

Legal Justice in Government and Private Sector Partnership Projects: A Justice Approach Based on Pancasila and Rawls



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KEY WORDS	ABSTRACT
Legal justice, Pancasila, Rawls' theory of justice.	Infrastructure development is a fundamental pillar of economic growth and public welfare enhancement in Indonesia, where government budget limitations necessitate innovative financing strategies. Public-Private Partnerships (PPP), particularly the Build Operate Transfer (BOT) scheme, have become increasingly prominent in delivering strategic infrastructure projects such as toll roads, ports, airports, and energy facilities. While BOT arrangements offer efficiency and financial benefits, they also present significant challenges regarding legal justice and the protection of public interests. This study analyzes BOT agreements through the lens of justice based on Pancasila values and John Rawls' theory of justice. Using a normative juridical approach, the research explores how Pancasila—especially its second and fifth principles emphasizing social justice and humanity—and Rawls' principles of “justice as fairness” can guide the formulation and implementation of BOT contracts. The findings highlight that legal justice in BOT projects must go beyond technical and legal compliance, incorporating philosophical and sociological dimensions to ensure equitable benefit distribution, protection of affected communities, and transparency in contract processes. The study underscores the importance of procedural, substantive, and distributive justice in contract design and execution, advocating for affirmative policies that address power imbalances and safeguard the rights of disadvantaged groups. By grounding BOT agreements in both Pancasila and Rawlsian justice, infrastructure partnerships can become strategic instruments for achieving inclusive, fair, and sustainable national development, aligning with Indonesia's constitutional mandate and societal aspirations.

1. INTRODUCTION

Infrastructure development is a fundamental pillar in economic growth strategies and the improvement of public welfare across various countries. The development of public facilities (infrastructure) and the provision of services to the community are critical agendas. As a developing country, Indonesia has a strong desire to advance its economic development. It requires the construction of infrastructure to serve public interests across multiple aspects of life. However, government budgets are often

limited and insufficient to meet the extensive needs of development projects.

Public-private partnerships have increasingly become a key pillar in national development, especially as the demand for quality public services grows amid budget constraints. In terms of financing and efficiency, private sector involvement through Public-Private Partnership (PPP) schemes, known in Indonesia as *Kerjasama Pemerintah dan Swasta (KPS)*, has become a dominant alternative. One of the most common PPP models is the Build Operate

Transfer (BOT) scheme, where a private entity is granted the right to build and operate public facilities for a specified period before transferring ownership back to the government. BOT schemes are widely applied in strategic national projects such as toll roads, ports, airports, and energy facilities.

The Build Operate Transfer model illustrates how governments and commercial organizations can collaborate to develop infrastructure. The Build-Operate-Transfer regulations are part of Indonesia's Government Regulation Number 19 of 2016 concerning Guidelines for Managing Regional Property, which includes provisions on BOT. This regulation defines the utilization of regional assets, such as land, by third parties who construct buildings and/or facilities and then use them for an agreed period. Cooperation between the government and private enterprises is formalized through specific agreements tailored to the nature of the project, as stipulated in Article 1 paragraph (36) of the Ministry of Home Affairs Regulation Number 19 of 2016.

In BOT agreements, the government's primary objective is to realize public welfare through infrastructure development, ensuring that implementation respects public interests and applicable regulations. Each phase must be conducted fairly, including equitable benefit sharing, protection of community rights, and resolution of potential disputes.

Indonesia also demonstrates a strong commitment to establishing a welfare state, as mandated in the Preamble of the 1945 Constitution: "To form a government of the State of Indonesia that protects all the people of Indonesia and all the homeland of Indonesia, and to promote the general welfare, to educate the life of the nation, and to participate in the establishment of a world order based on freedom, lasting peace, and social justice."

To achieve these constitutional goals, the government undertakes development in all

aspects of life, including legal development. One of the most important principles in the body of the 1945 Constitution, which underpins Indonesia's economic development, is Article 33 paragraph (3), stating: "The earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

Despite the economic benefits and financing efficiencies offered by BOT agreements, as well as their potential advantages, significant challenges remain, particularly regarding legal justice and protection of public interests. In practice, these partnerships often raise issues of bargaining power imbalances, conflicts of interest, and risks of commercializing state assets that could harm the broader community if not strictly regulated and supervised. Therefore, a multidimensional analysis of BOT agreements is necessary—not only from a legal-formal perspective but also from a substantive justice perspective based on Pancasila values as the state foundation and contemporary justice theories such as John Rawls' theory of justice.

2. METHOD

Problem Formulation and Research Importance

This study aims to analyze government-private sector cooperation agreements under the Build Operate Transfer scheme through a justice approach based on Pancasila and Rawls' theory of justice. This approach is expected to provide both theoretical and practical contributions to public contract law reform, focusing on social justice, protection of community rights, and moral and legal legitimacy of sustainable national development projects.

RESULT AND DISCUSSION

Pancasila Justice in BOT Agreements

Pancasila is the foundational ideology of Indonesia, serving as a guiding reference in

various aspects of national life, including the realization of fair and sustainable communication. In the context of communication, the principle of justice is essential, as every individual has the same right to express their opinions. The values of Pancasila, particularly the second principle, “Just and Civilized Humanity,” and the fifth principle, “Social Justice for All Indonesian People,” emphasize the importance of social justice, respect for human dignity, and the equitable distribution of development benefits for all Indonesians.

The second principle, “Just and Civilized Humanity,” implies that every policy and legal action must respect human dignity and must not violate universal ethical values. Meanwhile, the fifth principle requires that the outcomes of development, including those from BOT projects, must be enjoyed equitably by all segments of society. Social justice serves as the foundation for every policy and legal implementation in Indonesia. In the context of national development, cooperation between the government and the private sector through Build Operate Transfer (BOT) schemes becomes a strategic instrument to accelerate infrastructure development. However, BOT projects often face challenges related to legal justice, especially in ensuring that the rights and interests of the wider community are not neglected in these commercially-oriented projects.

Therefore, a justice approach based on Pancasila is highly relevant for examining how legal justice can be realized in government and private sector partnership projects, ensuring that development is not only efficient and productive but also fair and equitable for all levels of society. In BOT agreements, the implementation of these values is reflected in

the government’s efforts to ensure that every infrastructure project built through BOT schemes truly provides equitable benefits, not only for investors or the government but also for the broader public as the legitimate owners of public resources, thus prioritizing national interests and social justice.

Social justice is the proportional balance and distribution of rights and obligations for every citizen, covering all aspects of economic, political, knowledge, and opportunity life. In other words, social justice is the absence of monopoly and concentration of any aspect of life by certain groups. In essence, social justice—sometimes referred to as substantive justice—aligns with the original spirit and objectives of the founding of the Republic of Indonesia: to promote general welfare, educate the nation, and participate in world order based on independence, lasting peace, and social justice. The people are a crucial element in a state, as they have the primary interest in ensuring the state functions well. Social justice guarantees that every individual and group in society can develop to their fullest potential.

Justice in Build Operate Transfer projects is not only technical-legal in nature but also rich in philosophical and sociological dimensions. A positivist-legalistic legal approach often fails to accommodate the full spectrum of expected justice, especially when faced with the complex interests and multidimensional impacts of large-scale projects. Pancasila, as the philosophical and constitutional foundation of Indonesia, mandates the realization of social justice for all Indonesians, which implies that every policy and development project, including BOT, must always be oriented toward achieving collective welfare and equitable distribution.

Legal justice in the context of Build Operate



Transfer is not limited to compliance with written laws and regulations. Legal justice encompasses a broader understanding, including justice in process (procedural), justice in the content of agreements (substantive), and justice in the distribution of outcomes (distributive). Procedural justice emphasizes the importance of fair, transparent, and accountable processes in designing and implementing partnership contracts.

Government and private sector partnership agreements in the Build Operate Transfer scheme, viewed through a Pancasila-based justice approach, demonstrate that the success of infrastructure development is determined not only by technical and financial aspects but also by the extent to which values of social justice, humanity, and unity are implemented in contract law and project execution. By making Pancasila the primary foundation, BOT agreements can become strategic instruments that accelerate development and ensure equitable, sustainable outcomes for all stakeholders, including communities directly affected by contracts, and for the entire Indonesian population.

Rawlsian Justice in BOT

Justice is a fundamental concept in legal theory and political philosophy, having been a central concern from classical times to the modern era. In the history of political and legal thought, justice is often associated with ideas of equality, freedom, and the distribution of resources and opportunities. However, in practice, justice is not always realized equally and objectively, especially in societies marked by economic and social inequalities. Thus, there is a need to define justice more systematically and normatively.

John Rawls' theory of justice provides a relevant conceptual framework for analyzing justice in Build Operate Transfer agreements. It emphasizes the importance of balancing the rights and obligations of parties in a contract. Justice as fairness does not mean equality of outcomes, but rather equality of standing, which implies a proportional balance of rights and obligations. This rejects views that demand equal outcomes without regard to process and individual contributions. In the context of partnership contracts, this principle requires that every contract clause be drafted in good faith, accommodate the interests of all parties, and be legally and morally accountable. Rawls' justice approach, focusing on the principle of "justice as fairness," can be realized in government-private sector relations.

Rawls introduces two main principles of justice: first, everyone has the same right to the most extensive basic liberties compatible with similar liberties for others; second, social and economic inequalities must be arranged so that they are to the greatest benefit of the least advantaged (the difference principle). In the context of BOT agreements, this principle can be implemented through affirmative policies ensuring that communities directly affected by infrastructure projects—such as landowners, local workers, and surrounding communities—receive protection, fair compensation, and access to the economic benefits generated by the project.

Government and private sector partnership agreements in the Build Operate Transfer scheme, viewed through the lens of Rawlsian justice, show that the success of infrastructure development is determined not only by technical and financial aspects but also by the extent to which distributive and procedural justice principles are implemented in contract law and project execution. By making Rawlsian

justice the primary foundation, BOT agreements can become strategic instruments that accelerate development while achieving fair, inclusive, and sustainable outcomes for all Indonesians.

3. CONCLUSION

BOT agreements as an infrastructure development partnership scheme in Indonesia must be grounded in the values of Pancasila, particularly the second and fifth principles, which emphasize social justice and just and civilized humanity. The implementation of justice in BOT is not only technical and legal but also philosophical and sociological, requiring that such projects provide equitable benefits for all Indonesians, not just the government or investors. Furthermore, the justice approach according to Rawls' theory, which emphasizes the principle of "justice as fairness," is also relevant in the BOT context. Rawlsian principles, such as equal basic liberties and the arrangement of inequalities to benefit the least advantaged, can be applied to ensure fair protection and compensation for communities affected by projects, as well as their access to the resulting economic benefits. By making Pancasila and Rawlsian justice principles the main foundation, BOT agreements can become strategic instruments that not only accelerate infrastructure development but also realize fair, inclusive, and sustainable development for all Indonesians, while considering national interests, the wider public, and legal justice in all contractual aspects and implementation.

4. REFERENCES

Ahmad Muhamad Mustain Nasoha, Ashfiya Nur Atqiya, 2025, Pancasila sebagai Landasan Komunikasi yang Berkeadilan Berkelanjutan, Aliansi : Jurnal Hukum, Pendidikan dan Sosial

Humaniora Volume. 2, Nomor. 4.
 Angga Christian, Ainun Nabilah, 2025, Teori Keadilan Menurut Jhon Rawls, Quantum Juris: Jurnal Hukum Modern Volume 07, No. 1.
 Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage, 2006, Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi, Pwenerbit CV Kita Surabaya.
 Franz Magnis Suseno, 2001, Kuasa dan Moral, Penerbit Gramedia Pustaka Utama, Jakarta.
 Ika Yuliyanti, Budi Santoso, 2023, Analisis Perjanjian Build Operate And Transfer (BOT) Pada Pembangunan Aset Milik Daerah, NOTARIUS, Volume 16 Nomor 2.
 Julianti Ratnasari Ningsih, Fayla Lakmi Dara, dkk, 2023, Pancasila Sebagai Dasar Hukum
 Kaelan, M, 2014, Pancasila: Yuridis, Filsafati, dan Etis. Yogyakarta: Paradigma, 2014.
 Mochtar Kusumaatmadja, 2006 Konsep-konsep Hukum Dalam Pembangunan, PT. Alumni, Bandung. .
 Simamora, Y.S, 2013, Hukum Kontrak : Kontrak Pengadaan Barang Dan Jasa Pemerintah Di Indonesia. Jakarta: Laksbang Justisil.
 Sri Susanti, Suyatno, 2024, Kerjasama Investasi Antara Pemerintah Dengan Badan Usaha Menggunakan Model Build Operate Transfer (Bot) Dalam Pembangunan Infrastruktur Di Indonesia, Jicn: Jurnal Intelek Dan Cendekiawan Nusantara
<https://Jicnusantara.Com/Index.Php/Jicn> Vol : 1 No: 2.
 Yohanes Suhardin, 2003, Konsep Keadilan Dari John Rawls Dengan Keadilan Pancasila (Analisis Komparatif), Fiat Iustitia: Jurnal Hukum Volume 3 No. 2.
 Ikka Puspitasari, Budi Santoso, 2018, Perjanjian Kerjasama Pemerintah Dan Swasta Dengan Pola (Bot) Build Operate Transfer Dalam Pembangunan Jalan Tol (Studi Pembangunan Jalan Tol Semarang-Solo), Jurnal Law Reform.