

## Legal Status of Legal Entity State Universities regarding the Implementation of Public-Private Partnership

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### ABSTRAK

*Peraturan presiden memberikan kebijakan yang memberikan landasan pengaturan bagi kerja sama pemerintah dengan badan usaha, termasuk kerja sama yang dilaksanakan oleh perguruan tinggi negeri badan hukum. Akan tetapi, kedudukan perguruan tinggi negeri badan memiliki karakteristik sebagaimana ditentukan oleh undang – undang tentang Pendidikan tinggi, sehingga terdapat permasalahan hukum terkait kedudukan hukum perguruan tinggi badan hukum dalam pelaksanaan kerja sama pemerintah dengan badan usaha dan tidak adanya dukungan Pemerintah kepada perguruan tinggi badan hukum atas penyelenggaraan kerja sama pemerintah dengan badan usaha. metode penelitian menggunakan metode penelitian hukum yuridis normatif yang menitikberatkan pada data kepustakaan dengan mempergunakan metode analisa penafsiran hukum dengan penyajian deskriptif analitis. hasil penelitian menunjukkan perguruan tinggi badan hukum wajib mempertimbangkan kemandirian pengelolaan, sumber pendanaan, perencanaan pembangunan, konsep pendanaan, dan pelimpahan kewenangan dalam hal mendapatkan kedudukan hukum atas penyelenggaraan kerja sama pemerintah dengan badan usaha. Perguruan tinggi badan hukum juga perlu mendapatkan dukungan dari Kementerian Pendidikan, Kebudayaan, Riset dan Teknologi sebagai lembaga pemerintah yang menaungi perguruan tinggi badan hukum melalui penyusunan regulasi tentang penyelenggaraan kerja sama pemerintah dengan badan usaha di lingkungan Kementerian Pendidikan, Kebudayaan, Riset dan Teknologi.*

### ABSTRACT

The presidential regulation provides a policy that provides a regulatory basis for government cooperation with business entities, including cooperation carried out by state universities as legal entities. However, the position of state universities as legal entities has characteristics as determined by the Law on Higher Education, so that there are legal problems related to the legal position of state universities as legal entities in implementing government cooperation with business entities and the absence of government support for state universities as legal entities for implementing government cooperation with business entities. The research method uses a normative legal research method that focuses on library data using the legal interpretation analysis method with analytical descriptive presentation. The results of the study indicate that state universities as legal entities are required to consider management independence, funding sources, development planning, funding concepts, and delegation of authority in terms of obtaining legal standing for implementing government cooperation with business entities. State universities as legal entities also need to get support from the Ministry of Education, Culture, Research and Technology as a government institution that oversees state universities as legal entities through the preparation of regulations on implementing government cooperation with business entities within the Ministry of Education, Culture, Research and Technology.

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## INTRODUCTION

Higher education is established and/or organized by the Government as specifically regulated in Law Number 12 of 2012 concerning Higher Education (hereinafter referred to as the Higher Education Law). The regulation of higher education is motivated by its strategic role in educating the nation's life and advancing science and technology by paying attention to and applying humanities values as well as the sustainable acculturation and empowerment of the Indonesian nation. Apart from that, universities also play a role in increasing the nation's competitiveness in facing globalization in all fields (Undang - Undang Republik Indonesia Nomor 12 Tahun 2012 tentang Pendidikan Tinggi, 2012).

The characteristic of higher education in Indonesia is the autonomy of higher education management. The Higher Education Law states that universities are obligated to carry out the Tridharma, namely providing education, research, and community service (Undang - Undang Republik Indonesia Nomor 12 Tahun 2012 tentang Pendidikan Tinggi, 2012). This obligation underlies the implementation of autonomy in higher education management.

The benchmarks for a university being able to carry out autonomy are the basis of implementation, the organization's objectives, and the university's ability to implement the Tridharma. The concept of tri dharma autonomy for higher education institutions is not necessarily given to every university, as explained in the Higher Education Law, which explains that state higher education or university are layered based on the ability to implement higher education autonomy as determined by the Minister (Undang - Undang Republik Indonesia Nomor 12 Tahun 2012 tentang Pendidikan Tinggi, 2012).

This layering consists of PTN with Work Unit management (hereinafter referred to as PTN Satker), PTN with Public Service Agency management (hereinafter referred to as PTN-BLU), and PTN with Legal Entities (hereinafter referred to as PTN-BH). This layering generally shows differences in financial management and authority granting to each PTN. Apart from the various forms of PTN as described above, what is of concern regarding the regulation of higher education institutions is the obligation to carry out higher education development of information management systems, tiered coaching systems, open learning resources, use of information technology, and higher education centers of excellence (Undang - Undang Republik Indonesia Nomor 12 Tahun 2012 tentang Pendidikan Tinggi, 2012). This applies to all higher education providers, both PTN Satker, PTN-BLU, and PTN-BH.

These various obligations are given to universities to improve the quality of education in Indonesia. However, the current phenomenon is that universities, especially PTN-BH, are having difficulty implementing higher education development due to budget constraints. This phenomenon was written about by Didi Achjari on the Kompas.id page, who explained that the allocation of funding assistance from the Government for each PTN-BH was given increasingly smaller as a form of implementation of the granting of higher education autonomy. In fact, the purpose of the funding assistance is to provide a subsidy to PTN-BH for the difference between the single tuition fee paid by PTN and the UKT paid by students. The allocation of PTN-BH funding assistance serves to cover the lower UKT difference compared to the expenditure unit for all students at each PTN-BH.

This situation implies that the subsidy allocation received by each PTN-BH is difficult to fulfill due to the limited budget of the Ministry of Education, Culture, Research and Technology (hereinafter referred to as the Ministry of Education and Culture, Research and Technology). This has an impact on the implementation of PTN-BH policies to meet funding needs through the provision of independent pathway selection, determining UKT rates, and institutional

development fees which have an impact on increasing capacity without considering the carrying capacity of existing resources (Didi Achjari, 2023). The policy of providing independent pathway selection, determining UKT rates, and excessive institutional development fees will majorly impact the quality of higher education provision. The reduction in the number of students entering private universities and the imbalance in supporting capacity and resources with the capacity of PTN-BH will result in a decline in the quality of higher education in Indonesia.

This phenomenon shows an imbalance in carrying capacity and resources with the carrying capacity of PTN-BH due to the small subsidy allocation received by each PTN-BH. Efforts that need to be made to achieve a balance of carrying capacity and resources with carrying capacity are through the availability of physical infrastructure in higher education. However, the government's investment policy on the physical infrastructure of higher education institutions cannot yet be implemented due to budget constraints, which can be seen in the posture of the education budget.

Based on the 2023 State Revenue and Expenditure Budget (hereinafter referred to as APBN), it is recorded that the budget for the education sector is allocated IDR 612.2 trillion. Of this amount, the Government through the Ministry of Education and Culture used IDR 237.1 trillion for spending. In detail, the budget was used for the Smart Indonesia Program (PIP) for 20.1 million students as well as the Smart Indonesia Card (KIP) for tuition for 994.3 thousand students. Apart from that, there is a professional teacher allowance for 553.5 thousand non-PNS teachers. Meanwhile, the regional transfer allocation is IDR 305.6 trillion for School Operational Assistance (BOS) for 43.7 million students, there is also Operational Assistance for the Implementation of Early Childhood Education (PAUD) for 6.2 million students, and BOP for Equal Education for 806 thousand students. The remaining Rp. 69.5 trillion is for endowment funds for education, research, higher education and culture (Dewan Perwakilan Rakyat Republik Indonesia, 2023). Based on this budgeting posture, education budgeting in Indonesia is oriented towards BOS for pupils and students, making it very difficult to use government budgeting instruments in the context of developing the physical infrastructure of higher education. Such conditions experienced by the Ministry of Education and Culture, Research and Technology, create urgency for the government to use infrastructure provision methods to provide physical infrastructure development, especially for universities.

The method of providing infrastructure discussed in this research is Government Cooperation with Business Entities in Providing Infrastructure (hereinafter referred to as PPP). PPP is a collaboration between the government and Business Entities in the Provision of Infrastructure for the public interest by referring to specifications previously determined by the Minister/Head of Institution/Head of Region/State-Owned Enterprise/Regional-Owned Enterprise, which partly or wholly uses the resources of the Business Entity by paying attention to the distribution of risks between the parties, with comprehensive steps to create an investment climate, to encourage the participation of business entities in providing infrastructure and services based on healthy business principles (Peraturan Presiden Republik Indonesia Nomor 38 Tahun 2015 tentang Kerjasama Pemerintah dengan Badan Usaha dalam Penyediaan Infrastruktur, 2015). Distribution and management of risks such as market uncertainty, policy changes and operational disruptions (Utami & Pasaribu, 2024) are the main points in the implementation of KPBU.

The potential for using PPP as a method of providing infrastructure is captured and implemented by the Indonesian Government through Presidential Regulation Number 38 of 2015 concerning Government Cooperation with Business Entities in Providing Infrastructure (hereinafter referred to as the PPP Presidential Decree) as well as Regulation of the Minister of National Development

Planning/BAPPENAS Number 7 of 2023 concerning Work Implementation Together with the Government and Business Entities in Providing Infrastructure (hereinafter referred to as the PPP Ministerial Regulation). The urgency of the presence of policies in the form of statutory regulations is the country's urgent need for adequate and sustainable infrastructure, accelerating infrastructure development and encouraging increased cooperation between the government and business entities in providing infrastructure and social services (Peraturan Presiden Republik Indonesia Nomor 38 Tahun 2015 tentang Kerjasama Pemerintah dengan Badan Usaha dalam Penyediaan Infrastruktur, 2015). Partnerships in this kind of PPP mainly defined as strategic relationships between independent entities that share the same goals, seek mutual benefit, and recognize a high degree of interdependence (Zuhdi et al., 2024).

The legal subject of PPP implementers is regulated in the provisions of Article 6 of the PPP Presidential Decree, which states that PPP implementers are ministers/heads of institutions/regional heads whose determination is made by considering the laws and regulations in the sector. These regulations provide various broad interpretations of which legal subjects can implement PPPs by the laws and regulations in their respective sectors. Therefore, the legal subject of PPP implementers is defined in more detail in the Minister of PPP Regulation, which states that PPP implementers are ministers/heads of institutions/regional heads or officials below them through delegation of authority (Peraturan Menteri PPN Nomor 7 Tahun 2023 tentang Pelaksanaan Kerjasama Pemerintah dengan Badan Usaha dalam Penyediaan Infrastruktur, 2023). The legal problem that arises from the presence of provisions in the PPP Ministerial Regulation relating to PTN-BH as the legal subject of PPP, is that the basis for considerations whether a PTN-BH can be declared to have legal standing as a PPP Implementer is unclear, and how to support the government's efforts to support PTN-BH in implementing the PPP.

### Literature Review

Discussions about PPPs are a topic that is widely researched by legal academics and the academic community at various universities in Indonesia. This is proven by research that resembles research conducted by the author. Some of the writings obtained based on the author's observations are as follows:

**Table 1.**  
**Previous research on PPP**

No.	Title	Writer	Publisher	Year
1	Government Cooperation Scheme with Business Entities (KPBU) in Providing Street Lighting Infrastructure (APJ)	Eka Setiajatnika; Trida Gunadi; Heri Nugraha	Management Scientific Journal, Indonesian Cooperative University, Vol 14., No. 2.	2023
2	Understanding and Learning from the Planning and Preparation Stage of Infrastructure Development in Indonesia through the Government and Agency Cooperation Scheme in Infrastructure Provision (KPBU)	Mochamad Rifki Maulana	Mandala Research and Education Institute, Journal of Social Sciences and Education, Vol. 5., no. 1	2021

No.	Title	Writer	Publisher	Year
3	The Urgency of Forming Regional Regulations on Government Cooperation with Business Entities in Providing Infrastructure	Wahyu Adi Mudiparwanto; Ade Gunawan	Legal Journal Diversion, Kediri Islamic University Faculty of Law, Vol 8., No. 1.	2022

Source: Author Processed

The first research discusses how to implement the PPP scheme in providing infrastructure in the form of public street lighting. What is similar to this research is the discussion of the main topic regarding PPP schemes to provide infrastructure. The difference with this research can be seen in the legal subject and type of infrastructure that will be collaborated, as well as the absence of discussion regarding authority which is the main characteristic of this research.

The second research discusses the understanding and learning process in the PPP stages, which is specific to the PPP planning and preparation stages. What is like this research is the discussion of the main topic regarding the implementation of the PPP scheme to provide infrastructure. This difference can be seen in the focus of the discussion which specifically discusses PPP planning and preparation, while this research discusses the main issues regarding the legal position and support for the implementation of PPP by PTN.

The third research discusses the formation of regional regulations regarding PPP. What this research has in common is the discussion of the big topic regarding PPP authority. The difference with this research can be seen in the focus of discussing authority, where the third research focuses on the Regional Head and/or Regional People's Representative Council, while this research focuses on the Minister of Education and Culture, Research and Technology.

This research fills a knowledge gap that has not been touched by previous studies, making a significant contribution to a deeper understanding of PPP in Indonesia.

## RESEARCH METHODS

This research seeks to answer questions related to PTN-BH's position in implementing PPP in Indonesia as well as the form of government support in implementing PPP by PTN-BH. This research uses normative juridical legal research methods. Normative juridical legal research methods are used to examine statutory regulations in the field of higher education and KBPU which are used as sample data, research results and various other references (Soerjono Soekanto, 2010).

The approach method that will be used in this research is the normative juridical approach method, which focuses on research on library data (Soerjono Soekanto, 2010). The literature that is the scope of this research is laws and regulations in the field of higher education, PTN-BH statutes in Indonesia, laws and regulations in the PPP sector, and internal documents of the central government. This data is complemented by legal theories and concepts, namely the theory of delegation of authority, development law theory, legal function theory and the concept of higher education autonomy.

The data collection technique used in this research focuses on library data including primary legal materials and secondary legal materials. The primary legal materials collected are laws and regulations in the field of higher education, PTN-BH statutes in Indonesia and laws and regulations in the PPP sector. The secondary legal materials collected were literature relating to

the theory of delegation of authority, development law theory, legal function theory and the concept of higher education autonomy as well as internal documents of the central government.

The research specifications that will be displayed are analytical descriptive, by presenting the data or description as carefully as possible regarding the object of the problem (Beni Ahmad Saebani, 2009). Through research specifications, the authority of the Minister of Education and Culture, Research and Technology will be described based on statutory regulations which are linked to the theory of delegation of authority, development law theory, legal function theory and the concept of higher education autonomy.

The method of analysis for this research was carried out through legal interpretation. Legal interpretation is one method of approach in cases where regulations exist but are not clear enough to be applied to existing legal subjects and/or legal events (Khalid, 2014). The legal interpretation carried out in this research uses a grammatical interpretation method, which emphasizes the meaning of the text in which legal rules are stated. This method departs from the meaning of words used in daily activities or standard technical-juridical meanings, so that it is hoped that there will be clarity regarding a legal subject and/or legal event that can be applied by a regulation through the meaning of the statutory regulations.

## RESULTS AND DISCUSSIONS

### a) Legal Position of Legal Entity State University in implementing PPP in Indonesia.

The definition of legal position is closely related to disputes or court cases, such as Constitutional Court cases. Harjono believes that legal standing is the right to file a lawsuit or petition before the court (Nur Rahman Anna Triningsih et al., 2011). When interpreted in a wider context, legal position is a situation in which a certain person or party meets the conditions and has the right to perform a legal act.

Concerning the legal position of PTN-BH in implementing PPP in Indonesia, this discussion will contain a condition that needs to be fulfilled by PTN-BH as a legal subject, so that it can be said that PTN-BH is allowed to implement PPP in Indonesia. In looking at these requirements, it is necessary to conduct a review based on the legal basis for implementing PPPs in Indonesia, including the PPP Presidential Decree and the PPP Ministerial Regulation.

Based on the provisions of the PPP Presidential Decree, there is no mention regarding the conditions for a legal subject to be an implementer of the PPP. However, the PPP Presidential Decree explicitly states that the Minister/Head of Institution/Regional Head or State-Owned Enterprise (hereinafter referred to as BUMN)/Regional-Owned Enterprise (hereinafter referred to as BUMD) is the person responsible for cooperation in the PPP who is the organizer and/or implementer. from the PPP (Peraturan Presiden Republik Indonesia Nomor 38 Tahun 2015 tentang Kerjasama Pemerintah dengan Badan Usaha dalam Penyediaan Infrastruktur, 2015). If a general conclusion is drawn, then all heads of government administrators, institutions, BUMN and/or BUMD can implement PPP.

Coming to the discussion of PTN-BH, PTN-BH is a government institution with the function of providing higher education which was founded and/or organized by the government (Undang - Undang Republik Indonesia Nomor 12 Tahun 2012 tentang Pendidikan Tinggi, 2012). The above can be interpreted to mean that PTN-BH is one of the government institutions that can implement the PPP. However, the inclusion of the definition of PTN-BH as the organizer and/or implementer of PPP does not necessarily mean that PTN-BH has legal standing over the implementation of PPP in Indonesia.

What can be done to find the requirements for a legal subject to have legal standing regarding the implementation of PPPs in Indonesia is to carry out a synthesis of the philosophy and objectives of implementing PPPs in Indonesia. Philosophically, PPP regulations were formed to meet Indonesia's infrastructure needs which were felt by the government to be a very urgent need in the context of the nation's development, economy, prosperity and competition (Peraturan Presiden Republik Indonesia Nomor 38 Tahun 2015 tentang Kerjasama Pemerintah dengan Badan Usaha dalam Penyediaan Infrastruktur, 2015). The objectives of establishing PPP regulations in Indonesia are: sufficient sustainable funding for infrastructure provision; realizing the provision of infrastructure effectively, efficiently, on target, on time and with quality; creating an investment climate through the participation of business entities in providing infrastructure; encourage the implementation of the principle of users paying for services received by considering the user's ability to pay; and provide certainty of return on investment by business entities in providing infrastructure (Peraturan Presiden Republik Indonesia Nomor 38 Tahun 2015 tentang Kerjasama Pemerintah dengan Badan Usaha dalam Penyediaan Infrastruktur, 2015). Based on the philosophy and objectives of the PPP, there are at least 5 (five) aspects that are requirements for a PTN-BH to have legal standing for the implementation of the PPP in Indonesia.

First aspect is an aspect of institutional management. Institutional management aims to ensure that the institution that will be the PPP organizer is able to encourage the implementation of investment cooperation, implement the user pays principle and ensure return on investment to business entities. Therefore, an institution must have management independence that ensures that the institution is able to carry out investment cooperation with business entities. This aspect of management independence is owned by PTN-BH as stated in the Higher Education Law, where universities are given management independence in accordance with the foundations, goals and capabilities of the university. In its implementation, universities are required to carry out independent evaluations in determining the foundations, goals and capabilities of higher education institutions based on regulations from the Minister of Education and Culture, Research and Technology (Undang - Undang Republik Indonesia Nomor 12 Tahun 2012 tentang Pendidikan Tinggi, 2012). The practice of autonomy in higher education management has broad interpretation and implementation. Based on this, the author carried out a mapping of higher education autonomy in the following table:

**Table 2.**  
**PTN-BH Management Autonomy Fields**

Field	Sub-Field	Management
Academic	Education	a) academic requirements; b) study program; c) Study Program curriculum; d) learning process; e) assessment of learning outcomes; f) graduation requirements; g) graduation.
	Research and community service	-
Non-Academic	Organization	a) strategic and operational plans; b) organizational structure and work procedures; c) internal control and supervision system; And d) internal quality assurance system
	Finance	a) short- and long-term budget planning and management; b) educational service rates;



Field	Sub-Field	Management
		c) receiving, spending, and managing money; d) short-term and long-term investments; e) agreements with third parties within the scope of the Tridharma of Higher Education; f) short-term and long-term debts and receivables; And g) financial recording and reporting system.
	student affairs	a) intracurricular and extracurricular student activities; b) student organizations; And c) development of students' talents and interests.
	Power	a) admission requirements and procedures; b) assignments, coaching and development; c) preparing work targets and career paths; And d) dismissal.
	facilities and infrastructure	a) ownership; b) consumption; c) utilization; And d) maintenance.

Source: Indonesian University Law 2012, processed by author (2024)

Based on the autonomy of higher education administration above, PTN-BH has autonomy in non-academic fields with specificity in the financial sub-sector. If linked to the PPP philosophy and objectives, PTN-BH can implement PPP if there is autonomy in the financial sector in order to support the implementation of investment cooperation, implement the user pays principle and ensure investment returns to business entities.

The thing that needs to be considered regarding the autonomy of higher education is the legal meaning and certainty of whether PTN-BH is considered as a name for a separate form of legal entity or not, this is discussed in the Constitutional Court Decision Number 103/PUU-X/2012. Understanding PTN-BH as a legal subject entity often gives rise to different interpretations. This cannot be separated from the implementation of Law Number 9 of 2009 concerning Educational Legal Entities which was later annulled by Constitutional Court decisions Number 11-14-21-126 and 136/PUU-VII/2009. Therefore, according to the Constitutional Court, PTN-BH needs to be interpreted as an education provider managed by a legal entity, not as a general civil legal entity regulated by laws and regulations in Indonesia (Ikhtisar Putusan Perkara Nomor 103/PUU-X/2012 Tentang Konstitusionalitas Bentuk dan Pengelolaan Kekayaan Negara dalam Penyelenggaraan Perguruan Tinggi Badan Hukum (PTN BH) , 2012). A civil legal entity is an entity that is purely autonomous and independent and is subject to statutory regulations regarding that legal entity (private legal entity). However, PTN-BH's autonomy adapts the concept of a public legal entity with the obligation to carry out the provision of higher education at universities (Ikhtisar Putusan Perkara Nomor 103/PUU-X/2012 Tentang Konstitusionalitas Bentuk dan Pengelolaan Kekayaan Negara dalam Penyelenggaraan Perguruan Tinggi Badan Hukum (PTN BH), 2012).

The implications of the Constitutional Court's decision show that PTN-BH is a public legal entity as an agent of the state. This is shown in the provisions for autonomy in the administration of higher education in the statutes of each university with PTN-BH status. Based on these implications, the author carried out an analysis of all University Statutes regarding the autonomous authority for administering higher education in the academic and non-academic fields with the results as shown in the following table:



**Table 3.**  
**Basic Autonomy for Implementing PTN-BH Indonesia**

University	Legal basis
Institut Teknologi Bandung	Article 6, PP 65/2013
Institut Pertanian Bogor	Article 9, PP 66/2013
Universitas Gadjah Mada	Article 5, PP 67/2013
Universitas Indonesia	Article 4, PP 68/2013
Universitas Pendidikan Indonesia	Article 6, PP 15/2014
Universitas Sumatera Utara	Article 5, PP 16/2014
Universitas Airlangga	Article 8, PP 30/2014
Universitas Padjadjaran	Article 4, PP 51/2015
Universitas Diponegoro	Article 4, PP 52/2015
Universitas Hassanudin	Article 3, PP 53/2015
Institut Teknologi Sepuluh November	Article 7, PP 54/2015
Universitas Sebelas Maret	Article 2, PP 56/2020
Universitas Andalas	Article 2, PP 95/2021
Universitas Brawijaya	Article 2, PP 108/2021
Universitas Negeri Padang	Article 2, PP 114/2021
Universitas Negeri Malang	Article 2, PP 115/2021
Universitas Negeri Yogyakarta	Article 2, PP 35/2022
Universitas Negeri Semarang	Article 2, PP 36/2022
Universitas Negeri Surabaya	Article 2, PP 37/2022
Universitas Syiah Kuala	Article 2, PP 38/2022
Universitas Terbuka	Article 2, PP 39/2022

Source: data processed by author (2024)

Based on this table, it can be concluded that all PTN-BH have autonomy in the academic and non-academic fields based on the statutes of their respective universities, which has the implication that all PTN-BH in the aspect of institutional management have independence in institutional management, so that PTN-BH can become a PPP implementer, as long as the PPP implementation is related to the implementation of the tridharma of higher education and has been approved by the Government which oversees PTN-BH as a public legal entity.

Second aspect is PTN-BH's funding source. The implementation of PPP funding needs to follow the mechanisms that have been regulated by the Central Government, as stated in Government Regulation Number 26 of 2015 concerning Forms and Mechanisms of Funding for Legal Entity State Universities. If the implementation of PPP funding is included in the PTN-BH investment and development post in infrastructure procurement, then the funding can use two instruments, namely APBN Funding Assistance and Funding Assistance outside the APBN.

APBN funding assistance can be provided to PTN-BH if investment is carried out in the procurement of facilities and infrastructure for administering higher education, such as buildings, buildings, roads, bridges, irrigation, machinery and other equipment. APBN funding assistance can also be provided for investment in the procurement of fixed assets, except for land procurement (Peraturan Pemerintah Republik Indonesia Nomor 26 Tahun 2015 tentang Bentuk dan Mekanisme Pendanaan Perguruan Tinggi Negeri Badan Hukum, 2015). Meanwhile, funding assistance outside the APBN is possible for PTN-BH to obtain funding from the community, education costs, management of endowment funds, PTN-BH business, cooperation with the tridharma of higher education, management of PTN-BH assets, APBD, and/or loans, which its implementation refers to the provisions of the applicable laws and regulations (Peraturan Pemerintah Republik Indonesia Nomor 26 Tahun 2015 tentang Bentuk dan

Mekanisme Pendanaan Perguruan Tinggi Negeri Badan Hukum, 2015).

Discussion regarding PTN-BH's funding sources is important, considering that one of the objectives of implementing the PPP is to provide sufficient sustainable funding for infrastructure provision as well as ensuring return on investment for business entities in providing infrastructure. Therefore, PTN-BH needs to prepare sufficient funding sources based on statutory regulations to ensure investment sustainability while ensuring certainty of return on investment for business entities.

Third aspect is a development plan prepared by PTN-BH. The development planning in question needs to be included in the PTN-BH strategic plan which explains the goals, targets and indicators for implementing investment and developing PTN-BH infrastructure. This is important considering that the aim of the PPP is to provide infrastructure effectively, efficiently, on target, on time and with quality. This goal can only be realized if there are goals, targets and indicators in the PTN-BH strategic plan that have been prepared, so that PTN-BH is obliged to include development planning in the strategic plan to be used as a measuring tool for the usefulness and value of benefits from infrastructure development.

The thing that needs to be considered when including development planning in the PTN-BH strategic plan is the obligation for PTN-BH to prepare a strategic plan in accordance with the provisions of the laws and regulations, whether it is preparing a strategic plan within a period of 25 years, a period of 5 years and a period of annual (Peraturan Pemerintah Nomor 4 Tahun 2014 tentang Penyelenggaraan Pendidikan Tinggi dan Pengelolaan Perguruan Tinggi, 2014), the implementation of which must be guided by the strategic plan of the Ministry of Education and Culture, Research and Technology (Peraturan Menteri Pendidikan, Kebudayaan, Riset dan Teknologi Republik Indonesia Nomor 13 Tahun 2022, 2022).

Fourth aspect is PTN-BH's fiscal capacity, namely the financial capacity of PTN-BH which is collected from various sources of income to fund PTN-BH's expenditure budget. When related to PPP implementation, PTN-BH is obliged to prepare various funding concepts from various funding sources permitted by PTN-BH to be able to fund PPP projects. This is important because one of the objectives of implementing the PPP is to provide sufficient sustainable funding for infrastructure provision, encourage the implementation of the principle of users paying for services received by considering the user's ability to pay and provide certainty of return on investment of business entities in providing infrastructure. Therefore, an innovative form of financial management is needed from PTN-BH to combine various existing funding sources while ensuring that PTN-BH can provide guaranteed investment returns based on funding sources, funding adequacy and the ability to pay infrastructure users.

Fifth aspect is the delegation of authority from the Ministry of Education and Culture, Research and Technology to PTN-BH to organize the PPP. Delegation of authority is important, because PTN-BH can be the PPP implementer, as long as the PPP implementation is related to the implementation of the tridharma of higher education and has been approved by the Ministry of Education, Culture, Research and Technology which oversees PTN-BH as a public legal entity as per the First aspect analysis, which refers to the Constitutional Court decision Number 103/PUU-X/2012 concerning the Constitutionality of the Implementation of Legal Entity Higher Education. The procedures for delegating authority are regulated in two regulations, namely Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as the AP Law) and statutory regulations in the PPP sector (Perpres PPP and Permen PPP).

Based on the provisions of the AP Law, the first step in delegating authority is to identify the origin of the authority in question. In terms of implementing PPP, who has the authority to

organize and implement PPP is stated in the PPP Presidential Decree. Thus, the origin of the authority to administer PPPs falls within the scope of delegation, because this authority originates from Presidential Regulations which constitute the government's authority in administering government.

The next step is the implementation of delegation of authority, the source of which is delegated authority. This implementation is regulated in the AP Law through a mechanism for delegation of authority called sub-delegation (Undang - Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, 2014). The delegation of authority by sub-delegation according to the AP Law is carried out with the fulfillment of 3 (three) conditions, namely that it is stated in the form of a regulation before the authority is exercised, is carried out in a separate government environment and is given to a government official 1 level below him at most (Undang - Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, 2014).

1. In terms of fulfilling the first condition, PTN-BH is formed by the Government (Undang - Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, 2014) which basically states that State Universities are established and/or managed by the government. Further provisions regarding the establishment of State Universities are also further regulated in Government Regulations in the PTN-BH sector (Peraturan Pemerintah Nomor 4 Tahun 2014 tentang Penyelenggaraan Pendidikan Tinggi dan Pengelolaan Perguruan Tinggi, 2014), so that PTN-BH is one of the institutions that is part of the Ministry of Education and Culture, Research and Technology.
2. In terms of fulfilling the second requirement, this element has been fulfilled based on the scope of duties and responsibilities of the Ministry of Education, Culture, Research and Technology, one of which is providing higher education, as well as the scope of duties and responsibilities of the Chancellor as outlined in the respective PTN-BH Statutes. The responsibility for administering higher education from the Ministry of Education and Culture, Research and Technology and PTN-BH reflects that both institutions are in the same government environment.
3. In terms of fulfilling the third condition, this element can be fulfilled if the Minister of Education and Culture, Research and Technology provides delegation to Government Officials at a level below the Minister of Education and Culture, Research and Technology. If you look at the structure of the Ministry of Education and Culture, Research and Technology, the Government Officials one level below the Minister are the Inspectorate General, Secretariat General, State Universities, Higher Education Service Institutions, and Technical Implementation Units. Thus, if the Minister of Education and Culture, Research and Technology delegates to State Universities, then the third condition is fulfilled.

The final step that needs to be taken in delegating authority based on the AP Law is to enshrine the delegation of authority in statutory regulations. In the context of the delegation of authority of PTN-BH, the statutory regulations which state the delegation of authority are Government Regulation Number 4 of 2014 concerning the Implementation of Higher Education and Management of Higher Education and the respective statutes of PTN-BH, because these various provisions explicitly state that PTN -BH gets autonomy in the administration and management of higher education, especially in the non-academic field in terms of managing PTN finances.

The procedure for delegating authority based on statutory regulations in the PPP sector begins with identifying the provisions in the PPP Presidential Decree, which stipulates that the Minister is the leader or party representing the ministry/institution based on statutory regulations (Peraturan Presiden Republik Indonesia Nomor 38 Tahun 2015 tentang Kerjasama Pemerintah

dengan Badan Usaha dalam Penyediaan Infrastruktur, 2015). Thus PTN-BH has the possibility of becoming a PJKP, as long as the legal interpretation of the phrase "party representing the ministry/institution" is not interpreted as a mandate, but is interpreted as a delegation of authority.

The next stage is to carry out the delegation of authority based on the provisions of the PPP Ministerial Regulation, which determines the following conditions (Peraturan Menteri PPN Nomor 7 Tahun 2023 tentang Pelaksanaan Kerjasama Pemerintah dengan Badan Usaha dalam Penyediaan Infrastruktur, 2023):

1. Authority is delegated from the Minister of Education and Culture, Research and Technology to higher education leaders;
2. Pay attention to the duties and functions of the Ministry of Education and Culture, Research and Technology and PTN-BH institutions with related types of infrastructure activities;
3. Contains the transfer of the Minister's responsibilities to PTN-BH; and
4. Provide guidance on the implementation of delegated authority.

The stages regulated by the AP Law, the PPP Presidential Decree and the PPP Ministerial Regulation must be followed and implemented by the Ministry of Education, Culture, Research and Technology as a form of achieving the PPP's objectives of creating an investment climate through the participation of business entities in providing infrastructure. It is hoped that clarity on who has the authority and responsibility for a project can create a healthy and transparent investment climate so that business entities are willing to participate in providing higher education infrastructure.

As a result of the description and discussion above, PTN-BH has legal standing in administering PPPs in Indonesia, if it meets the following requirements:

1. Has management independence that ensures that the institution is able to carry out investment cooperation with business entities;
2. Have sufficient funding sources based on statutory regulations;
3. Have a development plan contained in a strategic plan to be used as a measuring tool for the usefulness and value of benefits from infrastructure development;
4. Have a concept of funding from various funding sources permitted by PTN-BH to be able to fund PPP projects; And
5. Carry out delegation of authority in accordance with statutory regulations in the field of state administration and the PPP sector.

#### **b) Government support in implementing PPP by PTN-BH**

Support according to the Big Indonesian Dictionary (hereinafter referred to as KBBI) means something that is supported, support and/or assistance (Kamus Besar Bahasa Indonesia - Dukung, n.d.), which implicitly shows that support arises from the existence of things that need to be supported, supported and/or given assistance. Based on this understanding, support can only be formulated if there is a certain action that is hampered, so that support, backing and/or assistance is needed so that the particular action can be carried out properly. Therefore, this discussion will take the practices and obstacles that occur in implementing PPP by PTN-BH as a research basis to formulate the form of government support needed in implementing PPP by PTN-BH.

The basis for implementing PPP by PTN-BH is taken based on data taken through The

Conversation and BAPPENAS, it is described that there are universities that have implemented PPP in Indonesia until 2023 with the following list (Kalihputro Fachriansyah, 2024):

**Table 4.**  
**Implementation of PPP by PTN-BH in Indonesia**

Year	Stages	
	Planning	Setup
2018	Universitas Diponegoro Universitas Gadjah Mada Universitas Islam Negeri Malang Universitas Islam Negeri Jakarta Universitas Islam Negeri Makassar	Universitas Udayana Politeknik Batam
2019	Institut Teknologi Bandung	Universitas Sam Ratulangi
2023	Universitas Padjadjaran	-

Sumber: The Conversation, 5 Juni 2024

The table above shows that from 2018 to 2023, there are 10 (ten) universities that have used the PPP scheme in infrastructure development at their universities. The interesting thing is that there are 4 (four) PTN-BH that have used the PPP scheme, including Diponegoro University, Gadjah Mada University, Bandung Institute of Technology and Padjadjaran University. This table also shows that the various universities are only able to go through the stages up to the project preparation process, while the upper stages of the PPP consist of planning, preparation, transactions and management (Peraturan Menteri PPN Nomor 7 Tahun 2023 tentang Pelaksanaan Kerjasama Pemerintah dengan Badan Usaha dalam Penyediaan Infrastruktur, 2023). Thus, PTN-BH which uses the PPP scheme until 2023 has not been able to reach the PPP transaction and management stage, which shows that there are obstacles and challenges for PTN-BH to implement PPP in Indonesia.

The obstacles and challenges in using the PPP scheme by universities are recognized by various parties, as stated by Kalihputro Fachriansyah from BAPPENAS, where the obstacles and challenges of the PPP scheme at PTN-BH lie in the lack of understanding of PPP, the cooperation structure which is considered less attractive, and the operationalization PPP within the scope of higher education (Kalihputro Fachriansyah, 2024).

Lack of understanding of PPP is an obstacle, because policy makers at PTN-BH are accustomed to procuring government goods and services (hereinafter referred to as PBJ) with a budgetary focus prioritizing physical infrastructure development, which has implications for comparing the PBJ scheme with the PPP scheme which is a PPP scheme. more expensive than the PBJ scheme budgeted by the government. In fact, understanding the PPP scheme does not only focus on the development of physical infrastructure, but also on the services and operations of the physical infrastructure being built.

An unattractive cooperation structure is an obstacle, because PTN-BH has not been able to prepare a project structure for various works within the scope of the PPP, this has an impact on the difficulty of project profitability and is considered less profitable for investors. This happens because PTN-BH tends to force itself to position its institution as a profit-oriented operator in the PPP project structure.

PPP operation at the PTN-BH level is an obstacle, because PPP implementation really requires long-term commitment from all stakeholder PTN-BH which consists of the Chancellor, Academic Senate and Board of Trustees. In practice, PPP implementation can have a period of 15 (fifteen) to 20 (twenty) years. This time will pass through several periods of leadership stakeholder PTN-

BH. Reviewing the objectives of implementing the PPP regarding the certainty of return on investment for business entities, the commitment of the Chancellor, Academic Senate and Board of Trustees over several periods of PTN-BH is important to ensure that the PPP continues to be implemented in accordance with the initial commitment, both policy commitments and funding commitments.

Based on these three obstacles, the main obstacle that causes the 3 (three) obstacles as described above is understanding stakeholder PTN-BH over PPP due to the legal vacuum in the scope of sector regulations. The legal vacuum within the scope of the sector has resulted in each PTN-BH's understanding of PPP implementation being diverse, which has implications for the difficulty of preparing project profitability and operationalizing PPP. The legal vacuum needs to be filled by drafting sector regulations that specifically address PPP issues. In other words, the main support needed for the implementation of PPP by PTN-BH is the preparation of legal provisions regarding the implementation of PPP within the Ministry of Education, Culture, Research and Technology.

The main support related to the preparation of legal provisions can take 2 (two) main aspects, namely aspects of legal theory and practice of implementing PPPs in Indonesia. The legal theory used is the theory of development law according to Mochtar Kusumaatmadja, that legal provisions are principles and/or rules that cover society, institutions and processes in the context of realizing law in people's lives (Mochtar Kusumaatmadja, 1986). Another legal theory used is the legal function theory according to Sjahran Basah, that the law functions as a guide in the context of developing society and achieving state goals (Sjahran Basah, 1992). By synthesizing development legal theory, legal function theory and the objectives of implementing PPPs, the legal provisions for implementing PPPs within the Ministry of Education and Culture, Research and Technology must have a scope regarding the implementation objectives, the overseeing institution, and the process of implementing PPPs by PTN-BH. Determining the scope of implementation objectives, institutions and implementation of PPP requires reviewing the environment of other ministries that have successfully implemented PPP in Indonesia, some of which are the Ministry of Public Works and Public Housing (hereinafter referred to as the Ministry of PUPR) and the Ministry of Transportation (hereinafter referred to as the Ministry of Transportation).

The Ministry of PUPR is an example based on the successful implementation of the PPP scheme in toll road operations. This success is proven by the achievement of toll road investment until the end of 2022 amounting to Rp. 794.85 Trillion and the construction of 10 (ten) new toll roads with a total length of 142.11 Kilometers, consisting of the Cileunyi-Sumedang-Dawuan Section 1 Cileunyi-Pamulihan Toll Road, the Binjai-Langsa Section 1 Binjai-Stabat Toll Road, the Manado-Bitung Section 1 Toll Road 2B Danowudu-Bitung, Sigli-Banda Aceh Toll Section 2 Seulimeum-Jantho, Cibitung-Cilincing Toll Section 2 and 3 Telaga Asih-Tambelang-Tarumajaya, Lubuk Linggau-Curup-Bengkulu Toll Section 3 Bengkulu-Taba Penanjung, Serpong-Balaraja Toll Section 1A Serpong-CBD, Pekanbaru-Bangkinang Toll Road, Bekasi-Cawang-Kampung Melayu Toll Cipinang-Casablanca Access and Wiyoto Wiyono Toll Connection East Side and Cileunyi-Sumedang-Dawuan Toll Sections 2 and 3 (Badan Pengatur Jalan Tol Republik Indonesia, 2022). This success cannot be separated from the role of the Toll Road Regulatory Agency (hereinafter referred to as BPJT) as the main pillar of implementing Toll Road PPPs in Indonesia, which functions to organize toll road investment procurement, determine initial toll rates, provide recommendations for the takeover of toll road concession rights and carry out supervision. on the implementation of toll road concession agreements executed by business entities (Peraturan Menteri Pekerjaan Umum dan Perumahan Rakyat Republik Indonesia Nomor 6 Tahun 2023 tentang Badan Pengatur Jalan Tol, 2023). In other words, in the implementation of PPP within



the Ministry of PUPR in the toll road sector, there is an institution that functions as an extension of the ministry in determining investment schemes, tariffs and supervision.

The choice of the Ministry of Transportation as the next example was motivated by the success of implementing PPP in the development of transportation infrastructure in Indonesia. Based on the Ministry of Transportation website, there are 17 transportation infrastructure PPP projects using the PPP scheme, including 2 (two) air transportation sectors, 4 (four) sea transportation sectors, 9 (nine) land and urban transportation projects and 2 (two) railway transportation projects (Kementerian Perhubungan Republik Indonesia, 2023). This success cannot be separated from the existence of regulations supporting PPP implementation within the Ministry of Transportation, which regulate the type of infrastructure in the transportation sector, PPP procurement organization, PPP implementation stages, procurement procedures for implementing business entities, government support and evaluation supervision (Peraturan Menteri Perhubungan Nomor 58 Tahun 2018 Tentang Tata Cara Pelaksanaan Kerja Sama Pemerintah Dengan Badan Usaha Dalam Penyediaan Infrastruktur Transportasi Di Lingkungan Kementerian Perhubungan, 2018).

Based on the practices of the Ministry of PUPR and the Ministry of Transportation related to determining the scope, implementation objectives, institutions and administration of PPP within the Ministry of Education and Culture, Research and Technology, the preparation of PPP regulations within the Ministry of Education and Culture, Research and Technology can be categorized as support for PTN-BH by containing the following legal substance:

- 1) **Implementation objectives;**
- 2) **PTN-BH Infrastructure Type;**
- 3) **PTN-BH PPP Institution;**
- 4) **PTN-BH PPP procurement organization;**
- 5) **Stages of implementation of the PTN-BH PPP;**
- 6) **Procurement procedures for implementing business entities;**
- 7) **Government support; and**
- 8) **Monitoring and evaluation.**

## **CONCLUSIONS**

Explicitly stating that PTN-BH can become a PJK as stated in the provisions of the PPP Ministerial Regulation, it cannot be said that PTN-BH has legal standing in administering PPPs in Indonesia. PTN-BH can only have legal status if it meets the requirements in accordance with the objectives of implementing the PPP.

After PTN-BH has legal standing in implementing PPP, PTN-BH is faced with obstacles and challenges such as a lack of understanding of PPP, cooperation structures that are considered less attractive, and the operationalization of PPP within the scope of higher education. Therefore, the Ministry of Education and Culture, Research and Technology, in accordance with its authority, needs to provide support through drafting provisions for implementing PPP within the Ministry of Education and Culture, Research and Technology.

The implication of the existence of provisions for implementing PPPs within the Ministry of Education and Culture, Research and Technology is that there is a mandate to form a separate work unit that specifically organizes PTN-BH PPPs. If there is no specific budgeting and process for the formation of the institution, the Ministry of Education and Culture, Research and Technology can first prioritize preparing the implementation stages of the PTN-BH PPP within the Ministry of Education and Culture Research and strengthen the relevant directorates and



work units related to the management of PTN-BH and university assets. considering the duties and functions contained in Presidential Regulation Number 62 of 2021 concerning the Ministry of Education, Culture, Research and Technology because. Regulation of the Minister of Education, Culture, Research and Technology Number 28 of 2021 concerning the Organization and Work Procedures of the Ministry of Education, Culture, Research and Technology, in the context of support from the Ministry of Education and Culture, Research and Technology for the implementation of PPPs in Indonesia.

This research produces suggestions to related state agencies/institutions to support the improvement and risk mitigation of KPBU implementation by PTN-BH. The suggestions include:

- 1) Ministry of Education, Culture, Research and Technology:
  - a. forming a work unit that specifically organizes KPBU by PTN-BH;
  - b. compiling the stages of KPBU implementation by PTN-BH within the Ministry of Education, Culture, Research and Technology in the form of a Ministerial Regulation; and
  - c. strengthening relevant directorates and work units related to the management of PTN-BH and higher education assets.
- 2) Ministry of Finance:
  - a. Conducting verification and joint assistance with BAPPENAS in the preparation of KPBU projects by PTN-BH; and
  - b. including KPBU project initiation by PTN-BH into the KPBU project list (PPP Book).
- 3) BAPPENAS
  - a. make PPN Regulation 7/2023 as the main basis for the implementation of KPBU by PTN-BH;
  - b. include indicators of management independence, funding sources, development planning, funding concepts and delegation of authority as initial requirements for permitting KPBU initiation by PTN-BH;
  - c. carry out verification and joint assistance with BAPPENAS in the preparation of KPBU projects by PTN-BH.
- 4) PTN-BH is required to consider indicators of management independence, funding sources, development planning, funding concepts and delegation of authority as initial requirements for permitting KPBU initiation.

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