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Balance of PPP Agreements for the Provision of Public Infrastructure in the Event of Force Majeure

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Abstract
The limited fiscal capacity of the government to finance infrastructure development has encouraged the implementation of Public-Private Partnership (PPP) schemes as an alternative mechanism for providing public infrastructure. One of the fundamental characteristics of PPP agreements is risk allocation, which aims to assign risks to the party best able to manage and mitigate them. Legal issues arise when a force majeure event occurs, as such events are beyond the control of both the government and private entities and may disrupt contractual equilibrium and project sustainability. This study aims to analyze risk allocation in PPP agreements in the event of force majeure based on the principle of contractual balance. The research employs a normative legal method using statutory and conceptual approaches. The findings indicate that force majeure risks in PPP agreements are essentially categorized as shared risks and therefore cannot be entirely imposed on either the government or the private sector. Risk allocation is implemented through contractual mechanisms such as project schedule adjustments, concession period extensions, contract renegotiations, and compensation arrangements proportional to the impact suffered by the project. These mechanisms are intended to maintain a balanced distribution of rights and obligations between the parties, ensure legal certainty, and preserve the continuity of public infrastructure services. Consequently, proportional risk allocation serves as an essential instrument in sustaining PPP projects when force majeure events occur.

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1. INTRODUCTION

Infrastructure development is one of the primary instruments used by countries to drive economic growth, increase national competitiveness, and achieve public welfare. Infrastructure is understood not only as physical infrastructure such as roads, ports, airports, energy networks, and drinking water supply systems, but also as a prerequisite for the effective implementation of economic activity and public services. The quality of infrastructure is closely related to a country's economic productivity because infrastructure serves as a link between various production and distribution activities. The availability of adequate infrastructure is also a crucial factor in creating equitable development across regions, reducing economic disparities, and expanding public access to various basic services. In Indonesia's developing context, the need for infrastructure development continues to increase in line with population growth, urbanization, and increasingly complex economic activities.

The importance of infrastructure development has been a key focus of national development policy over the past few decades. Various development planning documents demonstrate that the government places the infrastructure sector as a foundation for achieving long-term economic growth targets. This need includes the development of transportation, energy, telecommunications, water resources, and various other public facilities necessary to support community activities. Infrastructure investment is one form of public investment with the most significant long-term economic impact because it can create a multiplier effect (*multiplier effect*) to various economic sectors. The large need for development means that the government must provide adequate sources of funding so that development can proceed sustainably.

The ever-increasing need for infrastructure financing often outstrips the country's fiscal capacity. The government must allocate budget resources across strategic sectors, such as education, health, social protection, defense, and governance. Consequently, infrastructure financing cannot rely solely on the national or regional budgets. This situation is not unique to Indonesia, but also to many developing countries facing challenges in *infrastructure financing gap*, namely the gap between infrastructure investment needs and public sector funding capabilities.

Limited fiscal capacity then prompted the government to develop various alternative financing schemes that could involve private sector participation in the provision of public infrastructure. One model that has developed widely in various countries is *Public-Private Partnership* (PPP), known in Indonesia as Public-Private Partnership (PPP). This model allows governments and private entities to collaborate on infrastructure provision through a long-term contractual relationship. PPP is not merely a project funding mechanism, but rather a form of cooperation that integrates the financing, construction, operation, and maintenance of infrastructure within a single, ongoing legal framework. The presence of business entities in infrastructure projects is expected to accelerate the provision of public services while increasing the efficiency of project implementation.

In Indonesia, the legal framework for PPPs is regulated through Presidential Regulation No. 38 of 2015 concerning Government Cooperation with Business Entities in Infrastructure Provision. This regulation provides the legal basis for the government to collaborate with business entities in the provision of various types of public infrastructure. Through this scheme, business entities not only act as development implementers but also as providers of financing and managers of infrastructure for a specified period according to the agreement. Bappenas in the *PPP Book* explained that PPP is designed to increase private sector involvement in infrastructure development while maintaining the government's fiscal sustainability. This cooperative relationship is then realized in an agreement which, among other things, regulates the rights, obligations, benefits, and risks that must be borne by each party, as well as the return on investment from the business entity as a government cooperation partner.

PPP contracts differ from typical government procurement contracts. While the legal relationship in conventional procurement contracts ends upon completion and payment, PPP contracts establish long-term contractual relationships that can last for decades. In these relationships, the government is interested in ensuring the continuity of public services, while business entities expect a reasonable return on their investment. These differing interests require regulations that create a proportional distribution of rights and obligations to ensure project continuity.

One of the most important aspects that determines the success of PPP is the risk allocation mechanism. Risk allocation is a key characteristic that distinguishes PPPs from other forms of cooperation. A fundamental principle in PPP projects is that each risk must be allocated to the party most capable of effectively controlling, managing, or mitigating that risk. The concept of risk sharing is based on the effectiveness of the sustainable implementation of PPPs, considering that the output of PPPs is not only infrastructure availability, but also continues to the operation and maintenance of that infrastructure, which is a unified output object of service availability. Without such risk sharing, the parties in the PPP will have difficulty measuring the level of service availability due to the differences in the parties' positions and functions in the PPP agreement.

The concept of risk allocation in PPPs developed as part of international practice in partnership-based infrastructure project delivery. Risk sharing is at the heart of the contractual relationship in PPPs because it determines who bears the legal and economic consequences of an event affecting the project. Risks commonly allocated in PPP projects include construction risk, financing risk, operational risk, demand risk, regulatory change risk, and political risk. Each type of risk has distinct characteristics and therefore requires different management. Accurate risk allocation significantly impacts project feasibility and the sustainability of the partnership between the government and business entities.

Risk sharing in PPPs is fundamentally related not only to economic efficiency but also to issues of fairness and balance in contractual relationships. The principle of balance in contracts requires proportionality in the distribution of rights, obligations, benefits, and burdens borne by the parties. Balance doesn't necessarily mean equal distribution, but rather emphasizes the balance between the rights acquired and the obligations or risks each party must bear. This principle is crucial in PPPs because the legal relationship established involves not only economic interests but also public interests, which must be safeguarded by the government.

The need to maintain this balance is increasingly important because the government's position in PPPs differs from that of private legal entities in general, even though the government acts as a private legal entity in PPP agreements. The government not only acts as a party to the contract but also has public authority as a regulator and administrator. The involvement of the state in a contractual relationship often raises issues regarding the equality of the parties, as the state possesses authority that private entities do not. This situation makes the principle of balance crucial in ensuring that the legal relationship continues to provide proportional protection for all parties involved. This issue of balance becomes increasingly relevant when PPP agreements are faced with extraordinary risks beyond the control of the parties, particularly risks arising from force majeure (*force majeure*), and the emergence of changes in circumstances becomes very difficult (*hardship*).

Risks in PPP implementation do not always originate from technical or operational aspects that can be predicted from the outset of the contract. Various events beyond the control of the parties, such as natural disasters, pandemics, social conflicts, wars, fundamental changes in government policy, and extraordinary economic conditions, can impact the project's sustainability. These risks not only hinder the implementation of contractual obligations but also have the potential to alter the economic balance that underpins the parties' agreements. The World Bank cites these extraordinary risks as one of the main challenges facing projects. *Public Private Partnership, because* it can change the risk structure that has been agreed upon from the start of the contract.

In contract law, this condition is known through the concept of force majeure (*force majeure*). The provisions regarding force majeure in the Indonesian legal system can be found in Articles 1244 and 1245 of the Civil Code, which provide the basis for exemption from liability for parties who fail to fulfill their obligations due to events beyond their fault. Force majeure is a situation that causes a debtor to be unable to fulfill their obligations due to an event that cannot be predicted and cannot be prevented beforehand. This concept has been further developed in modern contract practice, as not all extraordinary events make it absolutely impossible to perform a contract. In many cases, performance is still possible, but at significantly greater costs and risks than when the contract was entered into.

The development of international contract law then introduced the concept of *hardship* as a complement to the concept of *force majeure*. In contrast to force majeure, which makes it impossible to carry out the performance, *hardship places* more emphasis on changes in circumstances that fundamentally disrupt the economic equilibrium of the contract. UNIDROIT *Principles of International Commercial Contracts explains that hardship occurs* when a particular event significantly increases the cost of performing an obligation or drastically reduces the value of the benefits expected by one of the parties. This concept becomes relevant in PPP projects because long-term legal relationships are highly vulnerable to changes in economic, social, and political conditions that cannot be predicted at the time the contract is made.

Contractual relationships in PPPs are more complex than typical business contracts because they involve significant investments and long-term partnerships. During concession periods, which can last for decades, the likelihood of changing circumstances affecting contract implementation increases. Risks initially within reasonable limits can develop into burdens that exceed the business entity's initial calculations, while the government remains concerned with maintaining the continuity of public services. These conditions necessitate the regulation of force majeure (*force majeure*) and *hardship* as an important instrument to maintain the stability and sustainability of contractual relations in PPP.

Although PPP regulations have established risk allocation as one of the basic principles of project management, its implementation still raises a number of issues. In practice, when force majeure occurs (*force majeure*) or *hardship*, business entities are still required to fulfill contractual obligations and service standards until an official determination is made by the Project Cooperation Agency (PJPK). During this period, financial and operational risks are generally borne primarily by the business entity, even if the event causing the loss is beyond its control. Government compensation mechanisms also depend on the verification process and available fiscal capacity. This situation indicates that the risk allocation normatively stipulated in the contract does not necessarily result in a balanced distribution of burdens in its implementation.

This situation raises questions about the role of the principle of balance in the legal relationship between the government and business entities in PPPs. Theoretically, the principle of balance requires that the rights, obligations, benefits, and risks accepted by the parties be in a reasonable proportion. A balanced contract must maintain proportionality of the parties' interests without placing one party as the party bearing excessive contractual risk. This principle becomes increasingly important in PPPs because governments and businesses have different positions, authorities, and objectives. The government represents the public interest, which must be protected by meeting public needs, while businesses fulfill investment functions that require certainty regarding sustainable returns and protection against uncontrollable risks.

The issue of balance is also inseparable from the government's role as a legal entity with public authority. In ordinary contractual relationships, the parties generally have a relatively equal position. In PPPs, the government acts not only as a party to the contract but also as a regulator with the authority to formulate policies and take administrative actions that can impact contract implementation. The use of public authority must always be accompanied by adequate legal protection mechanisms for parties affected by the use of such authority. This perspective becomes important when the government has the authority to determine the status of a situation as force majeure or *hardship*, while the business entity must continue to bear the risk during the determination process.

Beyond the issue of balance, risk allocation arrangements in PPPs are also closely related to the principle of legal certainty. Gustav Radbruch places legal certainty as one of the fundamental values that must be realized by law, alongside justice and utility. Legal certainty in the context of PPPs requires clarity regarding the rights and obligations of the parties in the event of an event that impacts contract implementation. Investors require certainty regarding compensation mechanisms, risk distribution, and the forms of protection available in the event of force majeure. The government also requires certainty regarding the limits of its responsibilities to ensure the continuity of public infrastructure provision without creating an unmanageable fiscal burden.

The problem arises because existing regulations focus more on risk identification and classification than on normative parameters for how the balance of risk should be restored when fundamental circumstances change. There is no clear measure of the risk limits that each party must bear in the event of force majeure *hardship*, when compensation must be provided, and how the loss-sharing mechanism will be implemented if project conditions change significantly. Legal certainty is determined not only by the existence of norms, but also by the ability of those norms to provide clear and predictable guidance in resolving legal issues. When regulations regarding risk distribution still leave wide room for interpretation, the potential for disputes and legal uncertainty will increase.

This issue demonstrates that risk allocation arrangements in PPPs cannot be viewed solely as project management instruments. These arrangements are also legal instruments that determine the level of protection for the parties and influence the sustainability of the contractual relationship. Satjipto Rahardjo explained that the law must essentially be able to protect the legitimate interests of each legal entity within a particular legal relationship. In the context of PPP, legal protection is not only aimed at business entities as investors, but also at the government as the party responsible for providing public services to the community.

Based on the description, this research is important to be carried out to examine the position of the principle of balance in the legal relationship between the government and business entities in PPP, analyze the arrangement of risk allocation in fulfilling the principle of contract balance and legal certainty, and examine the form of legal protection for the parties when force majeure occurs in the implementation of the PPP agreement, so that the researcher is interested in conducting research with the title **"The Principle of Balance in Risk Allocation During Force Majeure in Cooperation Agreements Between the Government and Business Entities in the Provision of Public Infrastructure".**

2. METHOD

This research is a type of normative legal research. This type of writing is normative, namely legal research consisting of research on legal principles, research on legal systematics, and also research on the level of legal synchronization. The research specification used in this paper is analytical descriptive, namely a definition that has a broad scope, but at the same time provides clear boundaries, by providing the distinctive characteristics of the term to be defined and supplemented with analysis as a normative legal research. The author will use both a statutory approach and a conceptual approach. The statutory approach, or *Statute Approach,* is an approach taken by reviewing all laws and regulations related to the legal issue being addressed. The data Analysis in this study uses a qualitative analysis method, namely a data analysis method with how to group and select primary data obtained from study field data according to its truth or relevance, then the data is processed systematically to be connected with the normative provisions of laws and legal theories, the opinions of legal experts, and other secondary data relevant to this research so that answers to the research problems are obtained and then clear conclusions can be drawn. The results of the research will be presented descriptively, namely explaining or describing a situation that actually occurs in the field, so that from the research, it can be give description and understanding can be provided that can provide conclusions from existing problems.

3. RESULTS AND DISCUSSION

The principle of balance is one of the fundamental principles in modern contract law, which aims to create a fair and proportionate legal relationship between the parties. This principle developed as a response to the classical view that placed freedom of contract as the main principle in the formation of agreements. In its development, freedom of contract is no longer understood as an absolute freedom, but must be carried out by taking into account the interests and positions of the parties involved in the contractual relationship. The principle of balance requires a proportional distribution of rights and obligations so that no party gains excessive benefits or bears an unreasonable burden in the implementation of the contract.

The principle of balance is closely related to the legal objective of achieving justice in private relationships. In contract law, balance is not always defined as mathematical equality of rights and obligations, but rather as the proportionality between the benefits obtained and the burdens borne by each party. Contractual balance must be viewed from the perspective of the entire legal relationship established by the parties, including the process of contract formation, contract implementation, and the resolution of any disputes that may arise in the future. This perspective shows that balance is a dynamic principle and must be assessed based on the context of the legal relationship in question.

In the Indonesian legal system, the principle of balance can be traced through the provisions of Articles 1338 and 1339 of the Civil Code, which require that every agreement be executed in good faith. Good faith relates not only to the honesty of the parties but also includes the obligation to respect the interests of the other party proportionally. According to Mariam Darus Badrulzaman, the principle of good faith serves as an instrument to prevent abuse of rights and maintain balance in legal relationships established through agreements. Thus, the principle of balance is a concrete manifestation of the implementation of good faith in contractual relations.

The principle of balance becomes increasingly important in contracts with special characteristics, such as those involving governments and private entities in the provision of public infrastructure. Unlike typical private contracts, these contracts align the public interest, represented by the government, with the economic interests of the private entity. The government is obligated to ensure the sustainable delivery of public services, while the private entity is concerned with profit and a guaranteed return on investment. These differing interests have the potential to create imbalances if not regulated through adequate contractual mechanisms.

Contractual balance also relates to the protection of parties who are in fact in a weaker position in a particular legal relationship. In certain contexts, imbalances don't always arise from differences in economic power, but can also arise from differences in authority held by the parties. The government, as the holder of public authority, holds a different position than a business entity acting as an investor. This difference necessitates contractual arrangements that maintain the proportionality of the parties' rights and obligations.

The principle of balance plays a role not only in the contract formation stage but also in contract implementation, especially in long-term legal relationships that are vulnerable to changing circumstances. Risks that were initially allocated proportionally can become an unbalanced burden due to unforeseen events. In such circumstances, the principle of balance serves as a benchmark for assessing whether the distribution of rights, obligations, and risks of the parties still reflects fairness and propriety. The application of this principle is particularly important in PPP schemes that involve large investments, long-term cooperation periods, and various risks that can affect project sustainability. The relevance of the principle of balance is further strengthened when force majeure occurs (*force majeure*) or *hardship,* which changes the basic assumptions of contract implementation and has the potential to affect the proportionality of the legal relationship between the government and business entities.

Risk allocation is one of the elements that distinguishes Public-Private Partnerships (PPPs) from conventional procurement contracts. In typical procurement contracts, the majority of the risks in project implementation tend to be borne by the service provider through a contractual mechanism determined by the service user. In contrast, PPPs are built on the principle of partnership, placing the government and business entities as parties jointly responsible for the success and sustainability of infrastructure projects. This characteristic makes risk sharing an integral part of PPP project design and implementation. Risk management is a key factor in determining project success. *Public Private Partnership, because* every investment decision in an infrastructure project is basically based on the ability of the parties to identify and control risks that may arise during the cooperation period.

In general, risk can be understood as the possibility of an event occurring that has consequences for the achievement of predetermined objectives. In the context of infrastructure projects, risk relates not only to the possibility of financial loss but also includes risks that can affect service quality, project completion time, operational continuity, and the achievement of development objectives. Risks in PPP projects have different characteristics than those in conventional development projects because they are long-term and involve complex legal relationships between the public and private sectors. This complexity causes risks to arise not only from the technical aspects of the project, but also from economic, legal, social, and political factors that develop during the implementation of the cooperation.

In international practice, risk allocation is understood as the process of determining the most appropriate party to bear a risk based on that party's ability to control or mitigate its impact. This principle stems from the view that risk should not always be transferred to the private sector, but rather should be placed with the party best equipped to manage it. The primary goal of risk allocation is not to transfer all risk to one party, but rather to create a risk distribution that promotes efficiency and long-term project sustainability. Inappropriate risk allocation can actually increase project costs because the party accepting the risk will include additional costs as a form of protection against the uncertainty they face.

The importance of risk allocation in PPPs is also related to the nature of infrastructure projects, which require significant investment and have a relatively long payback period. Investors not only consider the value of the project to be built but also consider various risks that could affect the rate of return on investment during the concession period. Clarity regarding who is responsible for a risk is a crucial factor in determining the feasibility of investment and project financing. Unclear risk allocation is often a major cause of increased transaction costs and the emergence of disputes in partnership-based infrastructure projects. Therefore, the preparation of a clear risk allocation mechanism is an important part of creating legal certainty for the parties.

Risks in PPP projects can be divided into several categories. One of the most common is construction risk, which is the risk associated with construction delays, increased construction costs, technical failures, or non-conformity to work specifications. This risk is generally borne by the business entity because it falls within the scope of control of the party implementing the construction. Furthermore, there are operational risks related to infrastructure management after the project is completed. Operational risks include service quality, maintenance costs, operational efficiency, and the ability to meet contractual service standards.

In addition to risks arising from business activities, there are also risks arising from government actions and changes in public policy. These risks are often referred to as regulatory or political risks because they relate to changes in legislation, fiscal policy, spatial planning policy, and administrative actions that can impact project implementation. Risks arising from the use of public authority are unique because they are beyond the control of the business entity, yet they can directly impact the sustainability of existing investments. Therefore, PPP contracts generally regulate compensation mechanisms or contract adjustments if policy changes occur that have a significant impact on the project.

The regulation of risk allocation in the Indonesian legal system is based on Presidential Regulation Number 38 of 2015 concerning Government Cooperation with Business Entities in Infrastructure Provision. This regulation requires the identification and allocation of risks from the project preparation stage. Furthermore, Regulation of the Minister of National Development Planning/Head of the National Development Planning Agency of the Republic of Indonesia Number 7 of 2023 concerning the Implementation of Government Cooperation with Business Entities in Infrastructure Provision stipulates that each risk must be analyzed based on the likelihood of its occurrence and the magnitude of its impact on the project. These provisions demonstrate that risk allocation is not merely a technical issue, but rather part of the legal design that determines the relationship between the rights and obligations of the parties during the cooperation period.

The problem in PPP practices often lies not in risk identification, but rather in the allocation of responsibilities when those risks actually occur. Risks that have been clearly allocated in the contract can develop into legal issues due to unforeseen changes in circumstances, particularly risks beyond the control of the parties, such as natural disasters, pandemics, social conflicts, or economic crises. This situation often gives rise to debates about which party should bear the impact and losses incurred. From a contract law perspective, this issue is closely related to the principle of balance, as risk allocation must not only create economic efficiency but also ensure proportionality of the burden borne by the government and business entities. Excessive risk assignment to one party has the potential to disrupt the balance of the contract and create legal uncertainty in its implementation.

Force majeure (*force majeure*) is a concept in contract law that provides a basis for exemption from liability when the performance of contractual obligations is hampered by events beyond the control of the parties. This concept is based on the understanding that not every failure to fulfill obligations is caused by the fault or negligence of the debtor.

Under certain conditions, events that cannot be predicted or prevented can make the implementation of an agreement impossible or create a very heavy burden. Force majeure is a situation that causes the debtor to be unable to fulfill its obligations due to events beyond its control and fault.

In the Indonesian legal system, provisions regarding force majeure can be found in Articles 1244 and 1245 of the Civil Code. Both articles, in principle, stipulate that a party unable to fulfill its obligations is not required to pay compensation if the failure occurs due to unforeseen circumstances for which it cannot be held responsible. This provision demonstrates that Indonesian civil law recognizes certain circumstances that can eliminate contractual liability. However, these provisions do not provide a detailed definition of the form and criteria for force majeure, so in practice, the interpretation of *force majeure has* developed much through contract doctrine and practice.

Doctrinally, force majeure generally has several basic elements. First, an event occurs beyond the control of the parties. Second, the event was not reasonably foreseeable at the time the contract was entered into. Third, the event prevents or significantly interferes with the performance of contractual obligations. Fourth, the party experiencing the obstacle did not contribute to the occurrence of the event. The existence of these elements is the basis for determining whether a situation can be categorized as force majeure, eliminating or reducing contractual responsibilities. Assessment of these elements is very important because it will determine the legal consequences that arise for the parties.

The development of modern business relations shows that the concept of *force majeure* is not always sufficient to address all the issues that arise in long-term contracts. Many circumstances do not make contract performance impossible, but significantly alter the economic equilibrium of the contract. This condition then gave rise to the concept of *hardship,* which has developed in international contract practice. The UNIDROIT Principles of International Commercial Contracts mentions this, namely, *hardship* occurs when an event fundamentally changes the balance of the contract due to increased costs of carrying out obligations or a decrease in the value of benefits received by one of the parties. Different from *force majeure, which* is oriented towards the impossibility of achieving the goal, *hardship*-oriented towards changing normal conditions into difficult conditions for one or more parties, resulting in an imbalance in the contractual relationship, thus giving rise to concerns regarding the sustainability of work completion and the provision of public services for infrastructure.

Draft *hardship* is highly relevant in PPP agreements because the legal relationship established is long-term and involves significant investments. During concession periods, which can last for decades, changing economic conditions, pandemics, energy crises, geopolitical conflicts, or changes in government policy have the potential to impact the project's previously calculated feasibility. These conditions lead to clauses of *force majeure* and *hardship.* They no longer merely function as supplementary provisions, but rather as instruments for maintaining the continuity of the parties' contractual relationship. Long-term contracts require adjustment mechanisms that allow the parties to maintain the contract when circumstances change that were unforeseen at the time the agreement was made.

In PPP contracts, force majeure has distinct characteristics compared to conventional commercial contracts because its impact is felt not only by the business entity as the investor, but also by the public as the beneficiary of public services. Disruptions to infrastructure projects due to force majeure can impact the continuity of public services for which the government is responsible. At the same time, the business entity faces financial and operational risks that can impact its ability to fulfill its contractual obligations. These conditions require legal protection from both the government and the business entity to ensure project sustainability while maintaining a balanced contractual relationship between the parties.

Risk allocation is a fundamental element in Public-Private Partnership (PPP) agreements because it determines which party is responsible for the legal and economic consequences that arise during project implementation. Unlike conventional procurement contracts, which tend to assign most of the risks to the service provider, PPPs are built on the principle that each risk must be allocated to the party most capable of effectively controlling, managing, or mitigating the risk. This principle is fundamental to project sustainability because legal relationships in PPPs are long-term, involve significant investments, and concern the public interest, which must be continuously served. *Public-Private Partnership is highly* dependent on the accuracy of risk allocation because risks placed on parties who cannot manage them will increase project costs and reduce the efficiency of cooperation.

In PPP practice, not all risks can be controlled by the government or business entities. Some risks arise from extraordinary events beyond the control of the parties, such as earthquakes, major floods, pandemics, war, social unrest, or extraordinary and unpredictable government policies. These risks are known as force majeure risks (*force majeure*). In Indonesian contract law, force majeure has a normative basis through Article 1244 and Article 1245 of the Civil Code, which essentially provides a release from liability for a party unable to fulfill its obligations due to an event that is unpredictable and beyond its control. Force majeure is a situation that causes the debtor to be unable to fulfill its obligations due to an event that occurs beyond its fault and control.

The main characteristic of force majeure is that the risk is not within the control of either the government or the business entity. Construction risks can be allocated to the business entity because the business entity controls the construction process. Permit risks can be allocated to the government because they relate to the administrative authority of the state. Conversely, risks resulting from earthquakes, pandemics, or war cannot be effectively prevented or controlled by either party. This condition means that force majeure cannot be fully attributed to the government or the business entity. The World Bank explains that force majeure risks in projects, *Public Private Partnership, is* a risk category that is generally divided (*shared risk*) because no party is effectively able to control the occurrence of this risk.

This principle of risk sharing is reflected in various international PPP practices. Force majeure risks are generally placed as shared risks (*shared risk*), the consequences of which are divided based on the impact they have on the project. The business entity continues to bear the risks associated with its day-to-day operations and mitigation obligations, while the government provides protection through concession extensions, certain compensation, or contract adjustments if force majeure significantly impacts project continuity. This approach aims to maintain a balanced contractual relationship without shifting the entire burden to one party.

Within the Indonesian legal framework, the principle of risk sharing in PPPs can be found in Presidential Regulation No. 38 of 2015 concerning Public-Private Partnerships in Infrastructure Provision. This regulation requires risk identification and allocation to be carried out from the project preparation stage. Further provisions in Regulation of the Minister of National Development Planning/Head of Bappenas No. 7 of 2023 emphasize that risks must be allocated to the party best able to manage them, taking into account the likelihood of the risk occurring and its impact on the project. Although it does not specify the mechanism for sharing force majeure risks in detail, the regulation indicates that risk allocation in PPPs is not intended to unilaterally impose all consequences on business entities or the government.

Problems arise when force majeure actually occurs during project implementation. In practice, business entities are often required to continue to meet service standards and contractual obligations until the Contracting Agency (PJPK) officially acknowledges that the event meets the criteria for force majeure. During this period, the business entity must first bear the various financial and operational consequences arising from the project disruption. This condition causes the risk of force majeure, which is theoretically a shared risk, to actually be borne more by the business entity. One of the main problems in PPP projects is the discrepancy between the contractual risk allocation and the actual distribution of risk in practice.

The situation becomes even more complex when force majeure persists for a prolonged period. The COVID-19 pandemic is an example of how extraordinary events can significantly impact the continuity of infrastructure projects. Many projects have experienced decreased demand, supply chain disruptions, increased operational costs, and delays in work execution. In such situations, applying the principle that a business entity must continue to bear the full economic consequences of force majeure has the potential to disrupt the balance that underpins contract formation. Contractual balance requires proportionality between the benefits gained and the risks borne by the parties. When risks beyond the control of a business entity are excessively assigned to the business entity, this proportionality is disrupted. Based on the principle of balance, the allocation of force majeure risk should not be oriented towards transferring all losses to one party, but rather towards restoring the economic balance of the contract disrupted by the extraordinary event. In the context of PPPs, this recovery can be achieved through various mechanisms, such as adjusting the project implementation schedule, extending the concession period, providing certain compensation, restructuring contractual obligations, or contract renegotiation. UNIDROIT even recognizes that changes in circumstances that disrupt the balance of the contract can be a basis for the parties to renegotiate to maintain the continuity of the contractual relationship.

From the government's perspective, force majeure risk sharing cannot be done indefinitely. The government is obligated to maintain the continuity of public services while safeguarding state financial stability. All losses arising from force majeure cannot be simply transferred to the government, as this could potentially create an unmanageable fiscal burden. According to the World Bank PPP Reference Guide, the primary objective of risk allocation is not to eliminate risk from one party, but rather to ensure that the impact of the risk can be managed efficiently and does not threaten project sustainability. Therefore, the form of compensation provided by the government must still take into account the principles of accountability and the country's fiscal capacity.

Based on this description, the allocation of risk in the KPBU agreement in the event of force majeure is basically placed as a shared risk (*shared risk*) that must be borne proportionally by the government and business entities. These risks cannot be fully borne by either party because they are outside the scope of control of both. Risk sharing is carried out through a contractual mechanism that aims to maintain project continuity, maintain a balance in the legal relationship between the parties, and ensure the continuous provision of public services. The greater the impact of force majeure on the economic balance of the contract, the greater the need to adjust the contract to restore the proportionality of rights, obligations, and risks that form the basis of cooperation between the government and business entities.

4. CLOSING

Risk allocation in the Government and Business Entity Cooperation Agreement (KPBU) in the event of force majeure (*force majeure*), in principle, is a shared risk (*shared risk*) that cannot be fully borne by the government or business entities. This is because force majeure is an event beyond the control of the parties, so no party is effectively able to prevent or fully manage it. Risk sharing is carried out proportionally through contractual mechanisms, such as adjusting the implementation schedule, extending the concession period, renegotiating the contract, or providing certain compensation according to the impact on the project. These arrangements aim to maintain the sustainability of infrastructure projects while maintaining a balance of the rights and obligations of the parties. From the perspective of the principle of balance, the allocation of risks due to force majeure must be implemented fairly and proportionally so as not to burden either party unduly. Thus, the interests of the government as a public service provider and the interests of business entities as investors remain protected, and the sustainability of public infrastructure provision can be maintained.

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