

## Legal Perspectives on Small-Scale Infrastructure Development Through Public-Private Partnerships: A Development Law Analysis

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### Abstract

This study aims to analyze the implementation of infrastructure development in Indonesia using the Public-Private Partnership (PPP) scheme from the perspective of development law as proposed by Prof. Dr. Mochtar Kusumaatmadja. Infrastructure development is crucial for achieving national development goals and improving public welfare, yet it often faces challenges such as bureaucracy and funding. The PPP scheme offers a solution by integrating the public and private sectors, as well as sharing risks to enhance the effectiveness and efficiency of infrastructure projects. This research employs a normative juridical method to examine regulations related to PPP, specifically Presidential Regulation Number 38 of 2015, and a conceptual approach to understanding the development law theory proposed by Kusumaatmadja. This theory emphasizes the role of law as a tool for reform and social development, with two main dimensions: order and regulation, and effective governance. The study finds that the PPP scheme aligns with the principles of development law theory, focusing on sustainable development, orderliness, and adherence to international practices. Additionally, the PPP scheme demonstrates a close relationship with national legal development, supporting the implementation of infrastructure projects. These findings are expected to provide insights for the more effective development and application of PPP in the context of development law in Indonesia

## 1. Introduction

Development is crucial for achieving the goals set by the government, particularly in the context of meeting the Millennium Development Goals (MDGs) by 2015 and the Sustainable Development Goals (SDGs) by 2030.<sup>1</sup> These efforts are not only aimed at achieving the aforementioned goals but also at improving the welfare of the Indonesian people.<sup>2</sup> The implementation of various development efforts can be carried out in several ways, ranging from cost-saving measures to strengthening law enforcement against those who violate the law and harm the state, which in this case could hinder the goals that have been set. Unfortunately, the implementation of development, as described above, is still not being carried out optimally. In practice, infrastructure development in Indonesia continues to face

<sup>1</sup> Destia Hera Ramadani and Nursiwi Nugraheni, "Upaya Peningkatan Pendidikan Indonesia Dalam Mencapai Target Sustainable Development Goals (SDGs)," *Jurnal Penelitian Pendidikan Indonesia (JPPI)* 1, no. 3 (2024): 126–32.

<sup>2</sup> Taufik Taufik and Hardi Warsono, "Birokrasi Baru Untuk New Normal: Tinjauan Model Perubahan Birokrasi Dalam Pelayanan Publik Di Era Covid-19," *Dialogue: Jurnal Ilmu Administrasi Publik* 2, no. 1 (2020): 1–18.

major challenges, particularly in the areas of bureaucracy and funding.<sup>3</sup> The issues described above have become serious concerns, as failure to resolve these two aspects will fail to achieve the goals and hinder efforts to improve public welfare.

The bureaucratic issues described above occur primarily because infrastructure development in Indonesia often requires approval from various parties, particularly regarding budget allocation for development projects. The complexity of these bureaucratic procedures frequently results in delays or even the failure of development projects due to late approval from the bureaucratic side. In response to these bureaucratic challenges, efforts have been made to address them, particularly through reforms led by the Ministry of Administrative and Bureaucratic Reform.<sup>4</sup> Although the bureaucratic issues have been addressed, they have not yet significantly improved public welfare, as evidenced by the still high poverty rate. According to data from the Central Statistics Agency (BPS) in March 2024, the poverty rate remains high, with 25.22 million people, or 9.03% of the total national population, living in poverty. This data indicates that bureaucratic issues are not the only problem; another major challenge is funding.<sup>5</sup> Addressing these issues can be achieved through infrastructure equity, which serves as a key solution because equitable infrastructure distribution can stimulate improvements in public welfare. One effective method to ensure infrastructure equity is by accelerating infrastructure development. Accelerated infrastructure development has become a government priority, as adequate infrastructure plays a crucial role in achieving various established goals. With robust infrastructure, the implementation of government programs and policies can proceed more smoothly and efficiently. Consequently, the government is placing significant focus on infrastructure development across various regions, including Aceh. In Aceh, infrastructure development has been prioritized and is specifically outlined in the Regional Government Plan (RPD), which replaces the Medium-Term Development Plan (RPJM) for the 2023-2028 period. This decision highlights the importance of infrastructure in supporting regional development and enhancing local welfare.<sup>6</sup>

The solution outlined above is unfortunately not easy to implement. The challenges in providing infrastructure require a more comprehensive and sustainable approach. One mechanism to address these issues is the Public-Private Partnership (PPP) scheme. PPP is not merely a temporary solution but a long-term strategy that can offer sustained benefits to both the government and the public. Through PPP, both the central government and local governments with their small-scale PPPs have the opportunity to share risks with private entities in the procurement and management of infrastructure. This is crucial given the complexity and large scale of infrastructure projects, which often involve significant costs and

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<sup>3</sup> Budisantoso Wirjodirdjo, Diesta Iva Maftuhah, and Iffan Maflahah, "Evaluasi Pasca Pembangunan Proyek Infra-Struktur: Sebuah Kebutuhan Penguatan Kapasitas Birokrat Perencana Di Pemerintah Daerah," *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo* 14, no. 1 (2021): 40-44.

<sup>4</sup> Adzra Arvianda et al., "Penerapan Citizen Lawsuit Terhadap Kebijakan Menteri Pendayagunaan Aparatur Negara Dan Reformasi Birokrasi Terkait Pegawai Honorer Di Peradilan Tata Usaha Negara," *Jurnal Hukum Peratun* 5, no. 2 (2022): 95-116.

<sup>5</sup> BPS, "Persentase Penduduk Miskin Maret 2024 Turun Menjadi 9,03 Persen," 2024, [www.bps.go.id](http://www.bps.go.id).

<sup>6</sup> Hayat Abdullah, "Realokasi Kebijakan Fiskal: Implikasi Peningkatan Human Capital Dan Pembangunan Infrastruktur Terhadap Pertumbuhan Ekonomi Dan Kesejahteraan Masyarakat," *Jurnal Bina Praja* 6, no. 2 (2014): 117-28.

long-term uncertainties. By sharing risks, the government can reduce budgetary burdens and leverage the expertise and resources of the private sector. Additionally, the PPP scheme ensures that the quality of the infrastructure being developed is maintained. Private entities involved in PPP projects have incentives to ensure that the infrastructure built and managed meets high standards, as the success of these projects directly impacts the profits that these entities will earn.<sup>7</sup>

High-quality infrastructure not only provides direct benefits to the public but also supports the sustainability of the business projects of the involved private entities. Thus, PPP creates a synergy between public and private interests, ultimately contributing to more inclusive and sustainable economic development. The availability of funding solutions through the PPP scheme, when examined from a regulatory perspective, provides certainty for the parties involved. This is due to the clear regulations outlined in the legislation, specifically in Government Regulation Number 38 of 2015 on Public-Private Partnerships (hereinafter referred to as the PPP Regulation). This regulation ensures that development can proceed with legal certainty among the parties involved. Such clear regulations align with various theories in development law in Indonesia, particularly the theory proposed by Prof. Dr. Mochtar Kusumaatmadja. According to Prof. Dr. Kusumaatmadja, law serves as a tool for societal reform, which can be achieved through development.<sup>8</sup> The presence of development theory in this context is essential, as it serves as a conceptual foundation for analyzing and evaluating development implementation. Development theory functions not only as an academic framework but also as a practical guide for policymakers, decision-makers, and project implementers. By applying development law theory, a thorough and systematic examination of various aspects of development, including governance, regulation, and the social and economic impacts of projects, can be achieved.

In the context of the Public-Private Partnership (PPP) scheme, development theory is a crucial instrument for understanding the dynamics between the public and private sectors. This theory allows for an exploration of how existing legal and regulatory frameworks can either facilitate or hinder the success of PPP projects in addressing infrastructure issues. Analyzing PPP based on development law theory also helps identify potential risks, challenges, and opportunities that may arise during implementation, enabling the formulation of more effective strategies to overcome these obstacles. In other words, development theory not only aids in understanding the legal aspects of PPP implementation but also provides critical insights into how development can be directed to achieve sustainable and equitable outcomes for all parties involved. In the long term, the development and application of robust development theory will contribute to creating more effective, efficient, and competitive PPP models, ultimately supporting the achievement of broader national development goals. Given the importance of development law theory, the author intends to analyze the implementation of small-scale PPP schemes from the perspective of development law as proposed by Prof. Dr.

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<sup>7</sup> Feri Lintang Saputra, Budi Puspo Priyadi, and Ida Hayu Dwimawanti, "Public-Private Partnership Pada Sistem Penyediaan Air Minum (SPAM) Semarang Barat," *Journal of Public Policy and Management Review* 13, no. 2 (2024): 179–200.

<sup>8</sup> Nor Fadillah, "Tinjauan Teori Hukum Pembangunan Mochtar Kusumaatmadja Dalam Undang-Undang Ibu Kota Negara (IKN)," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 11, no. 1 (2022): 45–65.

Mochtar Kusumaatmadja. This research aims to evaluate and analyze the concept of PPP within the infrastructure development landscape in Indonesia, providing insights and assessments regarding its effectiveness and alignment with development law principles.

Several previous studies also discuss the PPP Scheme. Among them is research conducted by Mochamad Rifki Maulana (2021) with research title "*Pemahaman dan Pembelajaran Tahap Perencanaan dan Penyiapan Pembangunan Infrastruktur di Indonesia Melalui Skema Kerja Sama Pemerintah dan Badan dalam Penyediaan Infrastruktur (KPBU)*" The similarity in this research is that it focuses on knowing the PPP scheme in terms of planning and preparation based on the Perpres 38/2015 regulation. The difference lies in, the research with the title above only explains how the Indonesian Government changed the development paradigm by making the PPP scheme the main choice in infrastructure financing options, while the research conducted by the author more broadly discusses the implementation of infrastructure development with the PPP scheme and relates the understanding of legal theory put forward by Kusumaatmadja, a theory that emphasizes the role of law.<sup>9</sup> Furthermore, research conducted by Mochamad Yusuf dan Buddi Wibowo (2024) with the title "*Pembiayaan Infrastruktur Dengan Skema Kerja Sama Pemerintah dan Badan Usaha Pada Proyek Preservasi Jalan Lintas Timur Sumatera Oleh PT Adhi Jalintim Riau*" The difference between the author's article and the research above lies in, the research examines the difference in infrastructure financing schemes with PPP schemes with conventional schemes and how the PPP scheme is implemented, funding and payment schemes and the impact on business feasibility, the application of creative finance and Risk Analysis and Project Implementation of PT Adhi Jalintim. Where the research emphasizes more on analyzing whether the PPP scheme can provide benefits or not for the company, especially the debt ratio.<sup>10</sup> The research conducted by Nanda Cahyani Putri dan Loveani Yastika Putri (2024) with the title "*Analysis of Non-Government Budget Financing In Supporting Infrastructure*" The difference between the author's research and the researchers above, in this study, discusses how four schemes have the potential to be developed in Indonesia, including land consolidation, regional loans, bonds, and Government and Business Entity Cooperation (PPP), for economic development and basic services. The research conducted by the author focuses on one object, namely the Analysis of the Implementation of Infrastructure Development with the Scheme of Government Cooperation with Small Scale Business Entities (PPP) Viewed from the Perspective of Development Law Prof. Dr. Mochtar Kusumaatmadja.<sup>11</sup>

Based on the above discussion, the author aims to address the issues concretely by formulating the following research question: How is the implementation of infrastructure

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<sup>9</sup> Maulana, Mochamad Rifki. 2021. "*Pemahaman Dan Pembelajaran Tahap Perencanaan Dan Penyiapan Pembangunan Infrastruktur Di Indonesia Melalui Skema Kerja Sama Pemerintah Dan Badan Dalam Penyediaan Infrastruktur ( KPBU )*" 5 (1). <https://doi.org/http://dx.doi.org/10.58258/jisip.v5i1.1646>.

<sup>10</sup> Putri, Nanda Cahyani, and Loveani Yastika Putri. 2024. "*ANALISIS PEMBIAYAAN NON-ANGGARAN PEMERINTAH DALAM ( Analysis of Non-Government Budget Financing In Supporting Infrastructure*" 6 (2): 91-103.

<sup>11</sup> Yusuf, Mochamad. 2024. "*Pembiayaan Infrastruktur Dengan Skema Kerja Sama Pemerintah Dan Badan Usaha Pada Proyek Preservasi Jalan Lintas Timur Sumatera Oleh PT Adhi Jalintim Riau*" 7 (2): 2110-20.



development through the PPP scheme and small-scale PPP assessed from the perspective of development law as proposed by Prof. Dr. Mochtar Kusumaatmadja?

## 2. Methods

This study employs a normative juridical method, analyzing Public-Private Partnerships (PPP) through Prof. Dr. Mochtar Kusumaatmadja's development law theory, which views law as a tool for development. Using statute and conceptual approaches, it examines Presidential Regulation No. 38/2015 (PR No. 38/2015) as the primary legal framework for PPPs in Indonesia. The study evaluates the regulation's alignment with development goals, focusing on its practical application and effectiveness. By integrating statutory and conceptual analyses, including PPP and development law theories, this research proposes recommendations to optimize PPP practices, promoting sustainable infrastructure development and inclusive economic growth in Indonesia.

## 3. Results and Discussion

Development The role of law in PPP can be specified by examining how it supports each phase, from planning and implementation to evaluation, such as ensuring accountability and risk mitigation. Legal challenges include regulatory inconsistencies, legal uncertainty, and local legal culture affecting PPP effectiveness. Case studies, such as specific infrastructure projects in Indonesia, demonstrate the relevance of development law theory in practice.

The alignment of PPP with international practices can be detailed by referencing frameworks like the World Bank Guidelines on PPP or the UN Sustainable Development Goals (SDGs) and linking them to national development needs. National legal development can be strengthened by highlighting concrete regulations supporting PPP implementation, such as PR No. 38/2015, and evaluating whether these regulations are adequate or require revision. A progressive development law theory should address global trends such as digitalization and the green economy, enhancing its relevance to modern challenges. Adaptive legal practices should focus on designing PPP regulations that remain flexible yet ensure legal certainty, particularly amidst the dynamic shifts in economic and technological landscapes:<sup>12</sup>

### 1. dimension of order and regulation

Development and reform are considered highly desirable and essential for improving the quality of life and advancing a nation. Development encompasses not only physical aspects, such as infrastructure and public facilities, but also social, economic, and cultural dimensions that collectively contribute to the well-being and prosperity of a country. In this context, law plays a crucial role as a foundation that ensures the development process proceeds in an orderly, regulated manner and adheres to principles of justice.<sup>13</sup> The law functions as a tool that regulates the interactions between various parties involved in development, including the government, the private sector, and the community. With strong and consistently applied legal frameworks, various interests can be accommodated, potential conflicts minimized, and the rights of all parties protected. Additionally, the law

<sup>12</sup> Nuansa Falsafia Taufik, "Sertifikasi Produk Halal MUI Sebagai Strategi Pembangunan Ekonomi Masyarakat Indonesia Ditinjau Dengan Teori Hukum Pembangunan Mochtar Kusumaatmadja," *Interdisciplinary Explorations in Research Journal* 2, no. 1 (2024): 401-17.

<sup>13</sup> Marif Marif and Nurhaedah Nurhaedah, "Teori Hukum Pembangunan Dalam Eksistensi Mediasi Penal Di Tingkat Penuntutan Dalam Mewujudkan Penegakan Hukum Yang Berkeadilan," *Indonesian Journal of Legality of Law* 6, no. 2 (2024): 217-24.

plays a role in overseeing and controlling the development process to ensure it remains within established parameters, thereby preventing deviations, violations, or injustices that could harm the broader community. In this framework, the law must be able to adapt to the evolving dynamics and changing needs of development. Therefore, legal reform is also an integral aspect of development itself. A law that is responsive and proactive to changes will ensure that the development process not only proceeds with order and regulation but also effectively achieves its desired goals, namely the sustainable improvement of public welfare. Thus, the law not only oversees development but also acts as a driving force that promotes innovation, balance, and justice within the process.

## 2. dimension of law in development

The law must function as an effective regulatory and guiding tool to direct human activities toward the objectives of development and reform. The primary role of law in this context is to establish a regulatory framework and norms that ensure the development and social change processes occur in an orderly and directed manner. In other words, law not only acts as a set of rules to be followed but also serves as a strategic instrument that guides the behavior of individuals and institutions towards achieving established development goals.<sup>14</sup> To achieve these goals, the law must be able to adapt to and respond to the evolving needs and challenges that arise during the development process. This involves establishing clear and relevant regulations, implementing consistent policies, and enforcing the law firmly yet fairly. By regulating the behavior of individuals and institutions, the law creates a conducive environment for the implementation of development projects, whether in infrastructure, economic, or social domains.<sup>15</sup> Additionally, the law functions to balance various conflicting interests that may arise during the development process. By providing a robust legal foundation, the law helps mitigate conflicts, protect individual rights, and ensure that all parties involved in the development process operate within established boundaries. This includes setting quality standards, licensing procedures, and effective dispute-resolution mechanisms. Overall, an effective legal framework should guide the behavior of individuals and institutions to align with desired development goals. Thus, the law acts as a pillar that not only maintains order and certainty but also promotes innovation, inclusivity, and sustainability in efforts to achieve progress and well-being.

Based on the issues outlined above, it can be explained that according to the development law theory proposed by Mochtar Kusumaatmadja, Professor Mochtar emphasizes the importance of dominant regulations in Indonesia. The importance of these regulations lies in their function as a means to guide development and infrastructure reform. Given that the regulations concerning PPP are outlined in specific legislation, particularly PR No. 38/2015, it can be explained that PPP aligns with the principles outlined in the development law theory proposed by Prof. Dr. Mochtar Kusumaatmadja.

The alignment between the PPP Scheme and the development law theory proposed by Prof. Dr. Mochtar Kusumaatmadja can also be observed through the relationship between PPP

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<sup>14</sup> Taufik, "Sertifikasi Produk Halal MUI Sebagai Strategi Pembangunan Ekonomi Masyarakat Indonesia Ditinjau Dengan Teori Hukum Pembangunan Mochtar Kusumaatmadja."

<sup>15</sup> Marif and Nurhaedah, "Teori Hukum Pembangunan Dalam Eksistensi Mediasi Penal Di Tingkat Penuntutan Dalam Mewujudkan Penegakan Hukum Yang Berkeadilan."

in general and Small-Scale PPP with the development law theory articulated by Prof. Dr. Mochtar Kusumaatmadja. This relationship can be outlined as follows:

1. The PPP scheme in infrastructure development always aims for sustainable development. The development law theory proposed by Mochtar Kusumaatmadja emphasizes the strategic role of law in guiding and facilitating the overall development process of society. According to his view, law functions not merely as a set of rules but as a tool that supports and directs efforts toward sustainable and inclusive development. This concept highlights the importance of integrating legal aspects with various dimensions of development to achieve optimal outcomes. The PPP scheme aligns with these principles of development law by emphasizing that development should not only focus on economic growth but also consider environmental and social impacts. PPP integrates the public and private sectors in infrastructure and public service projects, aiming to create synergy that addresses the comprehensive needs of society. Within the PPP framework, sustainability is key, as development must balance economic growth, environmental preservation, and social justice.<sup>16</sup> Sustainable development according to the PPP scheme encompasses various initiatives aimed at minimizing negative environmental impacts, such as efficient natural resource management, the adoption of eco-friendly technologies, and ecosystem protection. Additionally, social development is a key focus, where the development process must include community participation, improve quality of life, and reduce social inequality. By integrating the principles of development law with the PPP concept, this approach not only directs development to achieve optimal economic outcomes but also ensures that the process is fair, sustainable, and responsive to community and environmental needs. In this way, law acts as a bridge connecting various elements of development, ensuring that economic, environmental, and social aspects evolve harmoniously and supportively.

2. The PPP scheme in infrastructure development always focuses on orderliness and regulation in development.

In development law theory, Mochtar Kusumaatmadja emphasizes that orderliness and regulation are fundamental elements that cannot be overlooked in the process of reform or development. He argues that effective development can only be achieved when the process is conducted within a legal framework that is orderly and regulated, where all parties involved understand their roles and responsibilities. This orderliness and regulation not only reflect adherence to the law but also serve as the foundation for creating a conducive environment for sustainable development. Orderliness and regulation are also central to the concept of PPP. PPP emphasizes the importance of having a clear legal framework and effective regulatory mechanisms to ensure that development, particularly in infrastructure, progresses according to established plans and objectives. Without orderliness, the development process can be disrupted by uncertainty, conflicts, and inefficiencies, ultimately hindering the achievement of optimal results. As a collaborative mechanism between the public and private sectors, PPP requires orderliness at every stage—from

<sup>16</sup> Mochamad Rifki Maulana, "Pemahaman Dan Pembelajaran Tahap Perencanaan Dan Penyiapan Pembangunan Infrastruktur Di Indonesia Melalui Skema Kerja Sama Pemerintah Dan Badan Dalam Penyediaan Infrastruktur (KPBU)," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 5, no. 1 (2021), <https://doi.org/10.58258/jisip.v5i1.1646>.

planning and implementation to evaluation. Orderliness in PPP allows each party to operate with clear roles and responsibilities, reducing the risk of misunderstandings and potential disputes. Furthermore, orderliness helps create transparency and accountability, which are essential for maintaining public trust and encouraging broader participation in development projects. The alignment between Mochtar Kusumaatmadja's theory of development law and the PPP concept lies in their emphasis on orderliness as an indispensable foundation for successful development. Both approaches highlight that sustainable development relies not only on planning and investment but also on the consistent application of laws and regulations to create a stable and orderly environment. Thus, whether on a macro level (theory of development law) or a micro level (PPP implementation), orderliness and regulation are key to achieving sustainable development goals and delivering benefits to the entire community.

3. The PPP scheme aligns with International Practices.

In development law theory, one of the considerations is the alignment of infrastructure development with international practices. When connected to the implementation of development using the PPP scheme, this becomes a crucial aspect, as PPPs are required to adapt to international standards. This includes both the quality of development and payment processes, which must adhere to internationally determined standards.

4. The PPP scheme correlates with National Legal Development.

Mochtar Kusumaatmadja emphasizes the need to strengthen national law to fulfill its role in development. This includes updating regulations to be neutral and unaffected by cultural or religious aspects, and improving legal education so that practitioners have the necessary technical and professional skills. This aligns with the principles of the PPP scheme, where the development of national law is crucial for supporting sustainable development that meets the realities and needs of Indonesian society. Proper legal development will ensure that PPPs can be implemented effectively, helping to build a legal framework that is flexible and responsive to development challenges in Indonesia. Thus, national law not only serves as a cornerstone of development but also plays a role in creating a conducive environment for sustainable economic and social growth.

Based on the various explanations provided above, it can be stated that the development law theory proposed by Mochtar Kusumaatmadja emphasizes the importance of the role of law as a means not only to maintain order and regulation but also to facilitate sustainable development. The alignment of the PPP concept, both general PPPs and Small-Scale PPPs, with these development law principles, indicates that national law must continue to evolve and adapt to the dynamic needs of development in Indonesia. PPP plays a crucial role in ensuring that the development process not only complies with existing regulations but also adapts to international standards and fosters an environment that supports sustainable social, economic, and infrastructural progress. Therefore, responsive and adaptive legal development becomes a key element in steering development towards the desired direction, aiming to achieve more equitable and sustainable societal welfare.

#### 4. Conclusions

The development law theory proposed by Mochtar Kusumaatmadja emphasizes that law should function as an active instrument in facilitating and directing development. Law



serves not only as a set of rules that ensures order but also as a driving force that ensures development occurs in an orderly, fair, and sustainable manner. In the context of implementing PPP, it is evident that this scheme aligns with the principles of development law, where law plays a crucial role in creating a regulatory framework that supports private sector participation in infrastructure development. PPP also underscores the importance of adapting to international standards and developing a neutral and responsive national legal framework to ensure that development proceeds effectively and meets societal needs. Thus, development law provides a solid foundation for guiding the development process towards achieving sustainable welfare goals for the entire community.

As a suggestion, the government should continue to strengthen the legal and regulatory framework supporting the implementation of PPP to ensure that the scheme operates more effectively and efficiently. This includes updating regulations to keep pace with evolving times and enhancing the technical and professional capacity of stakeholders involved. Additionally, transparency and accountability in every phase of PPP implementation must be maintained to ensure that all parties, both public and private sectors, can contribute optimally to sustainable infrastructure development. The government is also encouraged to continuously adapt to international practices, ensuring that the development not only meets local standards but is also competitive on a global scale, aiming for broader welfare objectives for Indonesian society

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