weakens because contracts are treated as purely private matters. Consequently, the PPP scheme has the potential to conflict with the welfare state function, which demands policy adaptability.

Through this description, researchers have a very strong basis for reformulating the principle of good faith, which must be clearly explained and interpreted to avoid the problems that have occurred as described above. Thus, the researchers' proposal that the principle of good faith must be reconstructed as a continuing obligation, not

merely an abstract principle. When understood more deeply, in several PPP infrastructure projects such as toll roads and drinking water supply in Indonesia, contract renegotiation is often triggered by changes in demand projections and the public's ability to pay. When the good faith clause is not explicitly formulated as a public obligation, renegotiation becomes a commercial tug-of-war rather than a mechanism for correcting the public interest. Thus, it is important to understand that this problem arises when the absence of a public-oriented good faith formulation opens up room for moral hazard in the future or at a certain point in time. Furthermore, the state will ultimately find itself in a defensive position, rather than acting as a proactive regulator. Reconstructing good faith as a continuous obligation oriented towards the public interest is therefore necessary to ensure that policy adaptability remains within the corridor of accountability and contractual justice, while maintaining the welfare state's function in infrastructure development.

The model for reforming the incorporation of public-oriented good faith principles presented in this article takes into account the hybrid nature of government contracts. It is not only examined under private law but also reconstructed as public-oriented good faith. Therefore, it can be considered as a continuous public obligation that binds the government and business entities at every stage of a PPP contract and serves as a mechanism for constitutional accountability regarding the exercise of discretion, policy changes, and fiscal risk management. To realise this concept, an embedding strategy is required at four mutually reinforcing levels: constitutional, legislative, contractual, and enforcement.

1) Constitutional Level: Constitutional Accountability

This level focuses on the constitutional accountability framework that provides guidelines for the state to act as a party in a PPP contract. In principle, the state retains public authority over regulation, licensing, tariffs, and oversight in the public interest. However, the exercise of such authority must be constitutionally accountable, as PPPs are instruments for delivering public infrastructure services. This framework requires at least four standards of state conduct in PPPs: the duty of cooperation to ensure the continuity of public services, the duty of transparency and openness of information at every stage of the contract, the duty of good-faith renegotiation when changes in circumstances disrupt the balance of the contract, and the prohibition of opportunistic regulation.

2) Legislative Level: Codification of the Duty of Good Faith

The main weakness of PPP practices lies in the broad interpretation of the principle of good faith, resulting in inconsistent standards of propriety, particularly when dealing with policy changes and the management of long-term contracts. Therefore, the reform model proposes clear codification through the strengthening of legal norms at the statutory level (whether

through a dedicated PPP law or by reinforcing norms within the relevant legal framework), which should at least include:

- a) a normative definition of Public-Oriented Good Faith as an ongoing obligation in government contracts;
- b) formulation of four operational obligations (duty to cooperate; duty of transparency; duty of good-faith renegotiation; prohibition of opportunistic regulation);
- c) minimum procedural rules for variations/renegotiations, such as triggers for changes, consultation obligations, data exchange, deadlines, and documentation requirements;
- d) specific provisions regarding changes with fiscal implications, such as payment commitments, guarantees, or VGfFs, to be subject to auditable controls and approval; and
- e) clear legal consequences for violations, ranging from contractual remedies (adjustments, compensation), administrative sanctions, to specific civil liability in the pre-contract phase if malicious intent causing harm is proven.

This codification is essential as a guideline for implementing the principle of good faith as a testable standard of obligation.

3) Contractual level: mandatory clauses in PPP contracts

Structured mandatory clauses in PPP contracts ensure that codification extends beyond mere legislation. The reformulation of the principle of good faith in PPP contracts is expected to help prevent the abuse of authority to manipulate PPP contracts. Furthermore, strengthening the principle of good faith in PPP contracts is intended not only to maintain a balance between the parties but also to function as a constitutional mechanism to ensure the consistency of infrastructure contracts with the welfare state's mandate. At this level, at least four contract clauses need to be added as essential components of PPP contracts:

- a) Public-Oriented Good Faith Clause affirming good faith as an ongoing obligation.
- b) The Transparency and Probity Clause, which mandates the disclosure of material risks, audit histories, conflict-of-interest management, standards for documenting decisions, and proportional confidentiality protections without compromising accountability.
- c) The Change of Circumstances and Renegotiation Clause, which governs the triggers for changes, consultation procedures and data exchange, the obligation to provide reasons, and mechanisms for restoring contractual balance that continue to protect the public interest.

- d) The Clause on Restrictions on Opportunistic Regulation and the management of its impacts, as previously explained.
- 4) Enforcement Level: Judicial and Arbitration Standards
- This level focuses on PPP dispute resolution, thus requiring interpretive guidelines and review standards for judges/arbitrators who understand that PPP disputes are distinct from ordinary private disputes. These standards include:
- a) Recognition of the hybrid nature of PPPs to ensure that the assessment of good faith does not stop at subjective honesty, but rather at objective behaviour that includes cooperation, transparency, policy rationale, and the prohibition of opportunism;
 - b) The application of parameters such as the public interest, proportionality, transparency, and the prohibition of abuse of authority when disputes are triggered by administrative decisions or policy changes;
 - c) Strengthening of remedies, not only compensation, but also restoration of contractual balance through reasonable adjustments, procedural corrections (e.g., orders to conduct consultations/re negotiations), and quantifiable compensation if state actions are proven to be opportunistic; and
 - d) Enhancing institutional capacity through specific guidelines/evidence standards (audit histories, records of reasoning, and disclosure of conflicts of interest) so that violations of public-oriented good faith can be consistently adjudicated.

Through these standards, the state as a contracting party must remain accountable in accordance with public good faith standards.

These four levels of reform demonstrate that Public-Oriented Good Faith is not merely a theory, but a governance system that begins with constitutional accountability, is clarified through codification, operationalised in accordance with mandatory clauses in PPP contracts, and guaranteed by enforcement standards.

CONCLUSION

The Indonesian cases, in this context, cannot be treated as purely private contracts because they are inseparable from the welfare state's mandate and fall within the framework of state control over strategic sectors. PPPs are hybrid government contracts formed under agreements but implemented to fulfil public service objectives. It means that they require state accountability as the bearer of constitutional responsibility. Therefore, the principle of good faith must be reconstructed as Public-Oriented Good Faith, both a continuing public obligation and a mechanism of constitutional accountability. This principle operates from the pre-contract to the post-

contract phase, limiting administrative discretion and policy and maintaining the balance of the contract without sacrificing the public interest.

To implement this concept, this article further outlines four core elements: the duty to cooperate, the duty of transparency underpinned by probity (audit histories and conflict-of-interest management); the duty to renegotiate in good faith when material changes occur, including fiscal risks/VGF; and a prohibition on opportunistic regulation that prevents the state from using regulatory authority to avoid contractual obligations or unilaterally shift risks. These four elements are anchored in four layers of normative sources, namely: the Civil Code, Presidential Regulation No. 38/2015, the LKPP probity norms, and the Government Administration Law/the general principles of good governance. To implement this framework, the article proposes a phased reform model at the constitutional, legislative, contractual, and enforcement levels so that PPPs maintain state control while simultaneously ensuring contractual legitimacy, investment certainty, and public accountability in long-term infrastructure projects. The researchers suggest that future research should test the operationalisation of the Public-Oriented Good Faith model by analysing court rulings, PPP renegotiation practices, and the institutional design of fiscal risk management, to assess the practical functioning of this principle and to shape state accountability.

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