

The Force of Strategic Infrastructures

The Role of Public-Private-Partnership to Strengthen Sustainable Developments in Indonesia

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Abstract

The Republic of Indonesia as greatest archipelago state in the world with over 260 million people, facing various of challenge in the infrastructure sector. Nowadays, the growth of infrastructures has been the focus of the Indonesian government. Infrastructure means not only for transporting people, but also goods and services including information. Indonesian government scheme to build huge numbers of infrastructures such as road, highway road, bridge, and airport also broadband networks. President Joko Widodo as Indonesia President, in every presidential speech always mentioned and invited numbers of investor from other countries to invest in Indonesia to support Indonesia Infrastructure. To build numbers of infrastructure, Indonesia could not only rely on financial comes from the tax income or fiscal. It also could be realized by the cooperation between public and private entities, namely Public Private Partnership (PPP). A strategic PPP approach can potentially mitigate the overruns and schedule delays that plague traditional infrastructure project delivery by clearly delineating governance, allocating shared risk, integrating resources, applying best practices, and establishing a lifecycle– the long perspective of costs and accountability. Various infrastructure projects in Indonesia based on the PPP

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Framework. Indonesia Government has numbers of policy to support this framework such as Presidential Regulation No 38/ 2015 about the Public-Private Partnership for Infrastructure Project and President regulation No 58/ 2017 about The Accelerations National Strategic Project. The purpose of this research is to have legislation and regulation framework as a platform the Public-Private Partnership in Indonesia, and identified the potential issues with mitigation action for Indonesia as developing countries in implementation PPP for an infrastructure project to triumph sustainable developments in Indonesia.

Keywords: infrastructure, public-private partnership

Introduction

Indonesia is a big country with a high economic growth target in order to face global competitiveness. However, Indonesia has not achieved the ideal economic growth target in order to achieve the classification as a developed country in 2025. One of the barriers that Indonesia's government is currently working on is infrastructure development because infrastructure growth gives impetus to the economic growth of a country, This is a reason the government under President Joko Widodo has started to accelerate infrastructure development¹ focusing on investment and regulation.

The Government set targets to build approximately 788 km of the road by the end of 2017, since the 2015-2016 completion that built 1845 km of road. In 2019, Bridge development will be 29,8 km, from 2016 completion of 14 km in the housing sector. The government will develop high rise housing, private and housing for low-income community^{2,3}. Not only infrastructure development such as road but also telecommunication in a remote area. In 2017, President Joko Widodo and Vice President Jusuf Kalla initiated the "Expressway of Information" in accordance with their governance mission to focus on infrastructure development in telecommunications and to ensure the even spread of telecommunication services. Under the "Expressway of Information", the government expected to make the whole of Indonesia much more closely linked. The Palapa Ring⁴ Project is one example of infrastructure development projects initiated by the government in the telecommunications sector.

Telecommunications infrastructure development gives positive impetus to the distribution of information and communication all over Indonesia. The massive investment made by the government to build

is, therefore, to intensify cooperation with the private sector through Public Private Partnership (PPP). Nowadays, most of the infrastructure development projects in Indonesia are conducted and offered under Public Private Partnership.

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Following with this condition, private enterprises in Indonesia have an important role as well as a huge responsibility in infrastructure development. The Rp. 1.974 trillion from the infrastructure budget Rp. 4.700 trillion in the 2015-2016 period, shows the relatively high portion of private entities¹⁰. It means cooperation with private enterprises is needed to fill the deviation in the infrastructure budget, and this could be solved with public-private partnership.

The government of Indonesia provides any facility to make public-private partnership work effectively in Indonesia and also important for Indonesia. In 2017, the Ministry of National Development Planning/National Development Planning Agency released the Public-Private Partnership (PPP) Book 2017¹¹ that contains a list of infrastructure development projects that will be conducted under the PPP scheme. The Ministry invites international investors to participate and ensures all investors that all government projects under the PPP book 2017¹¹ will be conducted in cooperation with private enterprises. Another government office concerned with PPP is Indonesia's government formed PPP Office Government of Indonesia coordinating with National Development Planning Agency Ministry for Economic Affairs, Ministry of Finance, The Investment Coordinating Board of the Republic of Indonesia, National Public Procurement Agency, and Indonesia Infrastructure Guarantee Fund.

With regard to the infrastructure development in Indonesia, and also follow with the development of the PPP framework, the study related PPP as a problem solving for infrastructure funding become very important. Lawyers nowadays should be familiar with this scheme and also understand the regulations on PPP for infrastructure development. This article will try to elucidate the extent to which Indonesia regulates the PPP framework, and has the necessary legislation in place. It also identifies the potential challenges for Indonesia as a developing country in the implementation of PPP for infrastructure projects designed to strengthen sustainable development in Indonesia.

The definition of public-private partnership

Public-Private Partnership is one of the alternative infrastructure funding that currently happening widely in Indonesia. In infrastruc-

ture funding, PPP provides four funding option based on the source of the fund. Those four infrastructure funding comprise of central government funding through national budget, local government funding through local budget, state-owned enterprises fund, and lastly Public Private Partnership fund with central government and state-owned enterprises fund private-owned enterprises.

Although Public Private Partnership is known since 2005, 10 years later Indonesian government finally use alternative infrastructure funding in 2015. Through government regulation number 38 the year 2015 about Public Private Partnership. PPP defined as cooperation between public and private in the process of infrastructure development for the public purposes, based on the specifications made by the Minister/ Head of Agency/ Head of Local Government/ State Enterprises/ Local Government Enterprises, with the whole or partly use the sources from the private entities and consider the risk between the parties.

Cooperation between private and public sector vitrually have been known and applied for a fairly long time ago in terms of infrastructure development. History shows that infrastructure development will also increase economic development, one of the examples show that in the 1800s in the industrial revolution era. Transcontinental Railway in the United States, the British and Japanese Railway system project indicate that project mentioned above had become the backbone of economic activity continuance in that era. Additionally, Third railway development involving numbers of the party that indicate similar trend¹². PPP framework considered as one of the method to decrease the investment gap in infrastructure development in various countries. PPP framework has to be supported with adequate law system from procurement to the dispute settlement mechanism.

The Indonesia Government has been promoting the exercise of Public-Private Partnership (PPP) the past few years. Throughout history, governments have used such a mix of public and private cooperation to further develop their country Dorthea Greiling and Arie Halachmi¹³. PPP comes up to the surface when people start to realize that a country has a limited source to build infrastructures and social services while the demand of its presence is very high. The development of countries infrastructure cannot keep up with its people's demand if they depend solely on countries fund. It needs an external source of fund to accelerate the development of infrastructure and social services. PPP phenomenon has been with us for a long time. The origin of PPP can be trace back until the early 1990s. The first phrase became used by a spe-

cialist audience in the 1970s, and books were being written about such partnerships even in the 1980s, although it was the 1990s before it was widely recognized, when the Private Finance Initiative was launched by the John Major administration in the UK, and the acronym 'PPP' became common currency¹³.

There is no consensus of how to define PPP¹⁴. However, PPP can be defined as a cooperative arrangement between two or more public and private sectors typically of a long-term nature which covers, but not limited to risk allocation, funding, arrangements, and transparency requirements¹⁵. PPPs often formed in a contract between a public sector **authority and** private entities, in which the private entities provide a public service or project and assumes substantial financial, technical and operational risk in the project. According to the World Bank PPP¹⁶ refers to arrangements, typically medium to long-term, between the public and private sectors whereby some of the services that fall under the responsibilities of the public sector are provided by the private sector, with clear agreement on shared objectives for delivery of public infrastructure and/ or public services. In another definition, the World Bank and other Institutions adopt a broader view to defining PPP as a long-term contract between private entities and a government entity, for providing a public asset or service, in which the private entities bear significant risk and management responsibility, and remuneration is linked to performance¹⁶.

There are two types of how PPP stream revenue can benefit the private sector. In some types of PPP, the cost of using the service is borne exclusively by the users of the service and not by the taxpayer¹⁷. **In other types, capital investment is made by the private sector on the basis of a contract with** the government to provide agreed services and the cost of providing the service is borne wholly or in part by the government. According to Weimer and Vining¹⁸, "A PPP typically involves a private entity financing, constructing, or managing a public service or project in return for a promised stream of payments directly from the government or indirectly from users over the projected life of the project or some other specified period of time"¹⁸. When John Major launched the PFI in 1992, it proved to be controversial. Been attacked by the opposition party saying "apparent savings now could be countered by the formidable commitment to revenue expenditure in years to come"¹³.

Nowadays, the PPP framework is become more popular for the infrastructure project, since this framework can give the benefit not only

for the private sector but also for the public sector. PPP seems will replace the traditional method for the contracting for public services, which is usually conducted through competitive tendering⁵. Another definition is stated by Weimer and Vining¹⁸; “ a PPP Project generally involves the design, construction, financing, and maintenance (an in some cases operation) of public infrastructure or a public facility by the private sector under a long terms contract”¹⁸. In another way because sometime this collaboration will establish a new organization, so the PPP some time would be like some new institution or organization, consist of public and private sector⁵.

Dutch Public Management Scholars, Weimer and Vining¹⁸. They defined PPP through an institutional lens, cooperation of some sort of durability between public and private in which they jointly develop products and services and share risks, costs, and resources which are connected with these products. From this definition, we learned PPP is cooperation with the durability, there is a risk sharing, and they jointly to produce something and also gain some mutual benefit⁵. For the infrastructure project, both parties will joint to produce the infrastructure. Another issue about the PPP, follow the characteristic of PPP as institutional, is how the public and private entities engaged in financial arrangements and also how they could organize both the public and private sectors.

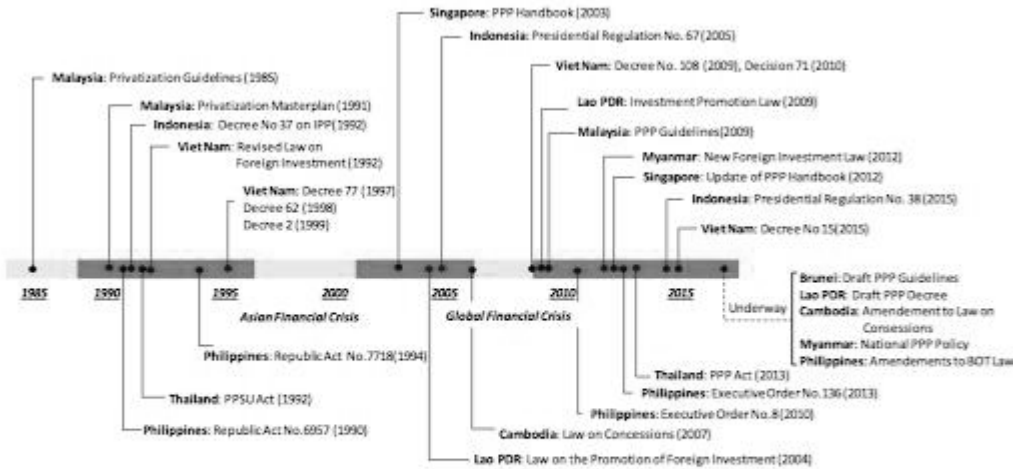
The ASEAN PPP guidelines¹⁹ defined PPP as a specialized procurement method employed by the government for the delivery of public goods and infrastructures services. These guidelines also emphasized the difference between PPP contract and conventional procurement. PPP contracts are long-term arrangements featuring private capital at risk and the allocation of transactional risk to a private party, including the responsibility for lifecycle costs¹⁹. The ASEAN PPP guidelines¹⁹ also mention about the primary objectives of PPP policy is for speedy implementation of strategic infrastructure plans and growth in the flow of foreign direct investment (FDI). The definition of a PPP contract will include the following contract forms over the policy development period:

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	Early Stage or Initial PPP Policy	Intermediate Stage PPP Policy	Mature PPP Policy
Privatisation of State Businesses Enterprises	X		
Privatisation of State Assets	X		
Privatisation with Residual Interest	X		
Private Finance Initiative (PFI)	X	X	X
BOT, BOO and BOOT Contracts	X	X	X
Design, Renovate, Build, Operate Contracts	X	X	X
Operations and Maintenance Contracts	X	X	X
Design, Build, Finance, Operate (DBFO) Contracts	X	X	X
Renovate, Build and Operate Contracts	X	X	X
Concessions	X	X	X
Management and Service Contracts	X	X	
Traditional Construction Contract			

Source: ASEAN PPP Guidelines¹⁹

In general, all members ASEAN have started to adopt the PPP framework in their national infrastructure development. The national regulatory in each member states of ASEAN for the PPP framework is still at a transitional stage. For the national regulatory, Philippines more developed than Indonesia, Thailand, and Vietnam²⁰.



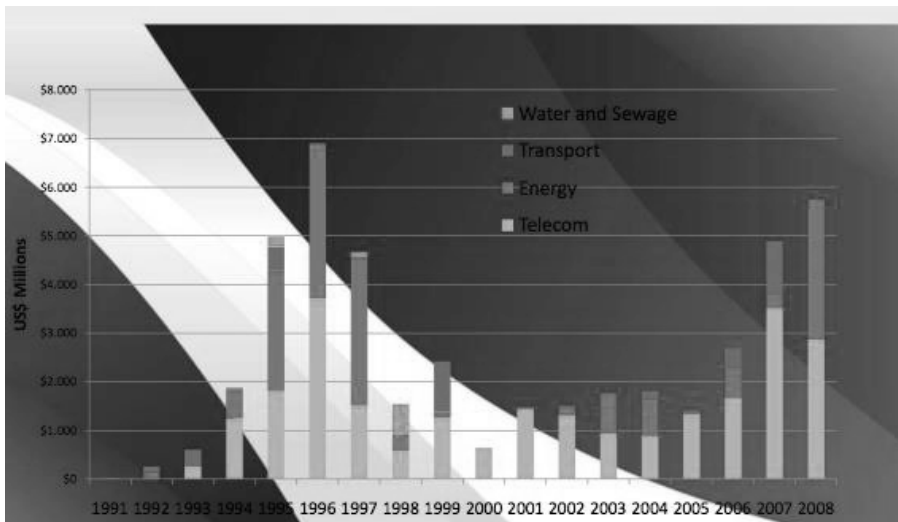
BOT = build–operate–transfer, IPP = independent power producer, Lao PDR = Lao People’s Democratic Republic, PPP = public-private partnership, PPSU = Private Participation in State Undertakings.

Source: Compiled by authors.

Source: ERIA summary on PPP 2015²⁰

The Regulation of Public-Private Partnership in Indonesia

In Indonesia, the private participation for infrastructure development is increasing. The private participation spread average in every sector infrastructure development. The statistic shows the private participation increase from the early 1990s until now. The National Development Planning Agency released the data statistic on 2010, in regard to the private participation in infrastructure development.



Source: World Bank Jakarta, 2010¹⁶

The Indonesia Government has highlighted the 60% of total infrastructure funding is required to fill the gap the total infrastructure funding needs. It is really important to improve private participation in infrastructure development. The contribution of private entity expected not only for the funding but also contribute in sharing knowledge and experience in the development, operation, and management.

The Indonesia Government committed to improving private participation by increasing investment attractiveness. To support the program government amendment and revoked the previous regulation Presidential Regulation 67/2005 with the Presidential Regulation 38/2015 on Cooperation between Government and Business entity in Infrastructure Provision. Another regulation to strengthen is Ministry of National Development Planning No 4/2015 regarding operational guideline for the PPP in infrastructure provision, head of national procurement agency (LKPP) Regulation No 19/2015 regarding guideline for procurement of Business entity on PPP infrastructure provision and ministry of home affair regulation Number 96 year 2016 regarding availability payment on regional PPP in infrastructure provision.

BAPPENAS as National Development Planning Agency is responsible for the PPP planning and implementation in Indonesia. The responsibility is also to increase the attractiveness of investment to funding project in Indonesia. To provide information for the private entities BAPPENAS issues a PPP Book 2017. These books provide information on available infrastructure investment in Indonesia to potential investors. There is number listed in PPP Book 2017 which divide into the offer projects and under preparation projects, and also project that has already moved to the tender process. In the PPP Books 2017 provide 22 projects with 21 under preparation projects and 1 ready to offer projects, with 17 already tendered project.

The infrastructure development in Indonesia is important to support national development to increase national economic, and community welfare. To improve the infrastructure development, Indonesia Government realized to support the investment and the participation of private entities in infrastructure development. With this concern, the government prepared the regulation for the mutual benefit for all parties, government, and private entities. The presidential regulation is one of the government regulations to provide cooperation between public and private entities in Infrastructure development.

The purpose of the cooperation of public and private entities, is to solve the problem in regard to the infrastructure funding by the funding from the private entities. The infrastructure, which will be provided for the scheme is the economic infrastructure and social infrastructure. These two kinds of infrastructure include the transportation, road, water and irrigation, drinking water, the management of waste, the telecommunication and informatics infrastructure, energy, oil and gas and renewal energy, conservation energy, the city facility of infrastructure, the education of infrastructure, the infrastructure for sport and art, tourism infrastructure, health infrastructure. The cooperation should conduct on the basis for the public interest.

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For every infrastructure project with the PPP framework, the presidential regulation regulates about the head of the cooperation project. The head of the cooperation project will be the Minister/ Head of agency/ Head of local government with considering the specific law. For this responsibility, the Minister/Head of agency/ Head of local government should sign the memorandum of understanding as head of the cooperation project. This is also applied to the state-owned enterprises. The cooperation will conduct with the basis of a memorandum of agreement between the executor entities.

This regulation also regulates about the land, as one of the important things in the PPP project which all the land should conduct under the law for the public interest. The regulation also stated about the support and guarantee from the government for the PPP framework. The infrastructure project with the PPP Framework should have the feasibility study. These studies include the plan of the PPP framework, the plan of infrastructure funding and also the source, the plan of cooperation planning include the schedule, process, and assessment. In the implementation of the PPP project, the head of the cooperation project could conduct the public consultation. In this regulation also regulate the participation of national public procurement agency in Indonesia when the implementation PPP, there is more than one private entity.

The presidential regulation 38/ 2015 is a comprehensive regulation about the PPP framework in Indonesia. Its regulate from the preparation step until the implementation of the project. The PPP framework needs the legal instrument for implementation. All the rights and obligation, which will be the rules of the project regulate on the contract between the parties. The formation of the contract should regulate about the scope of the project, duration of the project, the guarantee,

fee, standardization, transfer of shares, breach of contract condition, termination, and the asset management and dispute settlement.

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In 2017, Indonesia government release Presidential regulation No 58/2017 in regard with Acceleration of Implementation National Strategic Project. Indonesia government has a list of the national strategic project which before regulated by the presidential regulation No 3/ 2016. The existing regulation tries to revise the list of national strategic project and also regulate about the project funding by the non-government budget. These regulations also emphasized the needs of cooperation between the public and private entities in the infrastructure development.

Another regulation provides for the PPP framework to support the acceleration of infrastructure development, such as as:

- Presidential Regulation Number 78 the year 2010 regarding government guarantee on PPP infrastructure project;
- Presidential Regulation Number 75 the year 2015 regarding Acceleration of Priority Infrastructure Procurement;
- Ministerial Regulation of Finance Number 260 the Year 2010 as amended by Ministerial Regulation of Finance Number 8 the year 2016 regarding guideline on a government guarantee. The Government guarantee has been applied on Palapa Ring Project, Umbulan Water Supply Project, Central Java Power Plan Project, and Toll Road Projects;
- Ministerial Regulation of National Development Planning/had of National Development Planning Agency Number 4 the Year 2015 regarding operational guideline for the PPP in Infrastructure Provision;
- Head of National Procurement Agency (LKPP) Regulation Number 19 the Year 2015 Regarding Guideline for Procurement of Business Entity on PPP in infrastructure provision;
- Ministerial Regulation of Finance Number 129 the year 2016, issued as replacement of Ministerial Regulation of Finance Number 265 the year 2015 regarding Preparation and Execution of Transaction of PPP in Infrastructure Provision;
- Ministerial Regulation of Finance Number 190 the year 2015 Regarding Availability Payment on PPP in infrastructure Provision;
- Ministerial Regulation of Home Affair Number 96 the Year 2016 Regarding Availability Payment on Regional PPP in infrastructure Provision;
- Ministerial Regulation of Finance Number 223 the year 2012 Regarding Viability Gap Funding.

The implementation of PPP in Indonesia to strengthen the sustainable developments in Indonesia

PPP will be the most popular framework for infrastructure development. Indonesia government has committed to increasing the PPP framework to support infrastructure development, as one of the strategic development. Besides the regulation about the PPP framework by the presidential regulation 38/ 2015, the government should build another environment for the PPP framework. It should build the synergy between all the parties in terms of promoting infrastructure development growth.

The benefit of PPP framework for the infrastructure development is the efficiency and optimizing the local government budget, risk sharing between the public and private to increase the attractiveness project, transfer of knowledge and also technology to local government, and investment potential.

In the implementation of the PPP framework in Indonesia, there are numbers of barriers to the implementation. One of the issues is coordination issue between numbers of agency in government and also on the step of legislation. Another issue in the implementation is a land acquisition for the PPP project, which is need policy and also legal reform for the land issue. Sometimes the PPP project less feasible, and need government policy to make it more feasible in terms of law and regulation³.

The key success for PPP framework is the same interest and the same purposes between the public and private entities. The different point of view will be potential for the new problem. For example, PPP project for the government expected work to minimize the financial for the infrastructure development, since the main problem for the government is a limited budget for the infrastructure development and also to provide high-quality services. It would be different from the private entities view, they do the project on the basis for the profit and business. It seems that every detail on the PPP framework should be clear and regulate on the contract between the parties. Another challenge is the government paradigm about the cooperation with private entities, the whole part of government should be realized to keep the PPP framework as an alternative which should be improved, distribute and promote to the investor. In general, the PPP framework should conduct to build, to control, and to operate the infrastructure project under the government control and government regulation.

To support the PPP framework the Indonesia government established numbers of state-owned enterprises and also commission to

support the infrastructure development. The Indonesia Infrastructure Guarantee Fund (IIGF) is one of the state owned enterprises to provide government guarantees for infrastructure projects developed under the PPP framework. The IIGF established on December 30, 2009, under the ministry of finance. The IIGF purpose is to provide the better framework in attracting private investment and participation. IIGF also works with international and multilateral institutions in increasing its capacity to guarantee large-scale infrastructure projects. IIGF was established as part of the government to speed up the infrastructure development by providing guarantees through accountable, transparent and credible process²¹. IIGF also provides the benefit for the private sector mitigation risks in the implementation of infrastructure projects. Another function of IIGF is also to be the PPP office for the Government of Indonesia and will be work together between National Development Planning Agency, Coordinating Minister for Economic Affairs, Ministry of Finance, The Investment Coordinating Board of the Republic of Indonesia, National Public Procurement Agency and IIGF.

Another government effort to support the infrastructure development is the establishment of the Committee for Acceleration of Priority Infrastructure Delivery. As mentioned before, one of the obstacles of the infrastructure development in Indonesia is lack of coordination between various stakeholders involved. The committee was established with the main objective of becoming a coordinating unit in decision-making processes to encourage settlement of issues arising from the lack of effective coordination between the various stakeholders. The purpose of this committee is to regulate under the presidential regulation 75/ 2014²². The KPPIP works under the coordination of Coordination Ministry for Economic Affairs.

The Sarana Multi Infrastruktur Indonesia also another state-owned enterprises to improve the infrastructure development in Indonesia. As infrastructure financing company which was established in 2009, and 100 % shares owned by the Government of Indonesia through Minister of Finance. SMI has a function in facilitating infrastructure financing and also preparing the project and has an advisory function for an infrastructure project in Indonesia. SMI also has a function to support the government in PPP Projects²³.

Another key of success in the PPP Projects, follow the government support is the system of the dispute settlement between the parties

in the PPP project. In general, there are so many recommendations for the infrastructure project arbitration is the best method dispute settlement between the parties. Arbitration regulates under Indonesia Law No 30/ 1999 regarding arbitration and alternative dispute resolution. As defined by the law, arbitration is an alternative method out of court for the private dispute based on the writing contract between the parties. Arbitration should be known as a system in the infrastructure project to provide the law as mitigation action of the potential dispute between the parties in the PPP projects.

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Nowadays, the existence of arbitration as a method dispute settlement in the infrastructure projects has been proved. It is also emphasized in the new law of construction services law no 2/ 2017, which replace the previous law 18/1999. Before, there are numbers of methods which could be chosen by the parties such as negotiation, conciliation, mediation, arbitration and also court. The parties mostly choose court as their method of dispute settlement. The dispute settlement in Law 2/ 2017 regulates in article 88. The parties should choose and regulate the dispute settlement between the parties on the contract and will give the jurisdiction to the arbitration tribunal, and as resources for the tribunal to conduct the arbitration proceeding. With the advantage of arbitration, the parties expected the dispute far from the public concern. The dispute in the business is related to the reputation.

Regarding the PPP framework, which required the memorandum of agreement between the public and private sector, dispute settlement also one of the clauses in their agreement. The parties could choose arbitration as their dispute settlement and also by mentioned the institutional arbitration and the rules, makes their agreement operative. BANI arbitration center is one of the institutional arbitration in Indonesia, which provides the services in relation to arbitration, mediation, binding opinion and another form of dispute resolutions, include the infrastructure or construction disputes²⁴.

Conclusion

Nowadays, infrastructure development is the focus of Indonesia Government. With the infrastructure development, it is believed to improve the economic growth of the country. The infrastructure development in Indonesia, include the build of the road, improve the transportation, and also the development of information and communication infrastructure, which expected to connect all the Indonesia area. The

Government realized the financial based on the national budget is limited, and could not support the acceleration of national strategic project in particular for infrastructure development. There are numbers of an alternative to finance infrastructure development. One of them is Public Private Partnership framework. The cooperation between the public and private entity or the business entity. The PPP is regulated by the presidential regulation 38/ 2015²¹ to support the acceleration of national strategic project based on the presidential regulation 58/2017. To support the PPP framework Indonesia government issued the PPP Book 2017, which provide the information of PPP Project. This book provides to give and attract the investor to invest in the infrastructure project in Indonesia. The government also support with establishing numbers of the institution to give the facility and guarantee for the private in doing business in Indonesia. Dispute settlement institution is also another system of law provides in Indonesia. Arbitration recognized under the Indonesia Law to settle the future dispute between the parties on the basis of the arbitration agreement between the parties regulates in the memorandum of agreement of the PPP projects.

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