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STRENGTHENING CONTRACTUAL GOVERNANCE FOR SUSTAINABLE INFRASTRUCTURE DEVELOPMENT IN INDONESIA: BALANCING PUBLIC INTEREST, FOREIGN INVESTMENT, AND LEGAL ACCOUNTABILITY

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A B S T R A C T

This study develops the Balanced Contractual Governance Framework (BCGF), a normative governance framework designed to reconcile public interest protection with legal certainty for foreign investors in Indonesia's sustainable infrastructure sector. Employing normative legal research, the study integrates statute, conceptual, case, and comparative approaches to examine the coherence of Indonesia's investment and infrastructure regulatory framework. The analysis combines normative harmonization with cross-case synthesis of five strategic investment and public procurement cases PT Freeport Indonesia, PT Newmont Nusa Tenggara, the Chromebook procurement program, nominee agreements, and the Just Energy Transition Partnership (JETP) to identify recurring contractual governance vulnerabilities. The findings demonstrate that rigid contractual arrangements, fragmented regulatory coordination, inadequate post-award oversight, and the absence of enforceable sustainability obligations collectively undermine contractual resilience and increase governance risks in long-term infrastructure investment. Building upon these findings, the study develops the Balanced Contractual Governance Framework (BCGF), comprising five interrelated governance pillars: Public Interest Protection, Investor Legal Certainty, Transparency and Accountability, Dynamic Risk Allocation, and Sustainability Performance. The framework contributes to the contractual governance literature by providing an integrated normative architecture that strengthens contractual adaptability, regulatory accountability, and sustainable infrastructure governance while offering practical guidance for future legal and institutional reforms..

INTRODUCTION

Long-term infrastructure investment has become a central driver of sustainable economic development, particularly as governments increasingly rely on foreign direct investment (FDI) and Public–Private Partnerships (PPPs) to address substantial infrastructure financing gaps (Engel et al., 2020). However, expanding private participation in strategic infrastructure projects has also intensified the challenge of designing contractual governance arrangements capable of simultaneously ensuring investor confidence, preserving regulatory flexibility, and safeguarding long-term public interests (Roehrich et al., 2014). These challenges are especially pronounced in developing jurisdictions, where evolving regulatory frameworks, institutional reforms, and sustainability commitments frequently reshape the legal environment governing long-term investment relationships. Within this broader context, Indonesia provides an important case study due to its extensive infrastructure agenda, continuing legal reforms, and growing reliance on foreign investment and PPP mechanisms (Public–Private Partnership Monitor, 2021). Beyond providing financial resources, foreign investment facilitates technology transfer, managerial innovation, and improvements in public service capacity (UNCTAD, 2022). However, the success of long-term infrastructure investment depends not solely on the volume of capital inflows, but on the ability of contractual governance arrangements to maintain legal certainty while preserving the State's regulatory authority to respond to evolving public interests.

Although foreign investment and PPP schemes have become central instruments for financing sustainable infrastructure, their effectiveness ultimately depends on the resilience of the contractual governance framework governing long-term investment relationships. Infrastructure contracts must remain sufficiently adaptable to accommodate regulatory change, evolving public policy priorities, and sustainability commitments while continuing to provide predictable legal protection for investors (House, 2016). Nevertheless, experience from Indonesia's strategic infrastructure projects demonstrates that contractual arrangements remain predominantly rigid, limiting their capacity to respond to economic uncertainty, regulatory reform, and emerging sustainability obligations (Adebayo et al., 2023). This structural weakness frequently generates contractual disputes, regulatory uncertainty, and governance failures that undermine both investor confidence and the protection of public interests.

Evidence from Indonesia's strategic investment and public procurement practices further demonstrates that deficiencies in contractual governance constitute a systemic rather than isolated challenge. High-profile cases including the renegotiation of PT Freeport Indonesia's Contract of Work and the investment arbitration involving PT Newmont Nusa Tenggara illustrate how rigid contractual stabilization mechanisms may conflict with the State's evolving regulatory objectives. Similarly, the Chromebook procurement program exposed weaknesses in due diligence, post-award contract supervision, and procurement accountability, resulting in governance inefficiencies and increased fiscal risk. Comparable governance vulnerabilities are evident in the continued use of nominee arrangements that obscure the beneficial ownership of foreign investment, as well as in the implementation of the Just Energy Transition Partnership (JETP), where contractual mechanisms have yet to effectively integrate Environmental, Social, and Governance (ESG) obligations into long-term investment arrangements. Collectively, these cases reveal a recurring pattern: the principal challenge lies not in regulatory change or investment volume per se, but in the absence of an integrated contractual governance framework capable of reconciling public interest protection, investor legal certainty, and sustainability objectives within long-term infrastructure contracts (Adebayo et al., 2023).

From a normative perspective, many contractual disputes in infrastructure investment originate from the inherent tension between the State's regulatory authority and the principle of contractual stability. This tension reflects the coexistence of two fundamental legal doctrines: *salus populi suprema lex est*, which legitimizes governmental intervention to safeguard public welfare, and *pacta sunt servanda*, which requires contractual commitments to be respected in order to preserve legal certainty and investor confidence (Beysulen Angin, 2025). While governments retain constitutional responsibility to protect economic sovereignty, environmental sustainability, and equitable access to public services, foreign investors reasonably expect regulatory predictability, secure investment returns, and protection against indirect expropriation. As Indonesia's legal framework continues to evolve through reforms in investment, mining, and economic governance legislation, rigid long-term contracts frequently struggle to accommodate changing regulatory priorities. Consequently, contractual relationships become increasingly vulnerable to renegotiation, regulatory disputes, and international investment arbitration, exposing the structural limitations of conventional contractual governance.

Existing scholarship on contractual governance in infrastructure investment has evolved along three principal streams of research. The first, largely informed by Transaction Cost Economics (TCE), emphasizes ex-ante contractual design, efficient risk allocation, and mechanisms to mitigate opportunistic behaviour in order to enhance project bankability and attract private investment. A second stream adopts a relational governance perspective, arguing that long-term infrastructure contracts should incorporate adaptive renegotiation mechanisms, collaborative decision-making, and flexible dispute resolution processes to accommodate evolving economic and regulatory conditions. More recently, a third body of literature has incorporated Environmental, Social, and Governance (ESG) principles into sustainable infrastructure development, highlighting the importance of environmental responsibility, social accountability, and institutional governance in evaluating infrastructure performance (Benítez-Ávila et al., 2019).

Despite these important contributions, the existing literature remains conceptually fragmented. Studies grounded in Transaction Cost Economics primarily address contractual efficiency through risk allocation and legal certainty, whereas relational governance scholarship focuses on contractual adaptability and long-term collaboration. Meanwhile, sustainability-oriented research increasingly incorporates ESG considerations but generally treats sustainability as a project evaluation criterion rather than as an integral component of contractual governance itself. Consequently, limited attention has been devoted to developing a normative contractual governance framework capable of simultaneously integrating public interest protection, investor legal certainty, transparency and accountability, adaptive risk allocation, and sustainability obligations within long-term infrastructure investment. This limitation is particularly significant in Indonesia, where frequent regulatory reforms, increasing public accountability, and complex strategic infrastructure projects demand contractual arrangements that remain both legally stable and institutionally adaptive.This fragmentation suggests that contractual governance should no longer be understood merely as a mechanism for allocating contractual risks, but as an adaptive legal architecture capable of reconciling competing public and private interests throughout the lifecycle of infrastructure projects. More fundamentally, existing studies have yet to explain how these complementary perspectives can be systematically integrated into a single contractual governance architecture capable of balancing legal certainty, regulatory adaptability, public accountability, and sustainability within long-term infrastructure contracts. Consequently, the literature remains fragmented not only in its theoretical orientation but also in its institutional implications, leaving limited guidance for designing governance mechanisms that reconcile competing legal objectives throughout the contract lifecycle.

To address these limitations, this study develops the Balanced Contractual Governance Framework (BCGF), an integrated normative framework designed to reconcile public interest protection with investor legal certainty in sustainable infrastructure governance. Unlike previous approaches that predominantly emphasize individual dimensions of contractual governance, the BCGF integrates five interrelated governance pillars Public Interest Protection, Investor Legal Certainty, Transparency and Accountability, Dynamic Risk Allocation, and Sustainability Performance into a coherent contractual governance architecture (Feng et al., 2022). Rather than functioning solely as a conceptual proposition, the framework is developed inductively from the findings generated through normative harmonization and cross-case synthesis of Indonesia's strategic investment and public procurement cases. Accordingly, the proposed framework represents a theory-informed governance architecture grounded in systematic legal analysis rather than an a priori normative proposal. Accordingly, this study makes three principal contributions: first, it synthesizes fragmented contractual governance theories into a unified normative framework; second, it demonstrates how recurring governance vulnerabilities can be systematically identified through cross-case legal analysis; and third, it operationalizes the BCGF as a practical governance framework applicable to long-term infrastructure contracts and public-private partnership (PPP) projects.

Building upon this conceptual foundation, this study examines how Indonesia's contractual governance framework can be strengthened to reconcile public interest protection, legal certainty for foreign investors, and accountability in sustainable infrastructure development. Specifically, the study addresses two research questions: (1) How effective is Indonesia's existing legal and contractual framework in responding to regulatory change, strategic investment challenges, and governance risks in sustainable infrastructure projects? and (2) How can the Balanced Contractual Governance Framework (BCGF) be operationalized as a normative governance instrument to enhance accountability, contractual resilience, and sustainable infrastructure governance? By addressing these questions, the study seeks to contribute both to the development of contractual governance theory within investment law and to the formulation of practical legal guidance for legislators, PPP institutions, and public procurement authorities responsible for strategic infrastructure development in Indonesia.

METHODE

This study employs a normative legal research (doctrinal legal research) design to examine how Indonesia's contractual governance framework addresses the competing demands of public interest protection, investor legal certainty, and sustainable infrastructure governance (Hutchinson & Duncan, 2012). A normative legal approach is appropriate because the issues examined concern the interpretation, coherence, harmonization, and institutional interaction of legal norms governing foreign investment, public procurement, and infrastructure development rather than the measurement of empirical behaviour (Theil, 2025). Accordingly, the research focuses on analysing statutory regulations, legal doctrines, contractual principles, and institutional practices to identify normative inconsistencies, governance vulnerabilities, and legal gaps affecting long-term infrastructure investment. Beyond evaluating existing legal norms, this study seeks to develop an integrated normative framework capable of reconciling competing legal and institutional interests within sustainable infrastructure governance (Van Hoecke, 2015).

To comprehensively examine these issues, the study adopts an integrated legal approach that combines four complementary analytical perspectives: *The Statute Approach*, *Conceptual Approach*, *Case Approach*, and *Comparative Approach*. The integration of these approaches enables the research to analyse contractual governance from regulatory, theoretical, practical, and comparative dimensions, thereby providing a comprehensive methodological basis for developing the *Balanced Contractual Governance Framework (BCGF)* (Marzuki, 2022).

- The Statute Approach is employed to examine the hierarchy, coherence, and *ratio legis* of Indonesia's legal framework governing foreign investment, public procurement, and infrastructure development, including the Investment Law, the Mining Law, the Job Creation Law, Presidential Regulation No. 38 of 2015 on Public–Private Partnerships (PPPs), and procurement regulations issued by the National Public Procurement Agency (LKPP) (Hutchinson & Duncan, 2012).
- The conceptual approach provides the theoretical foundation by examining the doctrines of contractual governance, good public governance, *pacta sunt servanda*, *salus populi suprema lex est*, and Environmental, Social, and Governance (ESG) principles, which collectively underpin the construction of the BCGF (Stupak et al., 2021).
- The case approach evaluates the practical operation of these legal norms through five strategic investment and public procurement cases: the renegotiation of PT Freeport Indonesia's Contract of Work, the investor–State arbitration involving PT Newmont Nusa Tenggara, the Chromebook procurement programme implemented by the Ministry of Education, nominee arrangements in foreign investment, and the Just Energy Transition Partnership (JETP). These cases were selected because they represent recurring contractual governance challenges across different sectors of Indonesia's strategic infrastructure development (Mushkat, 2017).

- The comparative approach examines contractual governance practices adopted in selected ASEAN and Latin American jurisdictions, particularly concerning stabilization clauses, structured renegotiation mechanisms, adaptive risk allocation, and sustainability-related contractual provisions, in order to identify internationally recognised best practices relevant to Indonesia (Van Hoecke, 2015).

The study relies exclusively on secondary legal materials collected through systematic library-based legal research (Hutchinson & Duncan, 2012). Primary legal materials include the 1945 Constitution of the Republic of Indonesia, statutes governing investment, mining, public procurement, and infrastructure, implementing regulations, Presidential Regulations, model PPP contracts, and relevant judicial and arbitral decisions (Van Hoecke, 2015). Secondary legal materials comprise peer-reviewed journal articles, academic books, policy reports, legal commentaries, and other scholarly publications addressing investment law, contractual governance, public procurement, and sustainable infrastructure (Hutchinson & Duncan, 2012). Tertiary legal materials, including legal dictionaries, encyclopaedias, and specialised legal glossaries, are used to clarify legal terminology and support doctrinal interpretation. These materials were systematically collected through document identification, legal source classification, and database searches using Scopus, ScienceDirect, SpringerLink, Google Scholar, official government repositories, and institutional publications (Page et al., 2021).

The analytical process was conducted through four sequential stages. First, normative harmonization was undertaken to examine the coherence, consistency, and interaction of legal norms governing investment, infrastructure development, public procurement, and sustainable development within Indonesia's regulatory framework (Syahlan, 2021). Second, cross-case synthesis was employed to identify recurring contractual governance vulnerabilities across the five selected case studies by comparing patterns of regulatory conflict, contractual rigidity, accountability deficits, legal uncertainty, adaptive risk allocation, and sustainability obligations. Third, doctrinal legal analysis, supported by grammatical, systematic, and teleological interpretation, was applied to evaluate the normative implications of these recurring governance patterns and to assess the adequacy of the existing contractual governance framework (Feteris, 2008). Finally, the findings generated through normative harmonization, comparative legal analysis, and cross-case synthesis were inductively integrated to develop the Balanced Contractual Governance Framework (BCGF). The resulting framework comprises five interrelated governance pillars Public Interest Protection, Investor Legal Certainty, Transparency and Accountability, Dynamic Risk Allocation, and Sustainability Performance which collectively provide an integrated normative framework for strengthening contractual governance in sustainable infrastructure projects. This analytical procedure establishes a clear methodological link between the research design, legal analysis, empirical case synthesis, and the conceptual contribution of this study.

RESULT AND DISCUSSION

This section presents the findings generated through normative harmonization and cross-case synthesis. The results are organised into three sequential stages. First, the study examines the coherence of Indonesia's investment and infrastructure legislation to identify normative inconsistencies affecting contractual governance. Second, five strategic investment and procurement cases are analysed to identify recurring governance vulnerabilities. Finally, these findings are synthesised into a cross-case governance matrix that serves as the empirical and normative basis for the development of the Balanced Contractual Governance Framework (BCGF).

3.1 Normative Harmonization of Investment and Infrastructure Legislation in Indonesia

- The analysis of Indonesia's investment and infrastructure regulatory framework reveals a persistent normative tension between the protection of foreign investors' legal certainty and the preservation of the State's regulatory sovereignty. Rather than forming a coherent legal architecture, the principal statutes governing investment, mining, and public infrastructure exhibit divergent regulatory priorities that generate legal uncertainty in the implementation of long-term infrastructure investment.
- Law Number 25 of 2007 on Investment establishes legal certainty and national treatment as the cornerstone principles of Indonesia's investment regime (*UU No. 25 Tahun 2007*, n.d.). Article 7 expressly guarantees that the Government will not nationalize or expropriate investors' property rights except by law and subject to compensation based on fair market value (*UU No. 25 Tahun 2007*, n.d.). Nevertheless, the statute does not provide a structured legal mechanism for contractual renegotiation in situations of extraordinary change (*hardship*) that substantially affect the public interest. As a result, the legal framework remains relatively rigid when confronted with evolving economic or regulatory circumstances.
- In contrast, Law Number 3 of 2020 on Mineral and Coal Mining reflects a significant shift toward strengthening State sovereignty through mandatory domestic value addition, including smelter development requirements and compulsory share divestment of up to 51 percent (*UU No. 3 Tahun 2020*, n.d.). These policy changes directly intersect with earlier Contract of Work (CoW) arrangements containing rigid *freeze stabilization clauses*, thereby creating prolonged legal friction between contractual stability and subsequent legislative reforms (Cotula, 2010).
- Similarly, Law Number 6 of 2023 on Job Creation seeks to improve the investment climate through a risk-based licensing system designed to simplify administrative procedures (*UU No. 6 Tahun 2023*, n.d.). However, the analysis indicates that this deregulatory approach has

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not been accompanied by an equivalent strengthening of post-licensing contractual oversight. Consequently, the simplification of licensing procedures has created a potential supervisory gap in the governance of strategic infrastructure projects, particularly where contractual compliance depends primarily on ex post monitoring rather than preventive regulatory controls.

- A comparable pattern is identified in Presidential Regulation Number 38 of 2015 concerning Public–Private Partnerships (PPP), which introduces important risk allocation mechanisms, including Availability Payment (AP) and the Viability Gap Fund (VGF) (*PERPRES No. 38 Tahun 2015*, n.d.). Although these instruments improve project bankability, the regulation does not require sustainability performance indicators to be incorporated into payment or penalty clauses. Instead, such provisions remain largely optional, thereby limiting their legal enforceability and reducing the effectiveness of contractual incentives for sustainable infrastructure delivery.
- Overall, the findings demonstrate that Indonesia's investment and infrastructure legislation has evolved through sector-specific policy objectives rather than through an integrated regulatory strategy. While investment legislation prioritizes investor protection, sectoral legislation increasingly emphasizes resource sovereignty and public policy objectives. The absence of explicit legal mechanisms to reconcile these competing normative orientations contributes to contractual uncertainty and increases the likelihood of disputes in long-term infrastructure investment.

These findings provide the normative foundation for the subsequent case analyses, which examine how these regulatory inconsistencies materialise in the implementation of strategic investment and infrastructure contracts.

3.2 Case Analysis of Contractual Governance and Strategic Oversight Vulnerabilities

The examination of five major investment and public procurement cases in Indonesia reveals recurring vulnerabilities in contractual governance and strategic oversight. Despite arising from different regulatory sectors, these cases exhibit a common pattern in which rigid contractual structures, weak regulatory coordination, and insufficient monitoring mechanisms reduce the State's ability to safeguard long-term public interests while maintaining investment certainty.

3.2.1. Renegotiation of the PT Freeport Indonesia Contract of Work

The transition from the fifth-generation Contract of Work (CoW) regime to the Special Mining Business License (IUPK) exposed the structural limitations of traditional resource contracts. Earlier CoW arrangements were drafted with absolute stabilization clauses that effectively froze the applicable legal and fiscal regime at the time of contract execution. Subsequent statutory requirements concerning domestic mineral processing and mandatory share divestment under the Mining Law created a legal impasse between contractual commitments and evolving public policy objectives. The findings indicate that contracts lacking periodic adjustment mechanisms substantially increase renegotiation costs and require politically sensitive interventions to realign contractual obligations with national interests.

3.2.2. PT Newmont Nusa Tenggara ISDS Arbitration

The investment arbitration initiated by PT Newmont Nusa Tenggara before the International Centre for Settlement of Investment Disputes (ICSID) in 2014 illustrates the consequences of regulatory inconsistency between contractual investment protections and subsequent legislative reforms. The dispute arose following Indonesia's prohibition on the export of unprocessed mineral concentrates, which the investor argued undermined its contractual rights, whereas the Government justified the measure as a statutory obligation serving broader economic policy objectives. This case demonstrates that the absence of clear mechanisms reconciling investor protections with legitimate regulatory change may expose the State to substantial financial and legal risks.

3.2.3. Chromebook Procurement in the Ministry of Education, Culture, Research, and Technology

The Chromebook procurement program highlights governance weaknesses in large-scale public procurement contracts. The analysis suggests that contractual compliance was primarily assessed through formal administrative requirements, while limited attention was given to technological feasibility, user-needs assessment, and post-award performance evaluation. Such contractual rigidity increases the likelihood of inefficient public spending, potential financial losses, and the failure to achieve intended public service outcomes despite formal compliance with procurement procedures.

3.2.4. Nominee Agreements in Foreign Investment

Although Article 33 of Law Number 25 of 2007 explicitly declares nominee shareholding arrangements null and void, such practices continue to be used to circumvent foreign ownership restrictions. The persistence of nominee structures indicates weaknesses in both contractual governance and administrative supervision, particularly in identifying beneficial ownership before investment approval (*PERPRES No. 13 Tahun 2018*, n.d.). Consequently, deficiencies in ex ante monitoring create opportunities for regulatory circumvention that may undermine economic sovereignty and reduce public revenue.

3.2.5. JETP Financing and Sustainable Infrastructure

The Just Energy Transition Partnership (JETP), with its commitment of USD 20 billion for Indonesia's energy transition, illustrates the gap between political commitments and enforceable contractual obligations (*Indonesia's Just Energy Transition Partnership (JETP) Comprehensive Investment and Policy Plan (CIPP) – Policies*, n.d.). The current public–private partnership framework for green infrastructure does not establish mandatory sustainability performance indicators capable of linking Environmental, Social, and Governance (ESG) outcomes with contractual payment adjustments or concession termination. As a consequence, sustainability commitments remain largely aspirational, thereby increasing the risk of greenwashing and limiting accountability in infrastructure implementation (Mateo-Márquez et al., 2022).

Collectively, these case studies reveal that Indonesia's investment and procurement governance faces a common institutional challenge: contractual arrangements remain predominantly oriented toward legal certainty at the time of contract formation, while providing insufficient mechanisms to accommodate regulatory change, technological evolution, sustainability objectives, and effective post-award oversight. This structural imbalance reduces contractual resilience and weakens the capacity of both public institutions and private investors to manage long-term infrastructure risks.

Although each case arises within a different regulatory and contractual context, the recurring governance deficiencies identified across these cases suggest the existence of broader structural weaknesses. These recurring patterns are synthesised in the following cross-case analysis, which identifies the common governance vulnerabilities that subsequently inform the development of the Balanced Contractual Governance Framework (BCGF).

3.3 Cross-Case Synthesis of Contractual Governance Vulnerabilities

Table 1. Cross-case Synthesis of Governance Vulnerabilities Identified Across the Five Case Studies

Case	Governance Vulnerability	Contractual Weakness	Institutional Consequence	BCGF Response
PT Freeport Indonesia	Contract rigidity	Absolute stabilization clause without adaptive review	Costly renegotiation and regulatory deadlock	Periodic Adjustment Clause
PT Newmont Nusa Tenggara	Regulatory inconsistency	Misalignment between contractual protection and domestic regulation	ISDS exposure and compensation risk	Regulatory Rebalancing Mechanism
Chromebook Procurement	Weak contractual oversight	Limited due diligence and post-award monitoring	Procurement inefficiency and public loss	Performance-Based Contract Monitoring
Nominee Agreement	Ownership opacity	Weak beneficial ownership verification	Circumvention of investment restrictions	Beneficial Ownership Verification System

JETP Green Infrastructure	Sustainability governance gap	ESG obligations not contractually enforceable	Greenwashing and weak accountability	Sustainability Performance Indicators (SPI)

The cross-case synthesis demonstrates that the governance failures identified across the five cases are not isolated events but manifestations of recurring structural deficiencies within Indonesia's contractual governance framework. Despite differences in regulatory sectors, each case reveals one or more common weaknesses, including contractual rigidity, regulatory inconsistency, insufficient accountability, ownership opacity, and the absence of enforceable sustainability obligations. These recurring vulnerabilities indicate that existing contractual governance remains fragmented and sector-specific, thereby justifying the need for an integrated governance framework. The synthesis therefore provides the analytical foundation for the development of the Balanced Contractual Governance Framework (BCGF), which is discussed in the following section.

DISCUSSION

1. From Contractual Stability to Adaptive Contractual Governance: Reconciling *Pacta Sunt Servanda* and *Salus Populi Suprema Lex Est*

The findings presented in Section 3 demonstrate that the principal governance challenge in Indonesia's investment and infrastructure contracts lies in the persistent tension between investor legal certainty and the State's regulatory sovereignty. Rather than representing isolated legal disputes, the cases analyzed in this study consistently reveal that contractual rigidity emerges when long-term investment agreements prioritize regulatory stability without providing adequate mechanisms to accommodate legitimate changes in public policy. This recurring pattern explains why disputes such as those involving PT Freeport Indonesia and PT Newmont Nusa Tenggara extend beyond contractual interpretation and instead reflect a broader structural conflict between the doctrine of *pacta sunt servanda* and the State's inherent *right to regulate*. Within private and international investment law, the principle of *pacta sunt servanda* requires legally concluded agreements to be respected and performed in good faith, thereby providing the legal certainty necessary for long-term investment (*Vienna Convention on the Law of Treaties (1969)*, n.d.). Traditional freeze stabilization clauses were developed to preserve this certainty by maintaining the legal and fiscal regime existing at the time of contract formation (Cotula, 2010).

However, Incomplete Contracts Theory argues that parties to long-term contracts cannot reasonably anticipate every future contingency at the time of contract formation (Hart & Moore, 2006). In infrastructure projects spanning several decades, unforeseen economic crises, technological transformation, environmental challenges, and shifts in public policy inevitably alter the assumptions underlying the original contractual arrangement. Under these circumstances, rigid freeze stabilization clauses may produce a lock-in effect, preventing contracts from adapting to legitimate regulatory change (Cotula, 2014). Consequently, governments face a fundamental governance dilemma: maintaining contractual stability at the expense of public welfare or introducing unilateral regulatory reforms that may expose the State to Investor–State Dispute Settlement (ISDS) claims.

Modern administrative law therefore recognises the principle of *salus populi suprema lex est* as the normative basis for the State's inherent right to regulate in pursuit of legitimate public interests. Indonesia's experience becomes more apparent when viewed alongside the broader evolution of contractual governance reflected in comparative studies of public–private partnerships (PPPs) and long-term infrastructure investment. Rather than relying exclusively on rigid contractual stabilization, contemporary governance approaches increasingly recognize that long-term infrastructure contracts require adaptive institutional mechanisms capable of responding to regulatory change while preserving investor confidence. Comparative scholarship consistently highlights structured contractual renegotiation, procedural transparency, adaptive risk allocation, coordinated contract management, and continuous institutional oversight as complementary governance instruments for maintaining contractual resilience under changing economic, legal, and sustainability conditions (Benítez-Ávila et al., 2019; House, 2016; Opening the Black Box of Contract Renegotiations, 2013; The Renegotiation of PPP Contracts, 2014).

Viewed collectively, these comparative studies reveal a common governance trajectory despite differences in legal systems and institutional settings. Investor protection is increasingly achieved through transparent and predictable procedures governing contractual adjustment rather than through the permanent preservation of the legal regime existing at the time of contract formation. Accordingly, contractual resilience depends less on absolute stabilization clauses than on governance arrangements capable of accommodating legitimate regulatory change while preserving fairness, proportionality, and legal certainty for both public authorities and private investors. This broader international development reinforces the normative rationale for strengthening Indonesia's contractual governance framework beyond conventional stabilization mechanisms.

Comparative contractual governance literature further demonstrates that investor protection is increasingly understood not as the preservation of immutable contractual arrangements, but as the assurance of transparent, predictable, and proportionate procedures governing contractual adjustment (Brauch, 2020). Under this governance paradigm, legal certainty derives primarily from procedural predictability and institutional accountability rather than from maintaining an unchanged regulatory framework throughout the entire contract lifecycle. This theoretical development provides an important normative foundation for the Balanced Contractual Governance Framework (BCGF), which translates these governance principles into an integrated contractual architecture capable of reconciling public interest protection with investor legal certainty.

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The findings of this study extend the existing contractual governance literature in three respects. First, they support the proposition advanced by Incomplete Contracts Theory that long-term infrastructure agreements inevitably require adaptive governance mechanisms rather than exhaustive ex ante contractual design. Second, they demonstrate that relational governance alone remains insufficient unless supported by legally institutionalized mechanisms capable of accommodating legitimate regulatory change while preserving contractual predictability. Third, they indicate that sustainability considerations should no longer remain external policy objectives but should instead be embedded as enforceable contractual obligations throughout the governance architecture itself.

2. Development of the Balanced Contractual Governance Framework (BCGF)

The Balanced Contractual Governance Framework (BCGF) should therefore be understood not merely as a policy recommendation but as the principal theoretical contribution of this study. Rather than proposing an entirely new doctrine, the framework synthesizes fragmented strands of contractual governance scholarship into an integrated normative architecture capable of reconciling competing legal objectives within long-term infrastructure investment. Its analytical novelty lies in transforming recurring governance vulnerabilities identified through normative harmonization and cross-case synthesis into a coherent governance framework that is both theoretically grounded and institutionally operational. The cross-case synthesis presented in Section 3 demonstrates that the governance failures identified across Indonesia's strategic investment and procurement projects consistently converge into five recurring institutional vulnerabilities: (i) inadequate public interest protection during regulatory change, (ii) insufficient adaptive mechanisms to preserve investor legal certainty, (iii) weak transparency and accountability in contract implementation, (iv) rigid risk allocation without structured renegotiation mechanisms, and (v) the absence of contractually enforceable sustainability obligations. Rather than addressing these deficiencies through fragmented legal reforms, this study synthesizes them into an integrated governance architecture referred to as the Balanced Contractual Governance Framework (BCGF). The comparative governance literature further supports this institutional synthesis. Rather than emphasizing rigid contractual stabilization as the primary safeguard for investment protection, contemporary PPP governance increasingly promotes structured regulatory adjustment, adaptive risk-sharing mechanisms, standardized contract management, coordinated institutional oversight, and continuous contractual monitoring as complementary governance instruments for strengthening long-term infrastructure investment (House, 2016; Feng et al., 2022; Roehrich et al., 2014). Collectively, these governance practices demonstrate that contractual resilience is increasingly achieved through adaptive governance arrangements capable of balancing legal certainty with regulatory flexibility. Consequently, the five governance pillars incorporated into the BCGF reflect internationally recognized governance principles rather than isolated institutional practices, thereby strengthening both the theoretical coherence and practical applicability of the proposed framework.

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As illustrated in Figure 1, the framework comprises five interlocking governance pillars connected through a continuous governance feedback mechanism, enabling an adaptive balance between public interest protection and investor legal certainty while strengthening accountability, contractual resilience, and sustainability in strategic investment governance.

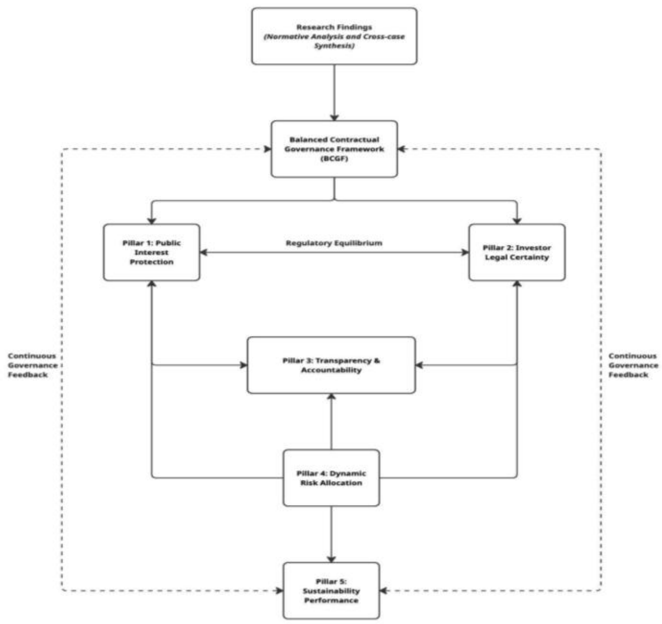

Figure 1. Balanced Contractual Governance Framework (BCGF). The framework is derived from the study's normative analysis and cross-case synthesis of contract governance vulnerabilities. It integrates five interlocking governance pillars that collectively balance public interest protection, investor legal certainty, transparency and accountability, adaptive risk allocation, and sustainability performance through a continuous governance feedback mechanism.

Pilar 1: Public Interest Protection (Perlindungan Kepentingan Publik)

The findings from the PT Freeport Indonesia renegotiation and the PT Newmont Nusa Tenggara arbitration demonstrate that absolute freeze stabilization clauses significantly constrain the State's regulatory capacity when responding to strategic policy reforms, particularly those concerning mineral downstream development and natural resource governance. These findings indicate that public interest protection remains insufficiently embedded within the design of long-term investment contracts. Accordingly, the BCGF positions Public Interest Protection as its first governance pillar, ensuring an appropriate balance between contractual commitments and the State's legitimate regulatory authority.

This pillar requires strategic investment contracts to incorporate a Public Interest Overriding Clause, which clarifies that non-discriminatory regulatory measures adopted in pursuit of legitimate public objectives including public health, environmental protection, public safety, and national economic interests should not automatically constitute indirect expropriation requiring commercial compensation. Under this approach, legal certainty is no longer interpreted as the preservation of a frozen legal regime but as the assurance that contractual adjustments occur through transparent, proportionate, and procedurally predictable regulatory processes consistent with the State's right to regulate.

Pilar 2: Investor Legal Certainty (Kepastian Hukum Investor)

The normative harmonization and case analyses further reveal that legal uncertainty frequently arises not from regulatory change itself, but from the absence of clearly defined contractual mechanisms governing such change. The disputes involving PT Freeport Indonesia and PT Newmont Nusa Tenggara illustrate that investors are more likely to challenge regulatory reforms when contractual arrangements fail to specify transparent procedures for contractual adjustment. These findings demonstrate that investor legal certainty depends not on the immutability of contractual terms, but on the existence of predictable mechanisms capable of accommodating legitimate regulatory evolution. Accordingly, the BCGF identifies Investor Legal Certainty as its second governance pillar.

Within the BCGF, investor legal certainty is strengthened through Regulatory Rebalancing Mechanisms that establish structured procedures for contractual adjustment following material regulatory change. Rather than relying on unilateral governmental intervention or protracted international arbitration, the framework promotes negotiated adaptation based on objective legal criteria, proportionality, and procedural transparency. This approach preserves investor confidence while enabling governments to pursue legitimate public policy objectives without undermining contractual stability.

Pilar 3: Transparency and Accountability (Transparansi dan Akuntabilitas)

The Chromebook procurement programme demonstrates that contractual compliance based solely on administrative procedures is insufficient to ensure accountability in public procurement. The findings reveal deficiencies in due diligence, limited post-award supervision, and inadequate performance evaluation, allowing governance failures to occur despite formal compliance with procurement regulations. These observations indicate that transparency must extend beyond procurement procedures to encompass continuous contractual oversight throughout project implementation. Consequently, Transparency and Accountability constitute the third governance pillar of the BCGF.

This pillar requires infrastructure contracts to incorporate performance-based monitoring systems supported by periodic independent audits, digital reporting mechanisms, and continuous compliance evaluation. Accountability therefore becomes an ongoing governance process rather than a one-time administrative requirement, enabling public institutions to detect governance risks at an early stage and to ensure that contractual implementation remains consistent with public sector objectives.

Pilar 4: Dynamic Risk Allocation (Alokasi Risiko Dinamis dan Renegosiasi Terstruktur)

The cross-case synthesis indicates that conventional contractual governance continues to allocate risks through static contractual provisions established at the time of contract formation. However, the cases analysed demonstrate that long-term infrastructure projects are inherently exposed to evolving legal, economic, technological, and environmental conditions that cannot be fully anticipated ex ante. As a result, rigid contractual risk allocation frequently becomes a source of contractual instability rather than legal certainty. These findings establish Dynamic Risk Allocation as the fourth pillar of the BCGF.

The BCGF therefore proposes adaptive contractual mechanisms, including periodic contractual reviews, structured renegotiation protocols, and predefined hardship provisions that enable proportional reallocation of contractual risks throughout the project lifecycle. Rather than undermining contractual certainty, adaptive risk allocation enhances contractual resilience by providing predictable legal procedures for responding to unforeseen circumstances while preserving the legitimate interests of both public authorities and private investors.

Pilar 5: Sustainability Performance (Indikator Kinerja Keberlanjutan/ESG)

The analysis of the Just Energy Transition Partnership (JETP) demonstrates that sustainability commitments remain largely political or policy-oriented unless they are translated into legally enforceable contractual obligations. Although Environmental, Social, and Governance (ESG) principles increasingly influence infrastructure policy, the existing contractual framework does not systematically connect sustainability outcomes with contractual rights, payment mechanisms, or performance evaluation. Consequently, sustainability remains weakly integrated into contractual governance. These findings establish Sustainability Performance as the fifth pillar of the BCGF.

Under the BCGF, sustainability obligations are operationalized through measurable Sustainability Performance Indicators (SPIs) that are directly incorporated into contractual provisions governing performance assessment, incentive structures, payment adjustments, and contractual remedies. Embedding sustainability within the contractual architecture strengthens legal accountability, reduces the risk of greenwashing, and aligns long-term infrastructure investment with broader sustainable development objectives. Collectively, the five governance pillars demonstrate that the BCGF extends existing contractual governance scholarship beyond individual theoretical perspectives. Instead of treating contractual stability, adaptive governance, transparency, and sustainability as separate analytical domains, the framework integrates them into a unified governance architecture capable of strengthening both legal certainty and regulatory resilience throughout the lifecycle of strategic infrastructure contracts.

3. Operationalizing the Balanced Contractual Governance Framework (BCGF) for Legal Reform and Future Infrastructure Contracts

The findings of this study indicate that the contract governance vulnerabilities identified across Indonesia's investment and procurement regimes are not confined to a single regulatory instrument. Instead, they originate from inconsistencies between statutory provisions, implementing regulations, and contractual practices. Consequently, the operationalization of the Balanced Contractual Governance Framework (BCGF) requires a multi-level legal reform strategy encompassing statutory law (macro level), implementing regulations (meso level), and standardized contractual instruments (micro level). Such a layered approach ensures that the governance principles embodied in the BCGF are translated into enforceable legal norms rather than remaining merely conceptual policy recommendations. The proposed operationalization is likewise consistent with comparative regulatory developments observed in ASEAN and Latin America. Rather than replicating any single foreign model, the BCGF selectively adapts governance mechanisms that have proven compatible with long-term infrastructure investment across different legal systems. The incorporation of structured renegotiation reflects practices observed in Chile and Peru, while standardized contract management and performance monitoring resemble approaches implemented within the Philippines and Malaysia. Likewise, the inclusion of adaptive risk-sharing arrangements corresponds with recent reforms in Vietnam's PPP framework. By integrating these internationally recognized governance practices into Indonesia's constitutional and statutory context, the BCGF adopts a contextualized comparative approach instead of simple legal transplantation (Van Hoecke, 2015).

Table 2. Operationalization of the Balanced Contractual Governance Framework

Regulations	Operationalization Steps of the BCGF Model	Target Legal Output
Macro Level (Statutory Law)	Revision of the Investment Law, Mining Law, and implementing provisions to recognize Economic Equilibrium Clauses, Right to Regulate, and Beneficial Ownership Disclosure.	Harmonization between investment protection and state regulatory sovereignty while reducing legal uncertainty in long-term contracts.
Meso Level (Implementing Regulations)	Revision of PPP Regulations (Perpres KPBU), LKPP procurement rules, and sectoral guidelines to incorporate standardized BCGF clauses, ESG KPIs, structured renegotiation procedures, and post-award governance mechanisms.	Consistent governance standards across infrastructure procurement and strategic investment projects.
Micro Level (Contractual Practice)	Development of standardized model contracts and contract management guidelines by PPP Unit and sectoral ministries incorporating dynamic risk allocation, transparency clauses, and sustainability obligations.	Improved contractual resilience, accountability, and dispute prevention throughout the contract lifecycle.

The proposed operationalization demonstrates that the BCGF is intended to function as an implementable governance architecture rather than a purely conceptual framework. By translating each governance pillar into concrete statutory reforms, implementing regulations, and standardized contractual mechanisms, the framework establishes a clear institutional pathway through which adaptive contractual governance can be embedded within future infrastructure investment and public procurement practices. Rather than treating contractual governance as a static legal instrument, the proposed BCGF reconceptualizes long-term investment contracts as adaptive governance mechanisms capable of accommodating regulatory change while preserving investor confidence. The framework therefore shifts the emphasis from dispute resolution toward dispute prevention by institutionalizing transparency, dynamic risk allocation, structured renegotiation, and sustainability performance within the contractual architecture itself.

Beyond its practical implications for Indonesia, the Balanced Contractual Governance Framework (BCGF) contributes to the broader contractual governance literature by demonstrating how fragmented theoretical perspectives can be integrated into a coherent governance architecture for long-term infrastructure investment. Rather than being confined to the Indonesian regulatory context, the framework offers a transferable analytical model for jurisdictions experiencing dynamic regulatory reform, increasing sustainability commitments, and growing dependence on private infrastructure investment. By operationalizing adaptive contractual governance through institutionally embedded legal mechanisms, the BCGF extends the application of Incomplete Contracts Theory, relational governance, and sustainability governance beyond explanatory frameworks toward a practical model for designing legally resilient infrastructure contracts.

CONCLUSSION

This study demonstrates that contractual governance vulnerabilities in Indonesia's investment and sustainable infrastructure projects stem not merely from deficiencies in contractual provisions, but from the absence of an integrated governance framework capable of reconciling public interest protection, investor legal certainty, transparency and accountability, adaptive risk allocation, and sustainability obligations. Through normative harmonization of Indonesia's investment and infrastructure legislation and cross-case synthesis of five strategic investment and public procurement cases, the study identifies the persistent tension between the State's regulatory authority and contractual stability as the principal source of recurring governance failures and legal uncertainty in long-term infrastructure investment.

Building upon these findings, this study develops the Balanced Contractual Governance Framework (BCGF) as its principal conceptual contribution. Unlike conventional contractual governance models that primarily emphasize contractual stability through rigid stabilization mechanisms, the proposed framework conceptualizes contractual governance as an adaptive legal architecture comprising five interrelated governance pillars: Public Interest Protection, Investor Legal Certainty, Transparency and Accountability, Dynamic Risk Allocation, and Sustainability Performance. Rather than viewing contracts solely as private legal instruments, the framework positions contractual governance as a public governance mechanism capable of balancing regulatory flexibility with investor protection while supporting sustainable infrastructure development.

The study further demonstrates that strengthening contractual governance requires coordinated legal and institutional reforms across multiple levels of governance. At the macro level, statutory reform should establish an integrated normative foundation for adaptive contractual governance. At the meso level, implementing regulations should institutionalize structured renegotiation mechanisms, beneficial ownership verification, and sustainability-based oversight. At the micro level, standardized contractual provisions should operationalize adaptive risk allocation, transparency requirements, and measurable Sustainability Performance Indicators (SPIs). Collectively, these reforms provide a practical pathway for improving contractual resilience, enhancing legal certainty, strengthening public accountability, and reducing the risk of disputes in strategic infrastructure projects.

This study is limited by its normative legal research design supported by doctrinal analysis and cross-case synthesis, without empirical evaluation of the practical implementation of the proposed framework. Future research should therefore examine the application of the BCGF through empirical studies of Public–Private Partnership (PPP) projects and other strategic infrastructure investments to evaluate its effectiveness in improving contractual governance, preventing investment disputes, and advancing sustainable infrastructure development across different regulatory and institutional contexts.

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