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When public interest meets private profit: The principle of proportionality in Indonesian PPP contracts

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Abstract

Public-private partnership (PPP) contracts in Indonesia are designed to accelerate infrastructure development by mobilizing private financing and expertise. However, they often raise concerns regarding fairness when private profits outweigh public interests. This study examines the implementation of the principle of proportionality as a legal safeguard to balance rights, obligations, risks, and benefits within PPP contracts. Using a normative-empirical approach, the research analyzes statutory frameworks such as Presidential Regulation No. 38 of 2015, doctrinal insights from proportionality and contractual balance theories, and qualitative data from interviews with government officials, state-owned enterprises, legal experts, and community representatives. Case studies of projects such as Palapa Ring, Umbulan Water Supply, Kertajati Airport, Jakarta-Bandung High-Speed Railways (Whoosh), Cisumdawu Toll Road, and the Balikpapan–Samarinda Toll Road illustrate how proportionality operates in practice through mechanisms such as risk allocation, Viability Gap Fund, and Availability Payment schemes. The findings indicate that Indonesia has institutionalized proportionality to some extent—particularly through standardized risk-sharing and government support—yet significant challenges remain, including tariff fairness, demand risk, and regulatory clarity. The study concludes that proportionality is not merely a doctrinal principle but a practical requirement for achieving equitable PPP contracts. Ensuring proportionality enhances public trust, protects vulnerable groups, and sustains investor confidence, ultimately reconciling private profit with public welfare in infrastructure partnerships.

Keywords: Infrastructure Justice, Proportionality, Public-Private Partnership, Risk Allocation, Sustainable Development.

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1. Introduction

Public-private partnership (PPP) schemes have become a central policy instrument in Indonesia to accelerate infrastructure development by mobilizing private investment and expertise [1, 2]. While PPP projects have improved connectivity and service delivery, they also raise concerns regarding fairness and justice. The involvement of private entities often introduces a profit-oriented logic that may conflict with the constitutional mandate of public welfare [3]. Instances of high toll tariffs and financial burdens on users illustrate how contractual arrangements can shift risks disproportionately, undermining the principle of justice in public service provision [4].

The key problem lies in the absence of explicit recognition of proportionality as a guiding principle in Indonesian PPP regulations. Although *KUH Perdata* Article 1338(3) emphasizes good faith in contracts, and Presidential Regulation No. 38/2015 establishes a risk allocation framework, neither instrument expressly codifies proportionality as a legal safeguard. Consequently, contractual arrangements may leave unequal bargaining positions or excessive concessions to investors, potentially compromising public interest [5].

This study aims to analyze the implementation of the principle of proportionality in Indonesian PPP contracts, using contractual balance theory and classical justice theories by Aristotle (*Nicomachean Ethics*), [6] Thomas Aquinas (*Summa Theologica*), [7] and John Rawls (*A Theory of Justice*), [8] include Jeffrey Sachs, in *The Age of Sustainable Development* [9]. Through normative-empirical methods combining statutory analysis, doctrinal perspectives, and field-based interviews, the research explores how proportionality serves as a safeguard to reconcile private profit with public interest.

Previous studies on PPP in Indonesia largely emphasize financial viability and risk-sharing efficiency, [10-12] while international scholarship addresses PPP from managerial or governance perspectives [4]. However, limited attention has been given to proportionality as a doctrinal principle in contract law applied specifically to PPP. Research by Hernoko [13] on Indonesian contract law often discusses fairness in general, but does not situate it in the hybrid nature of PPP contracts that are private in form yet public in function [13].

In Indonesian contract law, the principle of proportionality serves as a mechanism to ensure a fair balance between the contributions, risks, and benefits received by the contracting parties. This principle is embedded in Article 1338(3) of the Indonesian Civil Code, which emphasizes good faith in contractual performance, thereby prohibiting rigid enforcement that disproportionately favors one party. According to Hernoko [13] a just contract is one that rejects imbalanced clauses—such as the imposition of risks without adequate compensation—as they are inconsistent with the principle of contractual equilibrium [10].

Philosophically, Aristotle distinguished between distributive and commutative justice. Distributive justice requires that public goods—such as toll roads, clean water, or transport services—be allocated proportionally to community needs, while commutative justice demands fair reciprocity between the parties [6]. Thomas Aquinas reinforced this with his natural law theory, stressing that contracts must conform to morality and the substantive aims of justice [7]. Similarly, John Rawls, in *A Theory of Justice*, underlined the importance of *fairness*, particularly in protecting weaker parties from contractual exploitation [8]. Within the framework of public–private partnerships (PPPs), proportionality thus operates as a normative filter to assess the reasonableness of tariffs, the allocation of risks, and the compensation afforded to private entities, ensuring that public interests are not compromised.

Globally, PPPs are not merely designed to alleviate state budget burdens but to secure value for money (VfM) by allocating risks to the party most capable of managing them. Yescombe [1] emphasizes that PPP contracts must align risk profiles with cash flow structures to ensure that public benefits are achieved without imposing undue fiscal strain on the state Yescombe [1]. Grimsey and Lewis [2] highlight that PPPs can foster long-term fiscal discipline, but only if risk allocation remains proportionate to each party's mitigation capacity [2].

Nevertheless, international experience demonstrates variability in PPP performance. Hodge and Greve [4] argue that many PPPs suffer from *cost overruns* and renegotiations due to weak governance, with the financial burden ultimately reverting to governments while private entities capture disproportionate benefits [4]. An ideal PPP, therefore, requires proportional risk-sharing: construction and operational risks should fall on private partners, while macroeconomic or political risks remain under government responsibility

In Indonesia, the legal framework for PPPs is established under Presidential Regulation No. 38/2015, which regulates risk matrices, government support mechanisms, and guarantees by PT Penjaminan Infrastruktur Indonesia (PT PII). Instruments such as the Viability Gap Fund (VGF) and Availability Payment (AP) are employed to attract investors while maintaining affordability of public services [14]. However, the regulation does not explicitly codify proportionality as a positive legal principle. As a result, its application remains implicit, dependent on contractual practice and due diligence.

The enactment of Law No. 11 of 2020 on Job Creation expanded investment opportunities but also introduced challenges in ensuring contractual alignment with public interest. Indonesian legal scholarship emphasizes that PPPs must be grounded in the concept of the welfare state. For instance, Elviandri, et al. [3] contend that social justice is the essence of a welfare state, and therefore public contracts cannot disregard principles of accessibility, affordability, and protection of vulnerable groups [3]. Likewise, yuniarti and Junita [5] underscore that governance in PPPs is only sustainable if proportionality is institutionalized as a guiding principle in contract design [5].

Empirical studies reveal that well-structured risk allocation frameworks reduce uncertainty and capital costs. However, when demand risk is unilaterally shifted onto users or the public, the result often includes high tariffs, renegotiations, and even project failures [6].

To mitigate this, instruments such as VGF and AP are introduced. VGF addresses initial investment under-recovery, while AP ensures payment based on service availability rather than traffic volumes [1, 2, 7]. Both are consistent with the proportionality principle as they safeguard public benefits even amid demand volatility. Nevertheless, risks of moral hazard

persist: if government support is provided without performance measurement and transparency, subsidy schemes may devolve into uncontrolled fiscal burdens [6]. Therefore, risk-sharing in PPPs must be complemented with independent audits and strict performance indicators.

Integrating the doctrine of proportionality with Aristotelian and Rawlsian justice produces a three-step proportionality test relevant to PPP contracts: i) Legitimacy of purpose, whether clauses or government support measures genuinely justify public service objectives, ii) Necessity, whether less burdensome alternatives exist, dan iii) Balancing (*stricto sensu*), whether the public benefits are proportionate to the costs borne by the state and profits accrued by the private sector [1, 6, 8, 9]. This test is operational in tariff-setting, *step-in rights*, termination payments, renegotiation triggers, and performance deductions, directing contracts toward fairness and auditability.

Case studies show that successful PPPs are often underpinned by (a) standardized risk matrices, (b) transparent government support mechanisms, (c) institutional oversight by KPPIP and PT PII, and (d) limited renegotiation clauses [1, 11, 13, 15, 16]. Conversely, when these variables are weak, burdens shift either to the public through high tariffs or to the state budget through bailouts—outcomes clearly inconsistent with proportionality and public service objectives [3, 4]. This study fills the gap by integrating doctrinal theory with empirical evidence from landmark PPP projects—Palapa Ring, Umbulan Water Supply, Kertajati Airport, Jakarta-Bandung High-Speed Railway (Whoosh), and Balikpapan–Samarinda Toll Road—demonstrating how proportionality operates as both a legal principle and practical mechanism for achieving equitable PPP contracts that align with constitutional goals of justice and welfare.

While international literature is rich on the financial and operational aspects of PPPs, Indonesian scholarship tends to focus more on governance and policy dimensions. This creates a research gap: the doctrinal mapping of proportionality into contractual instruments remains underdeveloped in the Indonesian context post-Presidential Regulation 38/2015. This article aims to fill that gap by bridging theoretical frameworks (Aristotle, Aquinas, Rawls) and doctrinal proportionality (Hernoko) with the practical realities of Indonesian PPP projects.

2. Research Method

This study adopts a normative-empirical legal research method. The normative dimension analyzes statutory frameworks—such as the Indonesian Civil Code (KUHPerdata, Article 1338(3)), Presidential Regulation No. 38 of 2015 on PPP Infrastructure Provision, and the Job Creation Law (Law No. 11/2020)—and doctrinal sources on proportionality in contract law. The empirical dimension draws on semi-structured interviews with key stakeholders, including government contracting agencies, state-owned enterprises, private partners, and community representatives affected by PPP projects.

Data were collected through document study (laws, regulations, contract templates, feasibility studies, PPP manuals) and field interviews. A purposive sampling approach ensured representation from regulatory agencies (Bappenas, Ministry of Finance, PT PII), private contractors, and project users. The analysis employed a qualitative descriptive technique, combining doctrinal interpretation with thematic coding of interview data to identify recurring challenges and perspectives on proportionality.

The research employs a doctrinal framework of proportionality in conjunction with theories of justice (Aristotle's distributive and commutative justice, [6] Aquinas' natural law, [7] and Rawls' fairness principle, [8]. The analytical framework consists of three steps commonly applied in proportionality tests: First, legitimacy of purpose – whether the contractual clause or government support serves a constitutionally valid public purpose. Second, necessity – whether the measure chosen imposes the least burden to achieve its objective. Third, balancing (*stricto sensu*) – whether the benefits to one party are proportionate to the costs imposed on the other. This framework is applied to key PPP contractual elements: tariff-setting, risk allocation, government support (VGF, AP), step-in rights, and termination clauses.

Six flagship PPP projects were selected as case studies, such as: Palapa Ring Project (Telecommunications); Umbulan Water Supply Project (Water Infrastructure); Balikpapan–Samarinda Toll Road (Transportation); Kertajati Airport; Jakarta-Bandung High-Speed Railways (Whoosh); Jalan Tol Cisumdawu. These projects were chosen because they represent different sectors, financing schemes, and regulatory approaches, offering a comparative lens on how proportionality operates across PPP contexts in Indonesia.

The analysis proceeds in two stages. First, doctrinal analysis evaluates the extent to which proportionality is recognized in PPP law and contract templates. Second, empirical analysis triangulates doctrinal findings with field interviews and case study evidence to reveal discrepancies between regulatory design and practical outcomes. The research demonstrates how proportionality functions not merely as an abstract doctrinal principle but as a practical legal tool to reconcile private profit with public welfare in PPP implementation.

3. Result and Discussion

3.1. Result

3.1.1. Regulatory Recognition of Proportionality

The findings reveal that the principle of proportionality has not yet been explicitly recognized in Indonesia's PPP regulations. The Indonesian Civil Code (KUH Perdata), Article 1338(3), merely emphasizes the principle of good faith as a general guideline in contracts, which implicitly provides a basis for balancing the rights and obligations of the parties [10]. Presidential Regulation No. 38 of 2015 elaborates on risk allocation, government support mechanisms such as the Viability Gap Fund (VGF) and Availability Payment (AP), and standard forms of cooperation agreements [11]. However, the regulation does not elevate proportionality into a stand-alone legal principle. Similarly, Law No. 11 of 2020 on Job Creation broadened the scope of PPP arrangements but remained silent on proportionality [12]. As such, proportionality in Indonesia's PPP regime is only indirectly present through technical instruments, leaving its implementation uneven

across projects.

Several studies have observed that Indonesian PPP regulations fail to comprehensively address critical aspects such as equitable risk allocation, clear termination mechanisms, and effective dispute resolution. For instance, Tiawarman and Jon Vic [16] *"Analysis of Legal Voids in the Implementation of PPPs"*, identifies regulatory inconsistencies, contractual ambiguities, and weaknesses in termination and arbitration clauses [16]. In the absence of explicit recognition of proportionality, interpretation and implementation often depend heavily on the bargaining position of contracting parties.

Private entities are frequently tasked with bearing substantial risks—demand risk, cost overruns, and operational risks—in exchange for potential profits. Yet, when risks become excessive or poorly managed, the consequences often fall on the public, through higher tariffs or diminished service quality. A study on *Risk Assessment of PPP Water Projects in Indonesia* underscores that geographical conditions and local regulatory variations exacerbate uncertainty, compelling private investors to inflate costs or demand higher compensation to offset such risks [17].

A recurring problem is poor project preparation, including unrealistic feasibility studies, overly optimistic demand forecasts, and delays in land acquisition and permitting. Such deficiencies push private partners to demand guarantees or contractual clauses that transfer burdens back to the government or society. A World Bank report, *"PPP Projects in Indonesia"*, highlights inadequate project preparation and weak inter-agency coordination as major obstacles to fair and effective PPP implementation [18]. Where contracts lack transparency, with incomplete disclosure of KPIs (Key Performance Indicators) and weak oversight, private entities may exploit opportunities to pursue profit maximization at the expense of public welfare. Nahdi, et al. [19] found that several Indonesian PPPs lacked clear KPI descriptions and detailed risk-sharing arrangements [19].

Political considerations also distort proportionality. Governments sometimes adjust tariffs or public facilities to meet short-term electoral demands rather than long-term equity goals. Private parties, in turn, often demand renegotiation clauses in cases of traffic shortfalls, inflationary pressures, or rising operational costs. Field studies confirm that political intervention frequently undermines contractual stability and fairness [20]. Although instruments such as VGF, AP, and fiscal support exist, their application remains inconsistent across projects, with conditions often perceived as overly burdensome for private actors. In the absence of legally binding guarantees, government support risks being reduced to policy commitments rather than enforceable obligations [21].

Moreover, private entities typically possess greater expertise, resources, and access to financial and legal consultants, enabling them to design contractual clauses that secure disproportionate advantages. In contrast, public institutions often lack the technical capacity to negotiate comprehensive clauses that account for all risks and ensure equitable benefit distribution. As a result, contracts are frequently drafted in ways that allow private entities to capture excess profits, while public benefits remain limited [19].

Finally, several PPP projects lack realistic revenue projections or face financing difficulties due to high capital costs. To attract investment, private actors often demand higher tariffs or extended concession periods, shifting the financial burden onto the public. When revenue projections fall short, governments are frequently compelled to intervene with financial support, which may ultimately strain the state budget [22].

3.1.2. Palapa Ring Project

The Palapa Ring Western Package represents the pioneer application of the Availability Payment (AP) scheme in Indonesian infrastructure PPPs, designed to expand broadband connectivity to remote regions that were commercially unattractive to private investors [23]. Under the framework of Presidential Regulation No. 38 of 2015, the government, through the Ministry of Communication and Information Technology (Kominfo) and related institutions, committed to providing periodic payments to the Implementing Business Entity (IBE), covering capital expenditure, operational costs, and a reasonable profit margin, provided that service availability standards were met [24]. This structure effectively transferred most of the demand risk from the private partner to the government, as payments were tied not to traffic volume but to the availability of services in accordance with contractual benchmarks [25].

Nonetheless, the AP framework did not absolve the private partner from all operational risks. A study entitled *"Third-Party Risk in the Availability Payment: The Palapa Ring Western Package"* demonstrated that IBEs remain responsible for contingent costs arising from service disruptions caused by third parties (*third-party risk*) and are subject to penalties where availability standards are not achieved. This indicates that proportionality in risk distribution under the AP model is limited: while demand risk is absorbed by the government, private entities continue to bear obligations related to service quality and external risk mitigation [23].

From the perspective of public benefit, the Palapa Ring project significantly expanded digital access in the so-called 3T regions (Tertinggal, Terdepan, Terluar – underdeveloped, frontier, and outermost areas). Data show that the Western and Central packages achieved 100% backbone network coverage, while the Eastern package reached approximately 98%, illustrating how the AP scheme made service provision viable in high-cost, low-commercial-return areas [21]. However, the project also raises fiscal sustainability concerns. Despite the guarantees provided through the AP mechanism and institutional backstopping via PT Penjaminan Infrastruktur Indonesia (PT PII) and Universal Service Obligation (USO) funding, periodic payments remain a long-term fiscal commitment for the government. This underscores the importance of continuous performance monitoring and the enforcement of penalties where service standards fall short. Without strict oversight, the AP scheme risks evolving into an uncontrolled fiscal burden, especially in cases of declining service quality or persistently low demand [21].

3.1.3. Umbulan Water Supply Project

In the Umbulan Water Supply System (SPAM Umbulan) project, the Indonesian government provided financial support through a Viability Gap Fund (VGF) amounting to IDR 818 billion out of a total investment of approximately IDR 2.0 trillion [26]. The project was designed to serve around 1.3 million people through 310,000 household connections, with one of the primary aims of the subsidy being to ensure that water tariffs remained affordable for communities without undermining the financial viability of the service provider [27].

While construction and operational risks largely rest with the private partner—such as the development of treatment facilities and distribution networks—the government also shares in certain risks, particularly in securing water resources, integrating distribution networks, and providing land acquisition to ensure smooth project implementation. Government support in financing trunk networks and offtake facilities reflects efforts to maintain an equitable balance between public and private burdens [25]. Nonetheless, the project continues to face challenges regarding tariff efficiency and transactional costs. Research conducted by Wijanarko and Ye [28] reveals that tariff levels are heavily influenced by the capacity of local governments, inter-agency coordination, and the high cost of extended distribution networks. Transaction costs, regulatory delays, and complex institutional coordination further undermine the stability of tariffs within the PPP contract framework [28].

3.1.4. Balikpapan-Samarinda Toll Road

The Balikpapan–Samarinda Toll Road, despite being constructed under a PPP scheme and receiving risk guarantees from the Indonesia Infrastructure Guarantee Fund (IIGF), has faced significant challenges in achieving optimal traffic volumes. Several sources suggest that this toll road is among the least utilized in Indonesia, although detailed public data on discrepancies between projected and actual traffic volumes remain unavailable [29].

Overly optimistic projections and inflated traffic growth assumptions created investment return expectations that have been difficult to realize [30]. In such circumstances, financial risks may shift back to the government, particularly where underutilization leads to insufficient tariff revenues to cover operational costs, debt obligations, and maintenance expenditures [31]. Nevertheless, no official statements or audit reports have yet confirmed that the government has provided additional financial support specifically as compensation for low traffic volumes [30].

3.1.5. Kertajati International Airport

The West Java International Airport (Bandara Internasional Jawa Barat – BIJB) Kertajati in Majalengka represents one of Indonesia's flagship public infrastructure projects, conceived with high expectations. Built on approximately 1,800 hectares of land with an investment of around IDR 2.6 trillion, the airport was projected to serve 5.6–12 million passengers annually by 2024, and as many as 29.3 million passengers by 2032 [32]. In reality, however, by the end of 2024, BIJB served only 413,240 passengers, or about 3–4% of its original target, albeit an increase from 135,535 passengers recorded the previous year [33]. Operationally, the airport has imposed a significant fiscal burden on the provincial government, with reported annual operating losses of approximately IDR 60 billion, financed through the West Java regional budget (APBD) [34].

According to transportation expert Joko Setijowarno, the root cause is straightforward: passengers from Bandung are reluctant to travel to Kertajati. While travel time to Majalengka is not substantially longer than to Halim Perdanakusuma Airport when measured door-to-door, factors such as congestion, toll fees, fuel costs, and overall inconvenience have made Kertajati less attractive [35]. In contrast, Bandung residents increasingly prefer Halim, now more accessible through the Whoosh high-speed railway, while populations in Cirebon, Majalengka, and Indramayu lack the density to sustain an airport of Kertajati's scale.

From the perspective of proportionality, the project illustrates a failure in risk allocation: financial burdens fall disproportionately on the state through both national and regional budgets, while public benefits remain minimal [36, 37]. The government attempted to bolster the airport's utilization by diverting flights from Husein Sastranegara Airport, but this policy appeared coercive rather than a structural solution. Governor Dedi Mulyadi's call to "focus on Kertajati to prevent it from becoming a failed project," and Vice Minister of Transportation Suntana's remark that decisions must be data-driven, further underscore the absence of rigorous analysis in the project's inception [38].

Ultimately, BIJB Kertajati highlights how, absent data-driven planning—including realistic passenger projections, accessibility studies, and demand analyses—large-scale infrastructure projects risk producing a disproportionate balance between investment and public benefit, thereby creating fiscal losses and undermining the sustainability of proportionality in PPP practice.

3.1.6. Cisumdawu Toll Road

The Cileunyi–Sumedang–Dawuan (Cisumdawu) Toll Road was initially plagued by delays but was revived through a PPP scheme combining public and private financing. PT Citra Karya Jabar Tol (CKJT), as the lead investor, assumed responsibility for Sections 3–6, while the government developed Sections 1 and 2. According to CKJT's Director, the private partner's role extended beyond physical construction to include the provision of over IDR 2.5 trillion in land acquisition bridging funds, critical to synchronizing land acquisition with construction and preventing major disruptions [39].

Disproportionalities emerged in land acquisition, where some residents resisted or demanded higher compensation, while CKJT had to maintain community relations, as social support was essential for project continuity. Construction also faced environmental and topographical challenges, including hilly terrain, valleys, and teak forests. CKJT emphasized its

commitment to environmental stewardship, working with forestry agencies to mitigate ecological impacts [38].

From a proportionality standpoint, Cisumdawu demonstrates an effort to balance interests: the private sector bore the risks of investment and land bridging funds, the government provided regulatory support and initial financing, and local communities were expected to benefit from enhanced connectivity to Kertajati Airport and new economic opportunities in Sumedang. Yet, toll tariffs emerged as a critical fault line. Communities regarded the tariffs as misaligned with their purchasing power, creating potential social resistance, while the private sector required adequate tariffs to recoup substantial investments.

Ultimately, Cisumdawu illustrates the classic PPP dilemma in Indonesia: proportionality is sought through multi-actor collaboration, but achieving full balance remains elusive when investor expectations for profitability collide with public demands for affordability. The project underscores the need for socially sensitive tariff evaluation mechanisms, without which the legitimacy and sustainability of PPPs may be jeopardized.

3.1.7. Jakarta–Bandung High-Speed Railway (Whoosh)

The Jakarta–Bandung High-Speed Railway (HSR), popularly known as *Whoosh*, reflects the complexity of proportionality in practice. Initially structured as a purely commercial project without government guarantees, all financial and operational risks were formally assigned to the consortium PT Kereta Cepat Indonesia–China (KCIC), composed of Indonesian SOEs and Chinese partners. In practice, however, the project suffered from substantial cost overruns, ultimately prompting fiscal intervention by the Indonesian government despite prior assurances that the state budget (APBN) would not be burdened. This shift raised fundamental questions about policy consistency and proportionality, as risks originally allocated to the private sector were ultimately borne by the public.

Former Minister of Transportation Ignasius Jonan emphasized in an interview that the government's primary role as regulator was to ensure safety and grant concessions only after rigorous evaluation. He explained that a concession constitutes a state-granted right to an operator, bounded by time and obligations, with the dual aim of providing affordable public services while preserving investor viability. Jonan also underscored the importance of technical analyses—including geological, hydrological, and seismic studies—prior to issuing construction permits [40]. This illustrates that proportionality in the HSR project extended beyond profit and financial risk-sharing to encompass public safety guarantees [41].

Delays in concession approval, arising from administrative and technical factors, further highlight that balancing interests is not limited to tariff and profitability considerations, but also hinges on data integrity and compliance with safety standards. Jonan remarked that if construction costs proved excessive, the proposed IDR 200,000 ticket price would be re-evaluated to ensure affordability—demonstrating regulatory efforts to safeguard proportionality between public accessibility and private viability.

While the HSR delivers strategic benefits such as transport modernization and competitiveness, proportionality dilemmas persist. On the one hand, private involvement was initially hailed for sparing the APBN; on the other hand, cost overruns, renegotiated concessions, and subsequent state support reveal that equilibrium between private profit and public interest remains unfulfilled.

Stakeholder interviews further reveal divergent perspectives: government officials assert proportionality has been addressed through risk matrices and support instruments, but concede weaknesses in implementation; private actors value certainty through AP and VGF subsidies but demand stronger legal guarantees to avoid renegotiation; communities, meanwhile, assess proportionality primarily in terms of tariff levels and service affordability [38].

Taken across cases, instruments such as Availability Payments, Viability Gap Funds, and blended financing have fostered partial balance. However, shortcomings persist in tariff justice, accuracy of demand forecasting, and fiscal policy consistency. The absence of explicit recognition of proportionality in positive law renders its application heavily contingent upon project-specific designs, resulting in inconsistent practices.

3.2. Discussion

3.2.1. Proportionality as a Weak Normative Principle

A study published by Cambridge University Press indicates that Indonesia lacks a robust model of proportionality either in constitutional law or in contract law. Although the term has been invoked by the Constitutional Court, its application remains unsystematic and has not crystallized into binding legal text. This underscores a fundamental normative weakness: in the absence of explicit recognition of proportionality as a guiding legal principle, regulators and implementers tend to apply it ad hoc, based on pragmatic project needs rather than principled notions of justice.

3.2.2. Financial Risks and Overly Optimistic Projections

Research on toll road projects shows that demand, cost, and revenue forecasts are frequently inaccurate, with tariff adjustments becoming socially sensitive issues given their direct impact on affordability. Such forecasting errors often leave private actors exposed to significant financial risks, prompting them to set tariffs at higher levels to secure profitability. This, in turn, distorts proportionality by tilting the balance toward private profit at the expense of public accessibility.

3.2.3. Disproportionate Risk Allocation

According to Mazher's systematic review of 80 international PPP studies, *"Adequate Risk Allocation and Sharing (RAS)"* is a critical success factor but one that is extremely difficult to implement, monitor, and enforce [42]. PPPs

typically involve multiple categories of risk—political, design, operational, transfer—particularly in toll road BOT (Build–Operate–Transfer) schemes. When these risks are not fairly distributed—for example, when private partners bear excessive demand risk or cost overruns—contractual equilibrium is undermined, and proportionality is eroded.

3.2.4. Institutional Fragmentation and Weak Project Preparation

Projects such as Kertajati International Airport and the Cisumdawu Toll Road illustrate the absence of realistic, data-driven planning. Passenger targets were overly optimistic, and land acquisition processes proved prolonged and contentious. An interview with CKJT Director Bagus revealed that land acquisition bottlenecks significantly slowed construction progress [34]. Recent data highlight the fragility of Kertajati: in May 2025, domestic passenger numbers fell by approximately 89% year-on-year, despite the holiday and Eid travel season. The West Java provincial government has already allocated IDR 60 billion from the regional budget to subsidize operations, as revenues have been insufficient to cover costs [32, 33]. These conditions exemplify an imbalance in project preparation: private partners may be ready to invest, but institutional and social gaps prevent public benefits from being fully realized [43].

Similarly, land acquisition for Cisumdawu Sections 4 and 5 was reported as 99.2% complete by January 2023 (BPN Sumedang data). Yet several parcels—community land, wakaf property, tanah kas desa, and land owned by institutions—remained unresolved. The acquisition process faced administrative hurdles, valuation disputes, limited community consent, and problems with data validation and legal approvals. Additionally, reports from the Geological Agency identified soil movement risks along several segments, requiring detailed geological analysis and technical mitigation before construction could proceed.

3.2.5. Inadequate Tariff Oversight and Adjustment Mechanisms

Analysis of water supply PPPs reveals that tariff-setting often lacks regulatory frameworks for periodic adjustment and enforcement. Without such mechanisms, social losses become likely: the public bears the burden of service costs, while private entities secure disproportionately high compensation.

3.2.6. Weak Governance and Public Participation

Empirical studies in Indonesia's toll road sector demonstrate that strong governance—including monitoring, ownership structures, transparency, and contract management—correlates directly with project performance and public benefit. Where governance is weak, PPP contracts often favor private interests unfairly [44].

A related study, *"Examining Solicited PPP Projects"*, found that although PPPs aim to bridge government financing gaps, practical implementation often suffers from weak governance and shallow collaboration. Public participation is minimal in validating project benefits, leaving decisions on project location, tariffs, and concession terms largely top-down, with little attention to proportional service distribution.

3.2.7. Distributive and Commutative Justice versus PPP Realities

From Aristotle's perspective, justice manifests in two primary forms: distributive and commutative [6]. Distributive justice requires that the burdens and benefits of infrastructure development be apportioned in accordance with contributions and needs, while commutative justice demands fairness in exchanges and agreements. In the PPP context, distributive justice entails ensuring that the public broadly benefits from infrastructure, while commutative justice ensures that contracts between government and private actors reflect a balanced distribution of rights and obligations [6].

In Indonesia, however, realities often diverge. Projects such as Kertajati and Cisumdawu reveal imbalances between public interest and private profit. If distributive–commutative justice were genuinely internalized, PPP schemes could be designed more inclusively. For example, in toll road development, landowners affected by compulsory acquisition could be offered equity participation in the operating company rather than mere one-off compensation. As shareholders, they would be entitled to sustainable dividends rather than uncertain lump-sum payments.

Furthermore, affected communities could be integrated into the toll road economy through the allocation of micro, small, and medium enterprise (MSME) opportunities at rest areas. If government and private partners created reserved spaces for local entrepreneurs—food vendors, artisans, transport operators—local populations would share in economic gains. This model creates a *triple win*: private investors retain reasonable profits, affected communities secure new income sources, and government ensures development is conducted equitably [42].

This view resonates with Jeffrey Sachs in *The Age of Sustainable Development*, who stresses that development should move beyond the growth paradigm toward sustainability. Within the PPP framework, this means projects must not be judged solely on bankability or value for money but also on their capacity to safeguard social justice, empower local economies, and ensure environmental sustainability [45, 46].

Accordingly, an ideal PPP is not one that serves only corporate interests or short-term profits but one that functions as a collaborative mechanism where government, private sector, and society all benefit. In Indonesia, however, PPPs remain far from this ideal. Regulations do not explicitly enshrine proportionality, contractual practices often favor private actors in times of high risk, institutional capacity remains sluggish, and public participation is limited. To restore balance, future approaches must: i) codify proportionality as a legal principle in PPP regulation and contracts; ii) establish tariff adjustment mechanisms based on affordability and cost recovery; iii) adopt data-driven planning and realistic projections; and iv) enhance transparency and participatory decision-making. These reforms must be guided by a justice-oriented framework that evaluates contracts not solely on financial efficiency but also on the equitable and sustainable distribution of benefits.

4. Conclusion

This study has examined the application of the proportionality principle in Indonesian public–private partnership (PPP) contracts and its function in mediating the tension between private profit and public interest. The findings demonstrate that although proportionality is implicitly reflected in risk allocation frameworks, Viability Gap Funds (VGF), and Availability Payment (AP) schemes, it has not been explicitly codified as a binding legal principle in Indonesia's PPP regulations. As a result, its application remains fragmented and inconsistent across projects. The case studies—Palapa Ring, Umbulan Water Supply, Balikpapan–Samarinda Toll Road, Kertajati International Airport, Cisumdawu Toll Road, and the Jakarta–Bandung High-Speed Railway (Whoosh)—reveal varying levels of proportionality. While Palapa Ring and Umbulan illustrate relatively balanced arrangements between government support and service affordability, projects such as Kertajati and Whoosh highlight systemic weaknesses, including over-optimistic demand forecasts, cost overruns, and the eventual reallocation of financial risks to the state. Cisumdawu further underscores how land acquisition delays and tariff-setting controversies generate tensions between investor profitability and public accessibility. Overall, PPP practice in Indonesia still falls short of realizing distributive and commutative justice. The absence of explicit recognition of proportionality, combined with weak governance capacity and inadequate data-driven planning, undermines the objective of ensuring fairness between public and private interests.

To strengthen proportionality in Indonesian PPPs, three measures are essential. First, codifying proportionality as a guiding legal principle in PPP regulations and contract design. Second, institutionalizing community participation through mechanisms such as equity-sharing for landowners and empowerment of local SMEs (*UMKM*) in toll road rest areas. Third, enforcing transparent and data-driven planning, including realistic demand forecasts and tariff-setting frameworks. Embedding proportionality in this manner will not only promote contractual fairness but also align PPP implementation with the paradigm of sustainable development, ensuring that infrastructure projects generate long-term and equitable benefits for both investors and society.

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