

Initiating the Ideal Concept of Authentic Deeds in Public and Private Cooperation Contracts in Infrastructure Development in Indonesia

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ABSTRACT

The purpose of this study is to analyze: 1) What is the configuration of cooperation contracts between government and private business entities in infrastructure development, especially at the city district level? 2) To what extent are regulations able to anticipate and overcome problems that arise in the future related to cooperation contracts between the government and private business entities in infrastructure development? 3) How is the ideal concept of authentic deeds in infrastructure development cooperation agreements between district city governments and private business entities implemented? The research method used is normative juridical with a statutory approach, concept approach, and case studies.

The results showed that: 1) The role of the private sector is still needed in national development, and even needs to be improved. Because the government has limitations in financing various strategic projects, while the expected results of these projects are needed immediately considering the increasingly diverse needs of the community. 2) Presidential Regulation of the Republic of Indonesia Number 67 of 2005 concerning Government Cooperation with Business Entities in the Provision of Infrastructure Jo PERPRES 13 of 2010 Jo PERPRES 56 of 2011 Jo PERPRES 66 of 2013. Presidential Decree No. 67 of 2005 and its amendments that classify projects in eight types of infrastructure, namely transportation, roads, irrigation, drinking water, wastewater, telecommunications, electricity, oil and gas. For PPP nuanced projects that are not included in the infrastructure sector, others are grouped. Partnership between the government and the private sector is regulated in **PERPRES No. 13 of 2010** concerning Amendments to Presidential Regulation No. 67 of 2005 concerning Government Cooperation with business entities in providing infrastructure, as Article 4 Paragraph (1) letter f there are several types of infrastructure that can be collaborated with business entities in the field of telecommunications and information infrastructure, including telecommunications networks and *e-government infrastructure* 3) An authentic deed has perfect evidentiary power. This perfect evidence is contained in both the Civil Code and HIR Article 1870 of the Civil Code "An authentic deed gives between the parties and their heirs or persons entitled thereto, a perfect proof of what is contained therein." Article 165 HIR An authentic deed, is a writing made by or in the presence of a public officer who is authorized to make it, being sufficient evidence for both parties and their heirs and all persons entitled thereto, of all matters referred to in the deed and also in the deed as notice only.

Keywords: Initiate, Concept, Ideal, Authentic Deed, Contract, Cooperation, Government, Private, Development, Infrastructure, Indonesia

INTRODUCTION

Background

In essence, the BOT concept applied to government infrastructure projects includes the following:

"to have any projects which really belonged to the public sector implemented by the private organizations without the state, the province, the city or the commune providing any guarantees or accepting any liability. The projects which were intended to be self financing".¹

Thus BOT is a concept in which the project is built at the full cost of private companies, several private companies or cooperation with SOEs and after the construction is operated by the contractor and after the operating stages are completed, as specified in the BOT agreement, then the project is transferred to the government as the project owner.

Clifford W. Garstang, mentioned that BOT is:

"is a variety of type of project financing known as contractor provided financing. In the standard contractor provided financing a project entity may request proposal for the construction of a project pursuant to which the contractor will not only provide the materials and services needed to complete the project but will also provide or at least arrange the necessary financing. The contractor will also need to operate the project and use its cash flows to repay the debt it has incurred".²

In the context of infrastructure project procurement, BOT is nothing but a contract or agreement between the project owner (government) and other parties as project operators or implementers. In this case the project owner gives the right to the operator or executor to build a facility and infrastructure (public) and operate it for a certain period of time and take all or part of the profits and at the end of the

¹ Heinz H. Bunker. 1988. *Business Opportunities In the Pipeline Transmission System Through BOT*. The Asian Conference on Planning. Packaging & Implementing BOT Projects. Hilton Singapore 1988. p.1

² Clifford W. Garstang. Sidley & Austin Singapore. *BOT Arrangements. BOT & Project Finance Scheme Conference*. October 7, 1992. Jakarta

contract period must return the project to the project owner. If everything goes according to plan, then at the end of the contract period, or when the project must be returned to the government, the contractor has been able to return all costs that have been incurred plus a number of expected profits from the project.

There are times when the BOT project requires loan funds in the form of foreign exchange while the profits obtained are in local currency. At the time of falling forging it is not uncommon for contractors to have to return in the form of foreign exchange. At the time of repayment of loan funds it is not uncommon for very high exchange rate changes to occur, for which it is necessary to think out a common way out of this problem. Although the risks that may be faced have been accommodated into the contract, it does not mean that all problems have been revealed and contained all. Since the negotiation process is complete, at the same time various other risks can occur.

Andrew Pickering, in the BOT project (mainly in electricity BOT) at least three risk classes can be classified, namely *commercial risks*, *non-commercial risks*, and *casualty risks*. Included in the *commercial risks group* are: *market risk*, *participant risk*, *construction risk*, *operational risk*, *technical risk*, and *fuel supply risk*. While those included in *non-commercial risks* are: *legal risk*, *country risk*, *financial risk*, *environmental risk*. *Casualty risk* is a risk associated with *accidental damage or destruction of plan or equipment*.³

³ Andrew Pickering Partner. *Financing Power Sector Infrastructure*. Blake Dowson Waldron 101 Collins Street Melbourne Vic 3000 Australia. p 6 . **Market risk** is the exposure of the project to variations on price or demand for the product produced by the project. **Participant risk** is the risk that a project participant does not perform its financial or non financial obligations . **Construction risk** is the risk that the project is not constructed on time or budgeted or fail to meet satisfactory performance standards for normal operation. **Operational risk** is the risk that a project does not meet revenue expectations under normal operating conditions. **Technological risk** is the risk associated with using unproven technology. **Fuel Supply risk** is the risk that fuel can not be delivered to the project site in the necessary quantities, of the right quality and at a determinable price throughout the life of the project. As for **Non-Commercial risks**, i.e. **FX risk** is the risk of movement in foreign exchange rates. **Exchange control risk** is the risk that limitation on the right to purchase foreign exchange or on the availability of foreign currency may prevent the timely conversion of domestic receipts into foreign currency. **Interest risk** is the risk of movements in interest rates. **Economic risk** is the risk of adverse economic changes in the host state. **Environmental risk** is the risk of changes in environmental laws.

In many cases because the contractor must provide his own funds for the construction of infrastructure facilities or infrastructure, the contractor must find his own source of funding for construction. In general, the financing of the BOT project can be sourced from two things, namely financing derived from loans (*debt finance*) and financing derived from participation (*equity investment*). Financing derived from loans generally comes from commercial market loans, which come from banks, both domestic and foreign banks. Such loans can be short-term, medium-term, or long-term.

This funding model usually depends on floating *inflation* and the term is shorter than the concession period of the funded project. However, with the disclosure of *a feasibility study* on the project to be carried out and the potential market for the project, banks may provide a long period of time with a *flat rate*. This funding model does not involve the lender's accountability for project risks, so this funding model is usually known as "*unsubordinated*" or "*senior loans*".

Equity investment or *equity capital* is usually obtained initially from funds owned by the contractor himself (*project promoters*) or comes from individual investors. However, it is possible that the funding of the BOT project is funded jointly by the parties, namely the government and contractors bear together a certain percentage. If this is done then it is often known as *a public-private partnership*. In the context of funding for BOT in the oil and gas mining sector, a funding pattern is known as *the participating interest* of the local government where the oil drilling will be carried out, thus a combination of Pertamina, foreign oil contractors, and local governments (can be district or city or provincial governments). Meanwhile, Andrew Pickering, said that *financing* in the field of *power sector infrastructure* can come from a combination of: *commercial banks, export credit agencies, multilateral agencies, public debt market*.⁴

Problem Statement

⁴ See Andrew. p.3

1. What is the configuration of cooperation contracts between government and private business entities in infrastructure development, especially at the city district level?
2. To what extent are regulations able to anticipate and overcome problems that arise in the future related to government cooperation contracts and private business entities in infrastructure development?
3. How is the ideal concept of authentic deeds in infrastructure development cooperation agreements between district city governments and private business entities implemented?

Theoretical Framework

1. *Public-Private Partnership Theory*

The concept of *public private partnetship* can benefit the state as the owner of assets. This is because the private sector can provide financial assistance in infrastructure development and run operations if the assets used as objects have completed the development process. Each party also benefits both directly and indirectly from this cooperation. This certainly benefits the government as the owner of the asset as well as the private sector itself.⁵

William J. Staton said *Public private partnetship* is a form of agreement or contract between the *public* sector and the *private* sector consisting of several provisions, including: the *private* sector carries out government functions for a certain period. The *private* sector receives compensation for the performance of functions either directly or indirectly. In addition, the private sector is responsible for the risks arising from the performance of these functions.⁶

Public-private partnership can be interpreted as a contractual agreement between the government and the private sector. Both parties can work together

⁵*Ibid.*

⁶William J. Staton. 2012. *Marketing Principles*. Jakarta: Erlangga. p 174

to utilize each other's expertise and capabilities to improve public services, so that collaboration is formed to provide quality. This service is in the public interest and obtains the best benefits at the best cost. The concept of *public private partnetship* was motivated by the government which began to realize the limitations of the state budget in the provision of public services. To overcome this, the Government is required to use several funding alternatives, one of which is by using a partnership scheme involving private parties.⁷

2. Theory of Legal Certainty

Legal certainty is a matter of certainty. The law must essentially be certain and just. Legal certainty is a question that can only be answered normatively, not sociologically. Normative Legal Certainty is when a regulation is made and promulgated with certainty because it regulates definitely and logically.⁸ Legal certainty as one of the goals of law and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and enforcement of the law against an action regardless of who committed it. The existence of legal certainty everyone can predict what will happen if they take these legal actions. Legal certainty is needed to realize justice. Legal certainty is one of the characteristics that cannot be separated from the law, especially for written legal norms. Laws without certainty value will lose meaning because they cannot be used as a code of conduct for everyone.⁹

Apeldoorn argues, legal certainty has two aspects, first regarding the question of the formation (*bepaalbaarheid*) of law in concrete matters. This means that parties seeking Justice want to know the law in a specific matter before starting a case. Second, legal certainty means legal security. It means protection for the parties against the arbitrariness of the Judge. According to Jan Michiel Otto, real legal certainty is indeed more juridical in dimension.

⁷Pratiwi. N. G.& Warsono. H. 2018. "Analysis of Public-Private Partnership in the Development of Telaga Sarangan Tourism Object in Magetan Regency". *Journal of Public Policy and Management Review*. Vol 7 No 2. pp. 632–648.

⁸Cst Kansil. 2009. Dictionary of Legal terms. Gramedia Library. London.p.385

⁹*Ibid.*, p. 270

However, Otto provides further limits on legal certainty that define legal certainty as the possibility that in certain situations, namely: 1) Clear (clear), consistent and accessible rules are available; 2) The ruling agencies (government) apply these rules of law consistently and also submit and obey them; 3) Citizens adjust their behavior to these rules in principle; and 4) Independent and impartial judges apply these rules of law consistently as they resolve legal disputes and judicial decisions are concretely implemented.¹⁰

Research Methodology

This research is included in the type of *doctrinal research*, in this case it emphasizes more on the conception that law can be viewed as a set of laws and regulations that are systematically arranged based on certain regulations.¹¹ So that this research will be prepared using the type of normative juridical research, which is research focused on examining the application of rules or norms in positive law.¹² This research uses various approaches, the approaches used in this study are the statute *approach*, the *case approach*, and the conceptual approach.¹³ *The analysis used is qualitative descriptive analysis*, namely by observing data and linking each data obtained with provisions and legal principles related to the problem under study with inductive logic.¹⁴

¹⁰L.J Van Apeldoorn in Shidarta. 2006. *The morality of the legal profession offers a framework of thinking*. Bandung: PT. REVIKA Aditama. pp.82-83

¹¹ Suteki and Galang Taufani. 2018. *Legal Research Methods (Philosophy, Theory and Practice)*. Depok: PT. King Grafindo Persada. p. 265

¹² Johnny Ibrahim. 2006. *Normative Legal Research Theory and Methodology*. Malang: Bayumedia Publishing. p. 12.

¹³ Peter Mahmud Marzuki. 2008. *Legal Research*. Cet.2, Jakarta: Kencana. p. 29 .

¹⁴ Abdulkadir Muhammad. 2004. *Law and Legal Research*. Bandung: PT. Image. Aditya Filial piety. p. 127

RESEARCH RESULTS

Configuring Cooperation between Government and Private Business Entities in Infrastructure Development

In general, Indonesia's infrastructure development is considered to be road in place and unable to catch up with economic growth and progress in other countries. In *the Global Competitiveness Report* 2008-2009, Indonesia ranks 86th out of 134 countries, lagging behind Malaysia (23), Thailand (29), China (47), India (72), Sri Lanka (65) and Pakistan (85) (2). The general condition of infrastructure is not expected to change much, although several breakthrough steps have been taken. It is estimated that electricity is an infrastructure that will be restored first followed by roads, especially toll roads, but other infrastructure is still far behind other countries. Telecommunications are probably the most established because they are helped by cellular technology. The worse picture is seen in infrastructure related to communities, such as irrigation, sanitation, clean water, and mass public transit, which should be a priority.¹⁵

The availability of infrastructure largely determines the level of efficiency and effectiveness of economic activity. Given the vital infrastructure for economic development, infrastructure development is the full obligation of the government. There are 3 (three) differences in infrastructure development in Indonesia, including the Old Order Era, the New Order Era, and the Globalization Era.

In practice, infrastructure development does not run smoothly considering the existing fiscal limitations of the State Budget, and finally requires the Government to look for other alternatives, namely creative financing schemes, one of which is to encourage the active role of the private sector through the PPP scheme. PPP in the provision of infrastructure and/or services for the public interest refers to specifications that have been previously determined by the government, which partially or fully use the resources of business entities by taking into account the risk sharing between the

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<https://www.kemenkeu.go.id/sites/default/files/kajian%20good%20governance%20proyek-proyek%20infrastruktur.pdf>, p 2. accessed July 2022

parties. PPP focuses on economic infrastructure and social infrastructure by changing the mindset of infrastructure development which originally provided physical buildings to provide services for the community.¹⁶

The entry of the era of globalization has become a new shell for countries to interact because it is easier and there is integration through phenomena such as cross-country trade activities, and real-time information and communication. Globalization affects state governance in formulating national policies. Because globalization has succeeded in changing the national policy agenda that demands for countries to be able to adapt to that perspective with the growing strength of multinational corporations and international organizations.¹⁷ The challenges of globalization can affect national and regional development, globalization challenges related to infrastructure will also affect the economy so that in carrying out infrastructure development must pay attention to maximum benefits by managing resources efficiently and effectively. So that in the future the policy direction is based on identifying strengths, weaknesses, threats, as well as sectoral opportunities and aspects

The role of the private sector is still needed in national development, and even needs to be improved. Because the government has limitations in financing various strategic projects, while the expected results of these projects are needed immediately considering the increasingly diverse needs of the community. PPP is known since the New Order era such as toll road and electricity construction projects. However, this form of cooperation has only begun to be intensified since 1998 after the monetary crisis that hit Indonesia and some countries in the Southeast Asian region. After being preceded by several PPP supporting regulations, the government has issued Presidential Regulation number 38 of 2015 concerning PPP in Infrastructure Provision.

¹⁶ Tommy Kurnia. "List of Infrastructure Built by Karno to Jokowi". Coverage6. 2019. <https://www.liputan6.com/bisnis/read/3906184/daftar-infrastruktur-yang-dibangun--karno-hingga-jokowi>. accessed July 2022

¹⁷ R.K. Sapru. "Globalization of National Policy Making: An International Perspective". *The Indian Journal of Political Science*. 2006. Vol 67. pp 87–96.

Since this Presidential Regulation was launched, cooperation previously known as public-private cooperation (PPP) has been hereinafter called PPP.¹⁸

Infrastructure development through public-private cooperation has a strategic role in supporting the sustainability of Indonesia's economic development. This is important because it is based on limited government budgets in the future. In general, the success of public-private cooperation is largely determined by whether or not the government is able to meet three important aspects, namely: (1) Aspects of fulfilling the roles and responsibilities of each component involved (government, private sector, financing institutions, and others). (2) Implementation Aspects of balanced risk sharing patterns between various related parties, and (3) Aspects of profitability that may be obtained by the business world from involvement in certain cooperation agreement schemes.

The Government of the Republic of Indonesia ("Government") must prepare funding to carry out infrastructure development that is not small in number considering the vast territory of the Indonesian state which consists of islands and has more than 270 million people spread from the western end to the eastern end. The¹⁹ high need for infrastructure development in Indonesia is in line with the increasing number of Indonesian people who continue to grow. However, this is not comparable to the budget that the government has to carry out infrastructure development in Indonesia. The limited budget owned by the Government makes the need for cooperation with private investors very necessary to build and develop facilities and infrastructure to meet the needs of the community.

In Indonesia *Public Private Partnership* is known as Public Private Partnership (PPP), PPP is defined as cooperation between the Government and Business Entities in the Provision of Infrastructure aimed at the public interest by referring to

¹⁸ Directorate General of Natural Resources. "Why does national development need a private role? Jokowi said..." 2019. <https://sda.pu.go.id/balai/bwssumatera1/article/kenapa-pembangunan-nasional-butuh-peran-swasta-kata-jokowi>. accessed July 2022

¹⁹ Central Bureau of Statistics. "Results of the 2020 Population Census". Official Statistical Gazette No. 7/01/Yr. XXIV. January 21, 2021. p 33

specifications that have been previously determined by the Minister/Head of Institution/Regional Head/BUMN/BUMD, which partially or wholly uses the resources of Business Entities by taking into account the risk sharing among the party. In the current paradigm of infrastructure development financing, the role of community investment and business entities through PPP schemes is encouraged to overcome the disparity between the needs and availability of funding. To encourage this, there are still regulations and policies that need to be reviewed as a corridor for private participation in infrastructure financing in Indonesia.²⁰

The emergence of cooperation between the government and the private sector in infrastructure development has led to many collaborations between the government and the private sector, such as: *Build Operate and Transfer* (BOT); *Build and Transfer* (BT); *Build, Transfer and Operate* (BTO); *Build, Lesse and Transfer* (BLT); *Build, Own and Operate* (BOO); *Rehabilitate, Own and Operate* (ROO); *Rehabilitate, Own and Transfer* (ROT); *Develop Operate and Transfer* (DOT); and *Contract, Add and Operate* (CAO).²¹

In the contract of public-private cooperation, the things agreed to be implemented are formulated in the content of the agreement. The freedom possessed by the parties must be based on legal acts that must not contradict the law, decency and public order, because this will result in an unbalanced situation.²² While related to aspects of the implementation of the agreement, it is appropriate for a contract to be fulfilled by the parties in good faith. Other complementary factors are propriety and feasibility. In public-private cooperation contracts, good faith must be prioritized in the implementation of the Agreement, taking into account changes in circumstances that affect the fulfillment of the agreed performance.²³

²⁰ <https://kppip.go.id/berita/dorong-partisipasi-swasta-pemerintah-gelar-fgd-kerangka-kebijakan-regulasi-pspi/>

²¹ Muhammad Tang Abdullah. "Public Private Partnership in the Provision of Public Service Infrastructure: The Experience of Indonesia and India". *Journal of Administrative Sciences*. Vol 9 No 2. 2020. p 102

²² Munir Fuady. 1990. *Introduction to Business Law Structuring Modern Business in the Age of Globalization*. Bandung: PT Citra Aditya Bhakti. p. 63.

²³ *Ibid*,

The agreement is carried out to avoid default. The act of default carries consequences for the emergence of the right to the injured party to sue the party who committed the default to claim compensation. So that by law it is expected that no party will be harmed because of the default. According to R. Subekti default (negligence or negligence) can be of four kinds, namely:²⁴

- 1) Not doing what he was willing to do.
- 2) Carry out what he promised, but not as promised.
- 3) Doing what he promised but too late.
- 4) Do something he is not allowed to do according to the agreement

²⁴ R. Subject. 2005. *Law of Treaties*. Jakarta: Intermasa. p 43

Regulations related to the cooperation of the government and private business entities in infrastructure development in Indonesia

Public Private partnership relations are institutionalized cooperation of the public sector and the private sector working together to achieve certain targets when both parties accept investment risk on the basis of the sharing of profits and costs they bear.²⁵ Infrastructure development in the context of a unitary state with the characteristics of an archipelagic country makes the challenge of accelerating infrastructure development require certain policies and strategies. In the decentralization approach, central and regional relations in governance rely on the division of authority, namely the granting of authority to regulate and manage own Government Affairs given by the Central Government to the Regions, where this division of authority has been expressly regulated in the Annex to Law No. 23 of 2014.

The National Medium-Term Development Plan 2020-2024 makes infrastructure development one of the top priorities to realize the nation's economic development and basic services that compete with other countries. Toll roads are alternative roads that already exist, which were built with the aim of increasing effectiveness and efficiency in distribution services. This is because the use of toll roads will shorten time and save energy when driving, avoiding road congestion in big cities.

The development of road and toll road infrastructure has been regulated in Law No.38 of 2004 concerning Roads, which was amended by Law No.13 of 2020 concerning Job Creation and then amended again by Law No.2 of 2022 concerning the Second Amendment to Law No.38 of 2004 concerning Roads. Toll road construction carried out in collaboration between the government and private parties (legal entities) is also contained in Law No. 2 of 2022 in Article 50 paragraphs (1) - (5). In addition, government regulations (PP) specifically regulate toll roads, namely PP No.15 of 2005 concerning Toll Roads which was later amended 4 times with PP No.44 of 2009 concerning Amendments to Government Regulation No. 15 of 2005 concerning Toll Roads; Government Regulation No. 43 of 2013 concerning the Second

²⁵ Bambang Susantono and Mohammed Ali Berawi. "Development of Transportation Infrastructure Financing Policy Based on Public Private Cooperation in Indonesia". *Journal of Transportation*. Vol. 12 No. 2. 2012. p. 95.

Amendment to Government Regulation No. 15 of 2005 concerning Toll Roads; Government Regulation No. 30 of 2017 concerning the Third Amendment to Government Regulation No. 15 of 2005 concerning Toll Roads; and Government Regulation No. 17 of 2021 concerning the Fourth Amendment to Government Regulation No. 15 of 2005 concerning Toll Roads.

The increase in electricity consumption in the people in Indonesia which is not followed by the addition of electricity infrastructure results in the lack of fulfillment of electricity needs in several regions in Indonesia. This means that there are still some regions in Indonesia that are not electrified or enjoy electricity like other parts of Indonesia. The government has opened opportunities for private sector entry by creating a scheme or public *private partnership* (PPP) system which includes public activities between the government and private parties through cooperation between the public and private sectors for investment efforts in infrastructure procurement, the easiest example is toll roads. The government experiences financial limitations for funding in the electricity sector so that the role of the private sector is still very much expected, therefore based on Government Regulation Number 3 of 2005 and Government Regulation Number 26 of 2006 as an amendment to Government Regulation Number 10 of 1989, it is possible to purchase electricity for PKUK and PIUKU from cooperatives, BUMDs, private sector, non-governmental organizations, and individuals after obtaining the approval of the Minister, Governor, or Regent/Mayor according to his authority. Especially in cooperation in the implementation of electricity supply business, the government has also opened the door for the entry of private parties as stipulated in Law No. 30 of 2009 concerning Electricity.

In addition to being regulated in the Law on Electricity, the increasing role of cooperation between the government and the private sector has also been regulated in several other technical regulations, namely PP No. 1 of 2008 concerning Government Investment, Presidential Regulation No. 67 of 2005 concerning Government and Business Entity Cooperation in Infrastructure Provision This Presidential Regulation has been amended to Presidential Regulation No. 13 of 2010,

specifically for electrical energy there are several technical regulations such as PP No. 23 of 2014 concerning Amendments to Government Regulation No. 14 of 2012 concerning Electricity Supply Business Activities, Presidential Regulation 78 of 2010 concerning Infrastructure Guarantees in Government Cooperation Projects with Business Entities carried out through Infrastructure Guarantee Business Entities, there is also PP No. 50 of 2007 concerning Procedures for Implementing Regional Cooperation. The government has also established a special PPP unit or Agency that is actively tasked with facilitating public and private cooperation currently is BAPPENAS, through the Directorate of Public and Private Cooperation Development (PKPS).²⁶

Presidential Regulation of the Republic of Indonesia Number 67 of 2005 concerning Government Cooperation with Business Entities in the Provision of Infrastructure Jo PERPRES 13 of 2010 Jo PERPRES 56 of 2011 Jo PERPRES 66 of 2013. Presidential Decree No. 67 of 2005 and its amendments that classify projects in eight types of infrastructure, namely transportation, roads, irrigation, drinking water, wastewater, telecommunications, electricity, oil and gas. For PPP nuanced projects that are not included in the infrastructure sector, others are grouped. Partnership between the government and the private sector is regulated in **PERPRES No. 13 of 2010** concerning Amendments to Presidential Regulation Number 67 of 2005 concerning Government Cooperation with business entities in providing infrastructure, as Article 4 Paragraph (1) letter f there are several types of infrastructure that can be collaborated with business entities in the field of telecommunications and information infrastructure, including telecommunications networks and *e-government infrastructure*.

The ideal concept of authentic deeds in infrastructure development cooperation agreements between district city governments and private business entities

²⁶ Supanca & Tim. 2015. *Legal Review Report on the Implementation of Public Private Partnership (PPP) System in Electric Energy Development Project*. Jakarta: BPHN KEMENKUMHAM. p 5

Deed as a written statement signed by the parties with the intention that it can be used as evidence in legal proceedings. The deeds can be divided into authentic words and deeds under hand. Philipus M. Hadjon²⁷ stated that the requirements for an authentic deed are:

- a. In the form prescribed by law (standard form);
- b. Made by and in the presence of public officials

Furthermore, Irawan Surodjo has three essential elements in order to fulfill the formal requirements of an authentic deed, namely:

- a. In the form prescribed by law
- b. Made by before a public official
- c. A deed made by and/or before a public officer authorized for it and at the place where the deed is made.

The Civil Code as Article 1868 states that an authentic deed is a deed in the form prescribed by law, made by or in the presence of public officials who are authorized to do so at the place where the deed is made.

An authentic deed has perfect evidentiary power. This perfect evidence is contained in both the Civil Code and HIR Article 1870 of the Civil Code "An authentic deed gives between the parties and their heirs or persons entitled thereto, a perfect proof of what is contained therein." Article 165 HIR An authentic deed, is a writing made by or in the presence of a public officer who is authorized to make it, being sufficient evidence for both parties and their heirs and all persons entitled thereto, of all matters referred to in the deed and also in the deed as notice only, In this last case only if the notified is directly related to the subject mentioned in the deed.

With the perfection of an authentic deed as evidence, the deed must be seen as it is, it does not need to be assessed or interpreted otherwise, other than what is written in the deed. An underhand deed has evidentiary power as long as the parties admit or there is no denial on the part of either party. If the parties admit it, then the

²⁷ Adjie. *Op. cit.*, p. 56.

deed under the hand has perfect evidentiary power as an authentic deed. However, if one of the parties admits it, then the burden of proof is left to the party who denies the deed and the judgment on the denial of evidence is left to the judge. Both the proof of the deed under hand and the authentic deed must meet the legal formulation of the agreement based on Article 1320 of the Civil Code and materially bind the parties who make it (Article 1338 of the Civil Code) as an agreement that must be fulfilled by the parties (*pacta sunt servanda*)²⁸.

That the authentic deed is perfect evidence for the parties and their heirs, for those who derive rights therefrom. Except for the provision that an authentic deed has a perfect evidentiary power until proven otherwise, below are stated other matters relating to the evidentiary power relating to an authentic deed, namely:

- 1) If what is contained in the authentic deed is a mere narration that has no direct relation to the subject matter of the deed, then it can only be useful as a prelude to proof by writing (*vide* Article 1871 BW).
- 2) According to Article 1872 BW, if an authentic deed is suspected / suspected to be false, then its execution can be suspended.

In general, deeds do not have material evidentiary power, official deeds only prove the truth of what officials see and do. An official deed having material force is a deed issued by the Civil Registry Office, which is nothing but a direct passage or copy of the original register, as long as the contents are in accordance with the original list must be considered correct until proven otherwise.

CONCLUSION

The results showed that;

- a. The role of the private sector is still needed in national development, and even needs to be improved. Because the government has limitations in financing

²⁸ Habib Adjie. 2009. *Indonesian Notary Law (Thematic Interpretation of Position Law Number 30 of 2004 concerning Notary Positions)*. Mould 2. Bandung: PT. Refika Aditama. p . 49.

various strategic projects, while the expected results of these projects are needed immediately considering the increasingly diverse needs of the community.

- b. Presidential Regulation of the Republic of Indonesia Number 67 of 2005 concerning Government Cooperation with Business Entities in the Provision of Infrastructure Jo PERPRES 13 of 2010 Jo PERPRES 56 of 2011 Jo PERPRES 66 of 2013. Presidential Decree No. 67 of 2005 and its amendments that classify projects in eight types of infrastructure, namely transportation, roads, irrigation, drinking water, wastewater, telecommunications, electricity, oil and gas. For PPP nuanced projects that are not included in the infrastructure sector, others are grouped. Partnership between the government and the private sector is regulated in **PERPRES No. 13 of 2010** concerning Amendments to Presidential Regulation No. 67 of 2005 concerning Government Cooperation with business entities in providing infrastructure, as Article 4 Paragraph (1) letter f there are several types of infrastructure that can be collaborated with business entities in the field of telecommunications and information infrastructure, including telecommunications networks and *e-government infrastructure*.
- c. An authentic deed has perfect evidentiary power. This perfect evidence is contained in both the Civil Code and HIR Article 1870 of the Civil Code "An authentic deed gives between the parties and their heirs or persons entitled thereto, a perfect proof of what is contained therein." Article 165 HIR An authentic deed, is a writing made by or in the presence of a public officer who is authorized to make it, being sufficient evidence for both parties and their heirs and all persons entitled thereto, of all matters referred to in the deed and also in the deed as notice only, In this last case only if the notified is directly related to the subject mentioned in the deed.

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