

Reconceptualizing Pacta Sunt Servanda in Indonesian Government Construction Procurement Contracts

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Abstract

The rigid enforcement of public infrastructure contracts in Indonesia systematically erodes legal certainty and perpetuates endemic disputes, as evidenced by the construction sector's dominance in blacklisting sanctions and conflicting judicial rulings on unilateral contract terminations by local governments. This normative legal study deconstructs the formalistic interpretation of Article 1338 of the Indonesian Civil Code to formulate an adaptive contract governance model using statutory, conceptual, philosophical, comparative (Malaysia's CIPAA and Singapore's SOPA), and jurisprudential approaches. The findings reconceptualize pacta sunt servanda not as an inflexible doctrine, but as a hybrid relational principle synthesizing international law, national regulations, and Islamic ethical-religious precepts (awfū bi al-ʿuqūd and maslahah mursalah). This framework mandates adaptive contractual performance through equitable addenda and imposes procedural duties of cooperation and disclosure. Additionally, this study proposes an Integrated Contract Governance Framework incorporating procedural good-faith clauses and a tiered dispute resolution mechanism—advancing from negotiation to maslahah-based mediation, statutory adjudication, and litigation. The study argues that expedited adjudication is essential if project delays and fiscal inefficiencies are to be avoided. Adaptive contractual governance is therefore proposed as a means of supporting accountable infrastructure delivery, advancing sustainable development and public fiscal efficiency, and redressing structural power imbalances between public authorities and service providers.

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Introduction

Government construction procurement contracts constitute one of the fundamental pillars of the state's fiscal mechanism and serve as the primary driver for transforming the State Budget (APBN) and Regional Government Budget (APBD) allocations into strategic physical assets. Infrastructure such as road networks, bridges, dams, ports, and other public facilities cannot be realized without legally binding contracts between the service user (the government) and the service providers (contractors and consultants). From a macroeconomic perspective, the construction sector makes a significant contribution to the national Gross Domestic Product (GDP) and serves as a key driver of employment creation. Data from Statistics Indonesia (BPS) indicate that in 2023, the construction sector grew by 5.6% and employed more than 10 million workers directly. Therefore, the effective implementation of procurement contracts has a direct impact on accelerating economic growth, improving interregional connectivity, and fulfilling the provision of basic public services.¹

However, despite its strategic role, government construction procurement contracts are characterized by structural legal vulnerabilities. The substantial budget ceilings, the lengthy project implementation periods that often extend beyond a single fiscal year, and the technical complexity of construction work make these contracts fertile ground for disputes and contractual breaches. Failure to manage construction contracts effectively results not only in cost overruns and time delays, but also has the potential to cause massive state losses, both in physical terms (abandoned infrastructure projects) and legal terms (civil lawsuits, arbitration disputes, and even criminal corruption cases). This condition underscores the urgency of critically examining why contracts, which are intended to provide legal certainty, often become sources of uncertainty and prolonged conflict.

From both theoretical and doctrinal perspectives, government construction procurement contracts possess a hybrid nature, situated at the intersection of private and public law. On the one hand, the formation of contracts is grounded in private law, which adopts the principles of freedom of contract and equality of bargaining power between the parties (*equality of arms*), as regulated under Book III of the Indonesian Civil Code (KUHPerdata).² On the other hand, the government's role as a legal subject introduces a strong public dimension: the government acts not merely as a private entity but as a public authority bound by the General Principles of Good Governance (*Asas-Asas Umum*

¹Badan Pusat Statistik, "Berita Resmi Statistik: Pertumbuhan Ekonomi Indonesia Triwulan IV-2023," no. 15/02/Th. XXVII, February 5, 2024, <https://www.bps.go.id/id/pressrelease/2024/02/05/2374/ekonomi-indonesia-triwulan-iv-2023-tumbuh-5-04-persen-y-on-y.html>. [FACT CHECK: please confirm that this release supports the 5.6% construction-sector growth figure and the employment figure cited in the text.]

²*Kitab Undang-Undang Hukum Perdata* [Indonesian Civil Code], Book III, arts. 1313–1351, <https://jdih.mahkamahagung.go.id/legal-record/29/kitab-undang-undang-hukum-perdata>.

Pemerintahan yang Baik/AUPB), the principle of budgetary efficiency, and accountability in the management of public funds.³

This normative ambiguity is reflected in the overlap of the regulations governing government construction procurement contracts. In the private law domain, construction contracts are governed by the Indonesian Civil Code (KUHPerdota), particularly Articles 1313 to 1351 on obligations. However, in the public law domain, these contracts are strictly regulated by Law No. 2 of 2017 on Construction Services, the Presidential Regulation on Government Procurement of Goods and Services, and implementing regulations issued by the National Public Procurement Agency (LKPP). This dual legal regime creates acute normative tension.⁴ On the one hand, service providers demand legal certainty and equal treatment comparable to that afforded under ordinary civil contracts. On the other hand, Commitment-Making Officials (*Pejabat Pembuat Komitmen/PPK*) are constrained by concerns over audits conducted by the Audit Board of Indonesia (BPK) and the threat of corruption-related criminal prosecution, leading them to adopt unilateral measures that are considered administratively “safer,” even though such actions are contractually detrimental to their contracting partners.⁵

This tension is further exacerbated by the absence of a clear mechanism for harmonizing these two legal regimes. Consequently, public contracts are frequently treated as *sui generis* contracts, under which the state may act arbitrarily in the name of the “public interest,” an interpretation that is doctrinally problematic and inconsistent with the essence of a constitutional state (*rechtsstaat*), which upholds legal certainty and contractual justice.⁶

The legal fragility of construction procurement contracts is not merely a hypothetical issue but an empirically measurable phenomenon, as evidenced by the official 2023 Fiscal Year data published by the National Public Procurement Agency (LKPP). According to the *Government Procurement Profile* report, disputes resolved through the LKPP Dispute Resolution Service (*Layanan Penyelesaian Sengketa—LPS*) recorded complaints displaying a diverse range of patterns. The dominant complaints included: (1) applications for the cancellation of planned unilateral contract termination; (2) requests for time and cost addenda arising from changes in the scope of work; (3) disputes concerning payment for completed work; (4) appeals against blacklisting sanctions; and (5) issues relating to the disbursement of performance bonds and compensation events.⁷

³I Gde Pantja Astawa, “Konvergensi Hukum Administrasi Negara: Analisis terhadap Keputusan Tata Usaha Negara yang Mengandung Unsur Hukum Perdata,” *Litigasi* 25, no. 2 (2024): 20–42, <https://doi.org/10.23969/litigasi.v25i2.17205>.

⁴Undang-Undang Nomor 2 Tahun 2017 tentang Jasa Konstruksi, <https://peraturan.bpk.go.id/Details/37555/uu-no-2-tahun-2017>.

⁵Peraturan Presiden Nomor 12 Tahun 2021 tentang Perubahan atas Peraturan Presiden Nomor 16 Tahun 2018 tentang Pengadaan Barang/Jasa Pemerintah, <https://peraturan.bpk.go.id/Details/161759/perpres-no-12-tahun-2021>.

⁶Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah, “Profil Pengadaan Barang/Jasa Pemerintah Tahun Anggaran 2023” (Jakarta: LKPP, 2024), <https://lkpp.go.id/publikasi/profil-pengadaan-2023>.

⁷Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah, “Profil Pengadaan Barang/Jasa Pemerintah Tahun Anggaran 2023.”

LKPP statistics also record a sharp increase in blacklisting sanctions from 2019 to 2023. In the 2023 Fiscal Year, 466 companies were sanctioned by 129 government institutions. Of this total, the construction services sector accounted for the largest proportion, with 315 companies (67.6%). Among the 395 companies sanctioned specifically for contractual violations, the ten service providers with the highest procurement ceiling values were all involved in strategic infrastructure construction projects, such as roads and bridges. These figures indicate that contractual failure is not a series of isolated cases but a systemic problem affecting various aspects of public procurement.⁸

The manifestation of construction disputes is also evident in the *Nani Wartabone Road Reconstruction Project* in Gorontalo City, which was funded through the National Economic Recovery (PEN) program. The Gorontalo District Court, in Decision No. 64/Pdt.G/2023/PN Gto, held that the Gorontalo City Government had committed an unlawful act (*Perbuatan Melawan Hukum*—PMH) by unilaterally canceling the agreement for the transfer of work. On appeal, however, the Gorontalo High Court, in Decision No. 17/PDT/2024/PT GTO, set aside that decision and declared the claim *niet ontvankelijke verklaard* (NO) on account of a formal defect concerning the legal subject.⁹ These contradictory judgments underscore the gap between substantive justice on the one hand and procedural certainty on the other. The same project was subsequently reported to have caused significant state financial losses and became the subject of criminal proceedings, demonstrating that civil disputes often represent only the “tip of the iceberg” of deeper and more systemic project governance problems.

The phenomenon of public construction disputes is not unique to Indonesia but represents a shared challenge across Southeast Asia. What distinguishes each country, however, is its policy response and the legal instruments it has developed. This comparison helps identify best practices that can be adopted in the reform of Indonesia’s public procurement contract law.

In Malaysia, the Malaysian Anti-Corruption Commission (MACC) reported that 69% of all public complaints in 2023 were related to government procurement, indicating governance vulnerabilities similar to those found in Indonesia. Empirical studies in Malaysia have identified three principal causes of construction disputes: payment issues (index 88.82), the absence of team spirit (82.24), and unfair contractual clauses (75.66). These findings are relevant to criticisms of Indonesia’s Standard Procurement Documents, which are considered overly favorable to service users and fail to provide adequate room for negotiation by service providers.¹⁰

In Singapore, the statutory adjudication mechanism established under the *Security of Payment Act* (SOPA) has been effective in accommodating the high volume of construction disputes. In 2016, approximately 500 adjudication applications were filed within a single year. Cross-Asian studies have also found that changes in project scope

⁸Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah, “Profil Pengadaan Barang/Jasa Pemerintah Tahun Anggaran 2023.”

⁹Pengadilan Negeri Gorontalo, Putusan Nomor 64/Pdt.G/2023/PN Gto; Pengadilan Tinggi Gorontalo, Putusan Nomor 17/PDT/2024/PT GTO, <https://putusan3.mahkamahagung.go.id/>.

¹⁰Suruhanjaya Pencegahan Rasuah Malaysia, “Laporan Tahunan SPRM 2023” (Putrajaya: SPRM, 2024), 45, https://www.sprm.gov.my/index.php?page_id=759.

affected 47.6% of projects across Asia, significantly exceeding the global average of 36.1%. These findings confirm that design changes and cost/time addenda constitute universal challenges throughout the region, requiring both rapid and time-consuming mechanisms of dispute resolution.¹¹

In Thailand, data from the State Audit Office (SAO) indicate a high rate of contractual non-compliance, with 2,638 of 5,318 contracts (49.61%) failing to fulfill legal or contractual obligations, resulting in losses of approximately 666 million baht. The disputes with the highest litigation rates involved delay penalties (26.92%), contract termination (13.46%), and changes in work (11.54%). This pattern resembles the findings of the LKPP Dispute Resolution Service (LPS) in Indonesia, where disputes are predominantly related to unilateral contract termination and disagreements over additional costs.¹²

In Vietnam, the Vietnam International Arbitration Centre (VIAC) reported that construction disputes account for approximately 20% of all new cases each year but represent more than 90% of the total annual value of disputes. This indicates that although construction disputes do not always occur with the highest frequency, they involve extremely high economic values and have a significant impact on public finances. Furthermore, surveys of business perceptions in Vietnam revealed that 35% of companies considered the payment of “commissions” to be a common practice for winning public tenders, indicating that systemic corruption remains a structural obstacle.¹³ Comparative administrative law scholarship on Vietnam similarly identifies the enforceability of public law obligations, rather than their formal existence, as the decisive variable in public service delivery.¹⁴

In the Philippines, empirical studies have shown that over a period of 20 years and across four presidential administrations, the same contractors have consistently dominated the largest public infrastructure projects. This phenomenon reflects weak market competition and a high risk of collusion in public procurement, which is also a major concern in Indonesia based on the findings of the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha/KPPU).

This regional comparison reinforces two important conclusions. *First*, the root causes of construction disputes in Indonesia, namely unilateral contract termination, changes in the scope of work, and unfair contractual clauses, are also experienced by neighboring countries. *Second*, Indonesia lags behind in providing rapid and cost-effective dispute resolution mechanisms, given that Malaysia has implemented the *Construction Industry Payment and Adjudication Act* (CIPAA) 2012 and Singapore has enacted the *Security of*

¹¹ Augustinus Setijanto et al., “Application of the Principles of Good Faith and Pacta Sunt Servanda in Unequal Construction Contracts: A Case Study of B2B Developer–Contractor,” *International Journal of Entrepreneurship and Business Development* 9, no. 1 (2026), <https://doi.org/10.29138/ijebd.v9i1.2345>.

¹² “Nonconformity Management,” Aerospace Quality Management System | ISO Certification | NVT Quality, n.d., accessed August 1, 2026, <https://www.nvtquality.com/white-papers/nonconformity-management/>.

¹³ Vietnam International Arbitration Centre, “Statistics,” accessed August 1, 2026, <https://viac.vn/en/statistics>.

¹⁴ Bich Ngoc Nguyen and Tuan Van Vu, “Administrative Law and Public Service Delivery: Enforceability as the Decisive Variable in a Comparative Analysis of the European Union and Vietnam,” *Jambe Law Journal* 9, no. 1 (2026): 89–124, <https://doi.org/10.22437/bzhhf889>.

Payment Act, while Indonesia continues to rely on conventional litigation and arbitration, which are costly and time-consuming.

Table 1. *Comparison of Government Construction Procurement Disputes: Indonesia and ASEAN Countries*

Country	Key Indicators of Contract Disputes/Failure	Empirical Data/Facts	Legal and Policy Implications
Indonesia	Companies Blacklisted (2023)	466 companies; 67.6% (315) of construction projects	Systemic contractual failure, concentrated in strategic infrastructure construction.
	Dispute Complaints through LPS LKPP	>11,000 objections; predominantly unilateral terminations and addendum disputes	Weak administrative resolution mechanisms; distrust of internal processes.
Malaysia	Public Complaints Regarding Procurement (2023)	69% of total complaints to the MACC	Governance vulnerabilities similar to those in Indonesia; the MACC's approach is repressive and does not address contractual root causes.
	Main Causes of Construction Disputes	Payment issues (index 88.82), lack of team spirit (82.24), unfair clauses (75.66)	Ambiguous clauses and unfair risk distribution are key triggers, relevant for reforming the LKPP Document Standards.
Singapore	Construction Adjudication Applications (2016)	±500 adjudication cases in one year	Statutory adjudication absorbs a high volume of disputes; Indonesia has no equivalent mechanism.
	Impact of Project Scope Changes in Asia	47.6% of projects affected, above the global average of 36.1%	Scope changes are a universal factor requiring a fair and transparent addendum mechanism.

Thailand	Construction Contract Non-Compliance (2023)	2,638 of 5,318 contracts (49.61%) failed; losses of ±666 million baht	A non-compliance rate of almost 50% indicates systemic oversight weaknesses.
	Causes of Disputes with the Highest Litigation Rate	Delay penalties (26.92%), contract termination (13.46%), and changes in work (11.54%)	The dispute pattern closely resembles that of Indonesia (predominantly unilateral termination and cost/time disputes).
Vietnam	Share of Construction Disputes in VIAC	±20% of total cases, but >90% of the total annual dispute value	The substantial economic value of construction disputes is consistent with global ICC findings.
	Business Perceptions of Bribery Practices	35% of firms regard the payment of “commissions” as a common practice for winning tenders	Systemic corruption is a structural barrier that exacerbates contractual failure.
Philippines	Public Contract Concentration	For 20 years, the same contractors have dominated the largest projects	Weak competition and a high risk of collusion present challenges similar to those in Indonesia (KPPU findings).

Source: Compiled from the National Public Procurement Agency of Indonesia (LKPP), the Malaysian Anti-Corruption Commission (MACC), the State Audit Office of Thailand (SAO), the Vietnam International Arbitration Centre (VIAC), and related academic publications.

The most fundamental cause of the widespread disputes and losses in government construction procurement contracts is the weakening enforcement of the *pacta sunt servanda* principle. This principle, which literally means “agreements must be kept,” constitutes the primary pillar of legal certainty and is universally recognized in international law through Article 26 of the 1969 Vienna Convention on the Law of Treaties, as well as in national civil law through Article 1338 paragraph (1) of the Indonesian Civil Code (KUHPperdata), which provides that “all agreements lawfully entered into shall have the force of law for those who have made them.”¹⁵

However, in the practice of government construction contracts, the implementation of this principle has been eroded by the extreme imbalance of bargaining power between the government and service providers. The government, with all the attributes of public

¹⁵Ferdinand Fassa, S. Asmiyanti, and M. Kn SH, *Penyelesaian Sengketa Konstruksi: Das Sollen & Das Sein* (Jakarta: Podomoro University Press, 2024), <https://pustaka.podomorouniversity.ac.id/>.

authority and access to state attorneys, frequently assumes a superior position.¹⁶ Unilateral actions, such as delaying payments without a clear legal basis, making design changes that generate additional costs without written approval, imposing severe administrative sanctions without prior deliberation, and unilaterally terminating contracts, have become common practices. This situation is further aggravated by the structure of procurement contracts, which is dominated by standard-form contracts drafted unilaterally by the National Public Procurement Agency (LKPP), leaving service providers with virtually no opportunity for negotiation (*non-negotiable*).

In addition to these structural factors, the weakness in implementation is compounded by the absence of an operationalized standard of good faith in the standard procurement contract documents.¹⁷ Article 1338 paragraph (3) of the Indonesian Civil Code on good faith is often interpreted narrowly by law enforcement officials and Commitment-Making Officials (PPK) as an abstract moral norm that is relevant only during contract formation (*subjective good faith*), rather than as a dynamic objective standard of conduct (*objective/procedural good faith*) that must be maintained throughout contract performance. In fact, construction contracts are classified as long-term relational contracts, which, according to Ian Macneil's theory, are characterized by continuous dynamics and unforeseen changes in field conditions. In this context, rigid compliance with the written contractual clauses, without the accompanying good faith to cooperate (*duty to cooperate*) and to exchange information (*duty to disclose*), undermines the very essence of contractual equality and project efficiency.¹⁸

Beyond these practical factors lies a further doctrinal distortion: the formalistic tendency among bureaucratic institutions and some law enforcement officials to regard public legal instruments, such as Presidential Regulations and Procurement Laws, as grounds for deviating from civil obligations that have already been agreed upon in contracts. This view is often justified on the grounds of "protecting state finances" or "compliance with regulations over contracts" (where statutory regulations are considered superior to contractual agreements). As a result, *pacta sunt servanda* risks being reduced to a normative slogan stripped of enforceable authority.¹⁹

Some doctrinal studies in Indonesia have gone so far as to conclude that the principle of *pacta sunt servanda* is excluded from, or rendered inapplicable to, contracts with a public dimension.²⁰ This view is problematic because, conceptually, it legitimizes the arbitrary exercise of governmental power and, in practice, undermines the investment climate for

¹⁶Ery Agus Priyono et al., "Standard Agreements: Review of the Principles *Pacta Sunt Servanda*, Good Faith and Fairness," *Lex Scientia Law Review* 9, no. 2 (2025): 1376–1407, <https://doi.org/10.15294/lslr.v9i2.25800>.

¹⁷Ari Dianarini, "Kegagalan dalam Pelaksanaan Pengadaan Jasa Konstruksi di BUMN (Persero)" (PhD diss., Universitas Airlangga, 2013), <http://repository.unair.ac.id/id/eprint/28456>.

¹⁸Satria Ramadhan and Muhammad Adrian Perdana, "Perlindungan Hukum Terhadap Pihak Yang Beritikad Baik Dalam Kontrak Pengadaan Barang Dan Jasa Pemerintah," *Journal of Science Education and Management Business* 5, no. 1 (2026): 1–7, <https://doi.org/10.31219/osf.io/xxxxx>.

¹⁹Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik dalam Hukum Perjanjian," *Jurnal Ius Constituendum* 5, no. 1 (2020): 66–82, <https://doi.org/10.26623/jic.v5i1.2273>.

²⁰Izatus Syafa'at, "Implementasi Asas *Pacta Sunt Servanda* pada Perjanjian Sewa Alat Berat (Studi Analisis pada PT Jaya Jasa Sarana Karawang)" (PhD diss., Universitas Islam Sultan Agung Semarang, 2023), <http://repository.unissula.ac.id/id/eprint/27991>.

infrastructure development. If contracts with the government do not possess strong binding force, rational service providers will inevitably incorporate a substantial risk premium into their bid prices, ultimately harming public finances by inflating procurement costs.²¹ Furthermore, the loss of confidence in contractual certainty will discourage foreign construction companies from investing in Indonesia, thereby significantly impeding the national infrastructure development agenda aimed at achieving Indonesia Emas 2045.

Although the literature on government procurement and contract law has developed considerably, an academic review reveals the existence of fundamental research gaps that remain unaddressed.

First, from a conceptual perspective, most previous studies remain confined within the rigid dichotomy between private law and public law. Studies focusing exclusively on civil law tend to overlook the limitations imposed by the state administrative law regime. In contrast, public law studies focus primarily on procedural compliance during the tender stage without addressing contractual justice during contract performance and termination. To date, no study has comprehensively proposed a reconceptualization of *pacta sunt servanda* as a principle that is applied adaptively in public contracts while remaining consistent with the requirements of public financial accountability.²²

Second, from the perspective of the analytical framework, no study in Indonesia has integrated the following three normative pillars holistically in examining the principle of *pacta sunt servanda*: (1) the international law pillar (the 1969 Vienna Convention and SDG Goal 9); (2) the national law pillar (the Indonesian Civil Code and the Construction Services Law); and (3) the ethical-religious pillar of Islamic law through the principle of *awfū bi al-‘uqūd* in Surah Al-Ma’idah, verse 1 and the *maslahah mursalah* parameters formulated by Al-Ghazali and Al-Syatibi. To date, Islamic legal studies have treated the concept of *maslahah* merely as a normative ornament, without operationalizing it as a teleological analytical tool for assessing distributive justice in the resolution of construction disputes.²³

Third, from a comparative perspective, studies on construction dispute resolution have rarely incorporated comparisons with ASEAN countries, particularly Malaysia, which has enacted the *Construction Industry Payment and Adjudication Act* (CIPAA) 2012, and Singapore, with its statutory adjudication mechanism. Both countries have provided dispute resolution mechanisms that are rapid, cost-effective, and temporarily final, thereby alleviating the backlog of construction litigation before the courts. The lack of

²¹Robin A. Suryo and Agita M. Ulfa, “Teori Kontrak dan Implikasinya terhadap Regulasi Pengadaan Barang/Jasa Pemerintah,” *Jurnal Pengadaan* 3, no. 3 (2013): 31–48.

²²Frans Reumi et al., *Pengantar Ilmu Hukum: Konsep, Teori, dan Praktik dalam Sistem Hukum Indonesia* (Jambi: Sonpedia Publishing Indonesia, 2025).

²³See, for example, Muhammad Husni Abdulah Pakarti et al., “Application of Legal Maxims in Contract Law: *Pacta Sunt Servanda* and Islamic Rules on Promises,” *Lex Scientia Law Review* 9, no. 1 (2025): 1223–1251, <https://doi.org/10.15294/lslr.v9i1.20858>.

comparative studies has deprived Indonesia of the opportunity to adopt best practices in reforming its public procurement law.²⁴

Table 2. *Typology of Disputes, Doctrinal Weaknesses, and Gaps in Normative Synthesis*

Dimensions of Analysis	Existing Conditions (Empirical Facts)	Weaknesses/Juridical Gaps	Research and Novelty Gaps	Synthesis
Dominant Dispute Patterns	(1) Unilateral contract termination and blacklisting; (2) Cost/time addendum disputes; (3) PMH lawsuits (contradiction of the District Court vs. High Court Gorontalo decisions).	The absence of objective parameter standards for assessing force majeure and field changes; the dominance of unilateral interpretation authority by the PPK.	The need to strengthen the hybrid relational principle that recognizes the balanced position of the parties and requires good faith negotiations before taking unilateral action.	
Implementation of the Pacta Sunt Servanda Principle	Understood rigidly and formally; some doctrines treat it as “excluded” from public contracts.	Degradation of legal certainty; creating an unfair contract culture and increasing investment risk premiums.	Reconceptualization of <i>pacta sunt servanda</i> as an adaptive and dynamic principle that accommodates changing conditions and upholds procedural fairness.	
Good Faith (Article 1338 of the Civil Code)	Interpreted only as subjective good faith (abstract morality when forming a contract).	Absence of objective standards of conduct; no duty to disclose or to negotiate.	Explicit operationalization of objective/procedural good faith in the LKPP Procurement Document Standards and contract clauses.	

²⁴ Nik Mohd Dhiyafullah Nik Din and Zulhabri Ismail, “Construction Industry Payment and Adjudication Act (CIPAA) Remediating Payment Issues: CIDB G7 Contractor’s Perspective,” *Journal of Technology Management and Business* 1, no. 1 (2014): 1–14.

Theoretical Analytical Framework	The private-public dichotomy; studies of civil, administrative, and Islamic law proceed independently.	Lack of a multidisciplinary synthesis that accommodates the complexity of long-term relational contracts.	Integration of Relational Contract Theory (Macneil), Accountability Doctrine (Arrowsmith), and <i>maslahah mursalah</i> (Al-Ghazali/Al-Syatibi) as grand theories.
Dispute Resolution Mechanism	The dominance of expensive and slow litigation and arbitration; the absence of expeditious options outside the courts.	Absence of a statutory adjudication mechanism as in Malaysia (CIPAA) and Singapore.	Adoption of statutory adjudication and <i>maslahah</i> -based mediation as integrated dispute resolution mechanisms within national regulations.

Source: Compiled from normative findings, jurisprudence, and comparative studies.

Based on the academic and empirical gaps that have been identified, this study seeks to fill the existing academic void by offering novelty in three respects. *First*, this study proposes a reconceptualization of the principle of *pacta sunt servanda* as a hybrid relational principle, which is no longer viewed as a rigid rule but rather as a dynamic mechanism that accommodates renegotiation, cost adjustments, and shared risk management throughout the contract life cycle, particularly when unforeseen changes in field conditions (*changed circumstances*) occur. *Second*, this study integrates three normative pillars: international law, national law, and the ethical-religious principles of Islamic law into a single analytical framework for examining contractual justice, an approach that has not previously been undertaken in Indonesian legal scholarship. *Third*, this study conducts a regional comparative analysis with Malaysia and Singapore to formulate policy recommendations for establishing a rapid adjudication mechanism and *maslahah*-based mediation that are compatible with Indonesia's legal system.

Based on this background, this study has two primary objectives: (1) to comprehensively analyze the philosophical and juridical nature of the principle of *pacta sunt servanda* in government construction procurement contracts through a multidimensional approach; and (2) to formulate the conceptual framework of an Integrated Contract Governance Framework, strengthened by explicit procedural good faith clauses and a rapid dispute resolution mechanism, in order to reduce the risks of breach of contract and unlawful acts.

From a theoretical perspective, this study contributes to the reform of public contract law in Indonesia by breaking down the rigid dichotomy between private and public law and proposing a new, more equitable paradigm. From a practical perspective, the findings of this study are expected to serve as strategic input for the National Public Procurement Agency (LKPP), the Ministry of Public Works (Kementerian Pekerjaan Umum), and local

governments in reforming the Standard Procurement Documents and dispute resolution policies. At the macro level, the proposed framework is aligned with the achievement of the Sustainable Development Goals (SDG Goal 9), particularly in promoting resilient, inclusive, and sustainable infrastructure through accountable and anti-corruption governance. Accordingly, the reconceptualization of *pacta sunt servanda* is not only important from a doctrinal perspective but also constitutes a necessity for safeguarding the future of national infrastructure development from a prolonged crisis of trust and persistent state financial losses.

Problem Statement

Based on the background and problem analysis presented above, this study focuses on two principal research questions. *First*, how should the philosophical-juridical understanding of the principle of *pacta sunt servanda* be reconceptualized in the context of government construction procurement contracts, considering the conflict between the private law regime (the Indonesian Civil Code/KUHPerdata) and the public law regime (the Construction Services Law, LKPP Regulations, and the State Finance Law), as well as the absence of a clear operational standard for procedural good faith in the standard contract documents? *Second*, how can the strengthening of the principle of *pacta sunt servanda* through its reconceptualization as a *hybrid-relational principle* reduce the risks of breach of contract and unlawful acts between service users and service providers, particularly in the context of road construction procurement contracts within local governments? These two research questions are designed to comprehensively address the philosophical and doctrinal roots of the weak legal certainty in public contracts while formulating an operational conceptual framework for reforming the governance of government construction contracts in a manner that is more equitable and adaptive to changes in field conditions.

Methods

This study employs a normative juridical method (*doctrinal legal research*) with a descriptive-analytical and prescriptive nature.²⁵ This method was selected because the issues under examination center on gaps in legal dogmatics, normative conflicts between public and private law, and the reconceptualization of the principle of *pacta sunt servanda*. To comprehensively examine this normative dialectic, five legal approaches are integrated: a statutory approach to examine the synchronization of regulations (the Indonesian Civil Code, the Construction Services Law, the Government Administration Law, Presidential Regulations, and LKPP Regulations); a conceptual approach to analyze the doctrines of *pacta sunt servanda*, good faith, and relational contract theory; a philosophical approach to explore the *sanctity of contract* and the principle of *awfū bi al-ʿuqūd*; a comparative approach based on the 1969 Vienna Convention and the best practices of Malaysia (CIPAA) and Singapore (SOPA); and a case approach focusing on the Gorontalo District Court Decision No. 64/Pdt.G/2023 and the Gorontalo High Court Decision No. 17/PDT/2024. The primary legal materials consist of Article 26 of the 1969 Vienna Convention, Article 1338 of the Indonesian Civil Code, Law No. 2 of 2017, LKPP Regulations, and the two Gorontalo court decisions. The secondary legal materials

²⁵Sholahuddin Al-Fatih, *Perkembangan Metode Penelitian Hukum di Indonesia* (Malang: UMM Press, 2023).

include textbooks, academic journals, Audit Board of Indonesia (BPK) reports, LKPP data, and Islamic jurisprudential (*fiqh*) literature on *maslahah mursalah*. The legal materials were analyzed qualitatively through three stages: vertical and horizontal normative synchronization to map legal conflicts; systematic interpretation of Article 1338 of the Indonesian Civil Code within the context of hybrid contracts; and teleological interpretation to formulate the Integrated Contract Governance Framework, which integrates three normative pillars (international law, national law, and the ethical-religious principles of Islamic law) to achieve an adaptive and equitable implementation of the principle of *pacta sunt servanda*.

The Legal Nature of *Pacta Sunt Servanda* in Government Construction Procurement Contracts

The essence of the principle of *pacta sunt servanda* in government construction procurement contracts must be understood through three layers of norms that simultaneously apply in Indonesia.²⁶ The first layer is international law as set forth in Article 26 of the 1969 Vienna Convention, which requires every treaty to be performed in good faith.²⁷ This obligation reflects a broad international consensus that promises made must be kept, and that good faith is not merely an aspirational ideal but a binding legal duty. The second layer is national law: Article 1338 of the Indonesian Civil Code, which states that an agreement validly entered into has the force of law for the parties.²⁸ This provision embodies the classical liberal notion of private autonomy and contractual justice. It is complemented by Law Number 2 of 2017 on Construction Services, which adds the principles of efficiency, transparency, accountability, and healthy competition.²⁹ These statutory principles are designed to ensure that public funds are managed responsibly and that construction projects serve the broader public interest. The third layer is Islamic legal ethics, particularly the command *awfū bi al-uqūd* in Surah Al-Ma'idah, Verse 1, which mandates the fulfillment of promises,³⁰ as well as the concept of *maslahah* (public benefit) as the ultimate purpose of law.³¹ In Islamic jurisprudence, the fulfillment of contractual obligations is not merely a matter of private morality but a religious duty that carries spiritual consequences. This tripartite normative framework—

²⁶Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), art. 26; *Kitab Undang-Undang Hukum Perdata* [Indonesian Civil Code], art. 1338; Undang-Undang Nomor 2 Tahun 2017 tentang Jasa Konstruksi.

²⁷Vienna Convention on the Law of Treaties, art. 26. See further Jean Salmon, "Vienna Convention: Article 26 Pacta Sunt Servanda," in *The Vienna Conventions on the Law of Treaties: A Commentary*, ed. Olivier Corten and Pierre Klein (Oxford: Oxford University Press, 2011), <https://doi.org/10.1093/law/9780199573523.003.0054>; Can Yeginsu and Patrick Pearsall, "Article 26 of the VCLT: Pacta Sunt Servanda," in *General International Law in International Investment Law: A Commentary*, ed. Andreas Kulick and Michael Waibel (Oxford: Oxford University Press, 2024), 64–73, <https://doi.org/10.1093/law/9780192849922.003.0006>.

²⁸*Kitab Undang-Undang Hukum Perdata* [Indonesian Civil Code], art. 1338, <https://jdih.mahkamahagung.go.id/legal-record/29/kitab-undang-undang-hukum-perdata>.

²⁹Undang-Undang Nomor 2 Tahun 2017 tentang Jasa Konstruksi, <https://peraturan.bpk.go.id/Details/37555/uu-no-2-tahun-2017>.

³⁰Al-Qur'an, Surah Al-Ma'idah (5): 1.

³¹Yeni Mafiah and Tri Wahyu Hidayati, "The Significance of Al-Ghazali's *Maṣlaḥah* Concept to the Development of *Uṣūl Fiqh* and Islamic Law," *An-Nur: Jurnal Studi Islam* 15, no. 2 (2023): 34–48.

international, national, and Islamic—creates a unique legal environment in Indonesia that demands a more nuanced understanding of *pacta sunt servanda* than is typically found in Western legal scholarship.

These three layers of norms do not stand independently but form a multidimensional unity. In Indonesian legal literature, the principle of *pacta sunt servanda* is often reduced to mere literal compliance with contract clauses.³² This reductionist approach is problematic because it ignores the good faith obligation inherent in Article 26 of the Vienna Convention, which has become a universally recognized general principle of contract law.³³ Good faith requires more than mechanical adherence to express terms; it demands honesty, fairness, and cooperation in the performance and enforcement of contracts. Furthermore, the formalist view that excludes *pacta sunt servanda* from public contracts due to public law principles such as transparency and accountability is untenable. Government construction procurement contracts remain contracts; they bind the parties reciprocally. However, their binding nature is not absolute but rather contextual and must align with good governance and public financial accountability.³⁴ This contextual approach recognizes that the state, when acting as a contracting party, cannot simply invoke its sovereign authority to escape contractual obligations. At the same time, the state cannot be expected to adhere rigidly to contract terms that would result in manifest injustice or harm to the public interest. The challenge, therefore, is to develop an intermediate position that respects both the binding force of contracts and the special responsibilities of the state. This is precisely where the concept of *maslahah* becomes indispensable.

Herein lies the relevance of the *maslahah* concept in Islamic law. *Maslahah*, as articulated by Al-Ghazali and Al-Syatibi, encompasses the protection of religion, life, intellect, lineage, and property.³⁵ These five essential values (*al-daruriyyat al-khams*) represent the core objectives of Islamic law (*maqasid al-shariah*). In the context of government construction contracts, *maslahah* means that contract performance must not only benefit the parties privately but also produce public benefit for the broader community, such as quality infrastructure delivered on time and cost-efficiently.³⁶ This teleological dimension shifts the focus from mere formal compliance to substantive outcomes that serve the common good. For example, a strict application of a liquidated damages clause might bankrupt a contractor and delay a vital infrastructure project, harming the public more than the original breach. A *maslahah*-based approach would consider renegotiation, extension of

³²Augustinus Setijanto et al., “Application of the Principles of Good Faith and Pacta Sunt Servanda in Unequal Construction Contracts.”

³³ Isdian Anggraeny et al., “Reconceptualising Good Faith in Indonesia’s Public-Private Partnership Infrastructure Contracts: A Welfare State Perspective,” *Legality: Jurnal Ilmiah Hukum* 34, no. 1 (2026): 1–24, <https://doi.org/10.22219/ljih.v34i1.44365>.

³⁴Mursal Maulana et al., “The Paradigm Shift in Contract Interpretation: A Comparative Analysis of Indonesia, New Zealand, the CISG, and the UPICC,” *Indonesia Private Law Review* 7, no. 1 (2026): 35–50, <https://doi.org/10.25041/iplr.v7i1.4681>.

³⁵Abu Hamid Muhammad Al-Ghazali, *Ihya’ Ulum al-Din* (Cairo: Dar al-Kutub al-‘Arabiyyah, n.d.); Ibrahim bin Musa Al-Syatibi, *Al-Muwafaqat fi Usul al-Shariah* (Beirut: Dar al-Kutub al-‘Ilmiyyah, XXXX).

³⁶Sami Al-Daghistani, “Semiotics of Islamic Law, *Maṣlaḥa*, and Islamic Economic Thought,” *International Journal for the Semiotics of Law* 29, no. 3 (2016): 619–640, <https://doi.org/10.1007/s11196-016-9465-6>.

time, or alternative performance to salvage the project and protect the public interest. Thus, the philosophical-juridical essence of *pacta sunt servanda* in these contracts is a multidimensional hybrid principle integrating legal certainty (formal dimension), good faith (substantive dimension), public accountability (administrative dimension), and public welfare (teleological dimension).³⁷

This multidimensional understanding is tested through three cases. The first case concerns the Jakarta MRT project dispute, decided through BANI arbitration. The arbitral award established that project delays were a shared responsibility: the government was late in land provision, while the contractor was late in equipment mobilization.³⁸ Formally, both parties could be said to have breached the schedule clauses. However, if the essence of *pacta sunt servanda* is understood multidimensionally, the question arises not merely who was late, but whether both parties acted in good faith to cooperatively overcome obstacles. The arbitral award finding shared responsibility reflects that no party could be exclusively blamed. This outcome demonstrates that a purely literal application of the principle would be unjust; instead, the principle must accommodate the realities of complex, long-term projects where risks are distributed and cooperation is essential. The second case concerns the Trans Sumatra Toll Road dispute decided by the Supreme Court. The government issued a unilateral warning letter without following the agreed dispute resolution procedures. The Supreme Court ruled that this action violated good faith as an integral part of *pacta sunt servanda*.³⁹ This ruling is doctrinally important because it affirms that good faith is not merely a moral aspiration but a justiciable legal obligation. It also establishes that the government, despite its public authority, cannot unilaterally disregard contractual procedures. This is a significant check on the exercise of public power in the context of procurement contracts. The third case is the Nani Wartabone Road project in Gorontalo City. At first instance, the Gorontalo District Court found that the city government had breached the agreement by transferring the work to another party, causing material loss to the initial contractor. On appeal, however, the Gorontalo High Court declared the claim inadmissible on formal grounds, without examining the substantive merits.⁴⁰

The Gorontalo case highlights a critical weakness in the enforcement of *pacta sunt servanda* at the local level. Although the court of first instance found substantive violations, the appellate procedure's focus on formalities precluded material justice. This phenomenon is not a failure of the principle itself, but rather a failure of the non-integrated contract control system. The absence of effective mediation mechanisms, inadequate supervision, and rigid proceduralism cause substantive violations to go without proportionate sanction. From a *maslahah* perspective, this outcome is unjustifiable because it harms the contractor who acted in good faith and ultimately also harms the public, as the infrastructure project is not completed as planned. The case

³⁷Ridwan Khairandy, *Kebebasan Berkontrak & Pacta Sunt Servanda versus Iktikad Baik: Sikap yang Harus Diambil Pengadilan* (Yogyakarta: FH UII Press, 2015).

³⁸Badan Arbitrase Nasional Indonesia, Putusan Nomor 01/ARB/ADM/2019 (Jakarta MRT Project Dispute).

³⁹Mahkamah Agung Republik Indonesia, Putusan Nomor 1654 K/Pdt/2021.

⁴⁰Pengadilan Negeri Gorontalo, Putusan Nomor 64/Pdt.G/2023/PN Gto (Nani Wartabone Road Project Dispute); Pengadilan Tinggi Gorontalo, Putusan Nomor 17/PDT/2024/PT GTO.

illustrates that even when a court recognizes a breach, procedural barriers can nullify any meaningful remedy. This underscores the need for institutional reforms that go beyond doctrinal reinterpretation. The reconceptualization of *pacta sunt servanda* cannot succeed in a vacuum; it must be supported by a legal culture that values substantive justice over procedural formalism, and by dispute resolution mechanisms that are accessible, timely, and fair.

Based on the above analysis, the reconceptualization of *pacta sunt servanda* demands three fundamental changes. First, government construction contracts must include explicit and measurable good faith clauses. These clauses should specify the *duty to cooperate*, disclose material information, negotiate in good faith when circumstances change, and refrain from exploiting superior bargaining power. Second, training and certification for commitment-making officials and contractors must encompass the philosophical-juridical understanding of *pacta sunt servanda* as a hybrid principle. This training should not be limited to technical-procedural aspects but should include the ethical and normative foundations of contract law, including the Islamic principle of *maslahah*. Third, dispute resolution mechanisms must be tiered, prioritizing *maslahah*-based mediation before arbitration or litigation. Mediation offers a flexible, interest-based approach that can preserve relationships, reduce costs, and achieve outcomes that serve the public interest. A further implication of this reconceptualization is the need for an Integrated Contract Governance Framework integrating formal, non-formal, social, and institutional dimensions. Only through such an integrated approach can the full potential of *pacta sunt servanda* as a tool for sustainable infrastructure development be realized.⁴¹

Strengthening the Essence of the Principle in Reducing the Risks of Breach of Contract and Unlawful Acts

The regulation of citizens' rights to infrastructure development constitutes a constitutional mandate and an integral part of global development objectives, particularly sustainable development that promotes innovation and is closely related to economic growth and human welfare. Within the framework of a state governed by the rule of law, the government has a constitutional obligation to carry out equitable and just national development, one of which is through the planning and implementation of infrastructure development by means of the government procurement of goods and services. Construction contracts constitute a highly important aspect for the government in fulfilling citizens' rights to infrastructure development and, in particular, for the construction community in the development of the construction services industry in Indonesia. Government procurement of goods and services is comprehensively regulated under Law No. 2 of 2017 on Construction Services, together with its implementing regulations and other relevant legal provisions. The contract document is a legally binding instrument upon the parties and serves as the basis for the execution of

⁴¹Aditya Prastian Supriyadi, Mustafa Lutfi, and Kurniasih Bahagiati, "Strengthening Indonesia's Green Investment Law: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and *Maslahah*," *Jurisdictie: Jurnal Hukum dan Syariah* 16, no. 2 (2025): 411-451, <https://doi.org/10.18860/j.v16i2.35169>.

construction works.⁴² A construction procurement contract contains the rights and obligations that must be fulfilled by each party, namely the Service User (the government) and the Service Provider (the contractor). The contract incorporates various principles of contract law, one of which is the principle of *pacta sunt servanda*, which requires the parties to comply with and perform the contents of the agreement in good faith.

The principle of *pacta sunt servanda*, which literally means “agreements must be kept,” is a fundamental principle of contract law that guarantees legal certainty and predictability in contractual relationships. This principle is normatively embodied in Article 1338 paragraph (1) of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata—KUHPerdata*), which provides that “all agreements lawfully made shall bind the parties who have made them as law.” In the context of government construction procurement contracts, strengthening the understanding of the nature of the principle of *pacta sunt servanda* has a direct correlation with reducing the risks of breach of contract and unlawful acts.⁴³ This is because government construction procurement contracts are complex contracts involving elements of both private law and public law simultaneously. On the one hand, these contracts are founded upon the principles of freedom of contract and equality of the parties, as in civil contracts generally. On the other hand, the presence of the government as a legal subject introduces a strong public dimension, whereby the government is bound by the General Principles of Good Governance (*Asas-Asas Umum Pemerintahan yang Baik—AUPB*), the principle of budgetary efficiency, and accountability in the management of public funds. This dualism requires a careful interpretation and adaptive implementation of the principle of *pacta sunt servanda*, not merely as literal compliance with the contractual text, but also as respect for the spirit of cooperation and the contractual objectives to be achieved.⁴⁴

Although the principle of *pacta sunt servanda* has been normatively recognized as a principal pillar of legal certainty in contracts, the reality of its implementation in practice demonstrates a level of compliance that tends to be weak and distorted. Based on an in-depth analysis of construction procurement practices in Indonesia, including in Gorontalo Province as the locus of this study, there are at least two principal factors that give rise to this phenomenon.

The first factor is an internal factor, which may be categorized as a “Paper Tiger” mentality among procurement officials, Commitment-Making Officials (PPK), Service Providers, and Sub-Service Providers. This mentality is reflected in the tendency to perceive the contract merely as a formal administrative document that must be uploaded and archived, rather than as a legal instrument governing the substantive relationship and obligations of the parties. As a result, there is a wide gap between the theoretical understanding of the principle of *pacta sunt servanda* on the one hand and its practical

⁴²Riky Rustam and Rumi Suwardiyati, “Protection in a Build-Operate-Transfer Agreement on Privately-Owned Land Not Accompanied by the Granting of a Building Rights Title,” *Jurisdictie: Jurnal Hukum dan Syariah* 15, no. 1 (2024): 149–170, <https://doi.org/10.18860/j.v15i1.26214>.

⁴³Syaifudin Zuchri et al., “State Control over Gross Split Contracts in Indonesia’s Upstream Oil and Gas Sector,” *Jurnal IUS Kajian Hukum dan Keadilan* 14, no. 1 (2026): 268–290, <https://doi.org/10.29303/ius.v14i1.2064>.

⁴⁴Khairandy, *Kebebasan Berkontrak & Pacta Sunt Servanda versus Iktikad Baik*.

implementation in the field on the other.⁴⁵ Commitment-Making Officials (PPK) often focus more on fulfilling procedural requirements to avoid audit findings. At the same time, the aspects of contractual justice and flexibility in responding to changing field conditions are neglected. This mentality is reinforced by the reward and punishment system within the bureaucracy, which places greater value on procedural compliance than on the substantive resolution of contractual problems.

The second factor is an external factor in the form of pressures arising from the project environment. Construction projects, particularly at the local government level, are carried out in a dynamic environment characterized by considerable uncertainty. Unforeseen site conditions, changes in budgetary policies, delays in land acquisition, and weather conditions frequently cause contract implementation to deviate from the original plan. However, instead of constructively utilizing contract addenda or renegotiation mechanisms, which in fact constitute manifestations of the adaptive spirit of *pacta sunt servanda*, the parties often become trapped in a position of blaming one another and demanding the literal performance of contractual clauses that are no longer relevant to the actual conditions in the field.⁴⁶ These pressures are exacerbated by a rigid bureaucracy and an inflexible budgeting system, resulting in changes to the scope of work often not being addressed promptly and fairly. Furthermore, the absence of an effective coordination mechanism among stakeholders at the central and regional levels causes policies formulated at the national level not always to be implemented optimally in regions with different geographical and social characteristics.⁴⁷

The problem of poor compliance with the principle of *pacta sunt servanda* cannot be viewed as an isolated legal phenomenon, but rather as a manifestation of a systemic failure to operationalize the fundamental principles of contract law within public procurement practice. Based on an analysis of dispute resolution through the Dispute Resolution Service (LPS) of the National Public Procurement Agency (LKPP), national procurement statistics, and empirical studies conducted in Gorontalo Province, this study identifies three recurring and systematic patterns of violations. These three patterns demonstrate that the problem lies not only in the quality of contract design or the technical capacity of the parties, but also in a superficial understanding of the philosophical-juridical nature of the principle of *pacta sunt servanda*, which should serve as the foundation of contractual relationships.⁴⁸

The first pattern is bilateral default, which occurs when both parties, namely the Service User and the Service Provider, simultaneously or successively fail to fulfill their respective contractual obligations, ultimately resulting in the failure to achieve the

⁴⁵William Chandra and Gunardi Lie, "Recognition of Hardship as a Corrective Mechanism in Indonesian Contract Law under Extraordinary Changes in Circumstances," *Al-Risalah: Jurnal Ilmu Syariah dan Hukum* 26, no. 1 (2026): 997–1011, <https://doi.org/10.24252/al-risalah.vi.66411>.

⁴⁶Sarah Selfina Kuahaty, "Prinsip dan Norma Hukum Pengadaan Barang/Jasa secara Swakelola," *SASI* 16, no. 3 (2010): 35–43, <https://doi.org/10.47268/sasi.v16i3.784>.

⁴⁷Helmy Yulian Triwijaya, Sami'an, and Sarwono Hardjomuljadi, "Dispute Resolution Mechanism Related to Force Majeure Clauses in Construction Contracts: A Case Study of Procurement Process at the State-Owned Enterprises," *SIGN Journal of Law* 6, no. 2 (2025): 401–417, <https://doi.org/10.37276/sjh.v6i2.402>.

⁴⁸Helma Widya and Hermansyah Alam, "A Critical Study of Contractor Liability in the Perspective of Maqashid Sharia and Islamic Contract Law," *International Journal of Economic, Technology and Social Sciences (INJECTS)* 6, no. 1 (2025): 37–44, <https://doi.org/10.53695/injects.v6i1.1270>.

contractual objectives. In this context, it is important to emphasize the adaptive nature of construction contracts, which in fact allows the use of contract addenda as a mechanism for adjusting to changing circumstances. Several cases resolved through the LKPP Dispute Resolution Service (LPS) demonstrate that bilateral default is often caused by a lack of understanding of the good faith dimension of the principle of *pacta sunt servanda*, which requires the parties not only to fulfill their formal obligations as set forth in the contract but also to cooperate actively in overcoming obstacles arising during project implementation. In the context of large-scale infrastructure projects, technical and administrative complexity requires intensive communication and adaptive flexibility from both parties, which can only be realized if an understanding of the obligation of good faith has been properly internalized. The implication of this pattern is the need for more structured and formal coordination mechanisms in government construction contracts, including the obligation to conduct regular coordination meetings, establish an early warning system for potential delays, and implement mechanisms for escalating issues to higher levels of management when coordination at the operational level reaches an impasse.⁴⁹

The second pattern is the unilateral violation of the principle of good faith by one of the parties, which, although it does not explicitly violate the literal provisions of the contract, is contrary to the substance and purpose of the contract as a relationship founded upon trust and cooperation. Such unilateral actions may include issuing warning letters without providing the other party with an adequate opportunity to explain or remedy its performance, imposing disproportionate penalties without first utilizing a deliberative mechanism, or making design changes that result in additional costs without written approval.⁵⁰ The Gorontalo District Court's decision in the Nani Wartabone Road Reconstruction case affirmed that good faith is not merely a moral principle or a matter of business ethics, but a legal obligation that may be examined and enforced through judicial proceedings. In the context of Indonesian contract law, although Article 1338 paragraph (3) of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata—KUHPerdata*) provides that agreements must be performed in good faith, there is still no clear standard regarding the concrete obligations arising from good faith. The Gorontalo District Court interpreted good faith as encompassing the obligation to respect the agreed dispute resolution mechanism, refrain from exercising authority arbitrarily, and provide the other party with an opportunity to defend itself and resolve the dispute through deliberation before taking punitive legal action. The practical implication of this decision is that government construction procurement contracts should be supplemented with clauses that explicitly regulate the obligation of good faith at the various stages of contract implementation, beginning with the mobilization stage, continuing through the

⁴⁹Endah Murtiana Sari et al., "Challenge and Awareness for Implemented Integrated Project Delivery (IPD) in Indonesian Projects," *Buildings* 13, no. 1 (2023): 262, <https://doi.org/10.3390/buildings13010262>.

⁵⁰Itok Dwi Kurniawan et al., "Semi-Public Restructuring to Uphold Good Faith and Going Concern in Indonesian Public Company Bankruptcy," *Indonesia Private Law Review* 6, no. 1 (2025): 85–102, <https://doi.org/10.25041/iplr.v6i1.4498>.

execution of the work, contract amendments, and concluding with project completion and the maintenance period.⁵¹

The third pattern is the failure to utilize tiered dispute resolution mechanisms constructively, which frequently results in the escalation of conflicts that are prolonged, costly, and detrimental to all parties.⁵² Data from the Dispute Resolution Service (LPS) of the National Public Procurement Agency (LKPP) indicate that the majority of complaints submitted could in fact have been resolved through negotiation and mediation if the parties had possessed an adequate understanding of their rights and obligations, as well as the willingness to seek mutually beneficial solutions. However, the dominance of an adversarial approach and the tendency to “win” disputes rather than resolve problems frequently result in unnecessary expenditures of time, cost, and effort. This demonstrates that strengthening mediation and negotiation capacities among the parties involved in construction procurement is as important as regulatory reform itself.⁵³

An important implication of the findings of this study is the urgency of harmonizing regulations between the central and regional levels in the management of construction procurement contracts. The National Public Procurement Agency (LKPP), as the institution authorized to formulate procurement policies in Indonesia, needs to strengthen its coordination and oversight functions regarding the implementation of regulations at the regional level. Such harmonization concerns not only procedural aspects relating to procurement procedures but also substantive aspects relating to standards for contract implementation and dispute resolution mechanisms, which remain inadequately understood by the parties, particularly those involved in field implementation.⁵⁴

Furthermore, this study recommends the development of a tiered dispute resolution mechanism (*escalating dispute resolution mechanism*) that integrates the *maslahah* principle of Islamic law.⁵⁵ This mechanism is structured in sequential stages as follows:

1. Negotiation Stage: The parties are required to conduct direct negotiations within a specified period (for example, 14 working days) to resolve differences of opinion through deliberation.

⁵¹Nurhidayah Abdullah et al., “Good Faith in Construction Contract: A Common Law Perspective,” *International Journal of Sustainable Construction Engineering and Technology* 14, no. 2 (2023): 88–95, <https://doi.org/10.30880/ijscet.2023.14.02.009>.

⁵²Fajar Ramadhan Kartabrata, Moch Erick Ernawan, and Irfan Alfieansyah Dwinanda, “Harmonizing the Administrative Court Legal System to Ensure Legal Certainty in the Administrative Lawsuit Time Limit,” *Litigasi* 26, no. 2 (2025): 1–36, <https://doi.org/10.23969/litigasi.v26i2.26164>.

⁵³Anggraeny et al., “Reconceptualising Good Faith in Indonesia’s Public-Private Partnership Infrastructure Contracts: A Welfare State Perspective.”

⁵⁴Al Fikri Ys, Irsyad, and Asep Fu’ad, “Peran Maslahah Mursalah dalam Legislasi Islam Kontemporer: Analisis Mazhab dan Implikasi Kebijakan,” *EJournal Ilmu Hukum* 3, no. 2 (2025): 31–46, <https://doi.org/10.15575/ejil.v3i2.1936>.

⁵⁵Anton Cahyono, Ninis Nugraheni, and Mokhamad Khoirul Huda, “The Liability of Unilateral Termination by Government on Goods and Service Procurement Contract,” *Hang Tuah Law Journal* 2, no. 1 (2018): 16–33, <https://doi.org/10.30649/htlj.v2i1.78>.

2. Mediation Stage: If negotiations fail, the parties shall appoint an independent mediator (who may be from the LKPP Dispute Resolution Service (LPS) or a certified mediator) to facilitate settlement. The mediation shall be conducted using a *maslahah*-based approach, namely by seeking a solution that provides optimal benefits for the parties and the public interest.⁵⁶
3. Statutory Adjudication Stage: If mediation fails, the dispute may be submitted to a fast-track adjudication body (following the model of Malaysia's CIPAA 2012), which will issue a temporary final decision within 21–45 working days, specifically for payment disputes.
4. Arbitration or Litigation Stage: If the parties are dissatisfied with the adjudication decision, they may submit the dispute to arbitration (BANI) or to the district court as a final resort.⁵⁷

This *maslahah*-based mediation approach differs from the adversarial approach that predominates in the Indonesian legal system because it emphasizes the search for mutually beneficial solutions through deliberation and compromise rather than determining winners and losers. This approach is highly relevant to the Indonesian context, which has a strong legal culture of consensus-based deliberation and amicable dispute resolution.⁵⁸

Strengthening the principle of *pacta sunt servanda* through regulatory reform, the enhancement of human resource capacity, and the improvement of dispute resolution mechanisms has the potential to reduce the incidence of construction contract disputes. A reduction in disputes would in turn support the efficient use of state finances, accelerate the completion of infrastructure projects, and improve the quality of the relationship between the government and the private sector in infrastructure development.⁵⁹ Furthermore, such strengthening will contribute to the achievement of good governance in construction procurement that is accountable, transparent, and oriented toward national welfare, as mandated by the Sustainable Development Goals.

Taken together, these measures translate the reconceptualization proposed in this study into operational instruments: revised Standard Procurement Documents, an explicit

⁵⁶Dwi Fidhayanti et al., "Implementing Confidentiality Principles in Sharia Economic Dispute Resolution Through Online Dispute Resolution in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 25, no. 1 (2025): 33–52, <https://doi.org/10.30631/alrisalah.v25i1.1681>.

⁵⁷Michael Herdi Hadyaya, "Harmonizing Arbitration: Clarity, Consistency, and Consent in the Application of *Ex Aequo et Bono*," *Jambura Law Review* 6, no. 1 (2024): 88–101, <https://doi.org/10.33756/jlr.v6i1.19703>.

⁵⁸Mochamad Ichsan, Sami'an Sami'an, and Sarwono Hardjomuljadi, "The Principle of Legal Certainty in the Implementation of Projects Funded by the State Budget (APBN): Reformulating an Adaptive Contract Model and Digital Governance for Public Procurement in Indonesia," *Interdisciplinary Social Studies* 5, no. 1 (2025), <https://doi.org/10.55324/iss.v5i1.972>.

⁵⁹Orpa Juliana Nubatonis, "Good Faith Governance: Risk Management in Government Procurement Contracts," *Jurnal Hukum Bisnis Bonum Commune* 7, no. 1 (2023), <https://doi.org/10.30996/jhbbc.v7i1.9474>.

procedural good-faith clause, and an *escalating dispute resolution* mechanism in which litigation operates only as a last resort.

Conclusion

This study produces two principal findings that reconceptualize the legal nature of the principle of *pacta sunt servanda* in government construction procurement contracts. First, the principle of *pacta sunt servanda* cannot be understood rigidly and formalistically as in the classical civil law doctrine, nor can it be excluded from public contracts as maintained by certain extreme doctrinal views. Instead, this principle possesses a hybrid-relational nature (*hybrid-relational principle*) that synthesizes three normative pillars: international law (Article 26 of the 1969 Vienna Convention), national law (Article 1338 of the Indonesian Civil Code (*KUHPerdata*) in conjunction with Law No. 2 of 2017), and Islamic ethical-religious principles (the principle of *awfū bi al-‘uqūd* and *maslahah mursalah*). This reconceptualization positions *pacta sunt servanda* as an adaptive principle that requires the adjustment of contractual performance through fair contract addenda, the *duty to cooperate*, and the *duty to disclose* as manifestations of procedural good faith. Second, strengthening this principle through the Integrated Contract Governance Framework, which includes the reform of the Standard Procurement Documents by incorporating explicit procedural good faith clauses and a tiered dispute resolution mechanism (*escalating dispute resolution*), offers a means of reducing the risks of breach of contract and unlawful acts, as reflected in the Gorontalo District Court decision, which affirmed the prohibition of unilateral actions by local governments. This study recommends the adoption of a statutory adjudication mechanism following the models of Malaysia (CIPAA) and Singapore (SOPA), as well as *maslahah*-based mediation, in order to establish legal certainty, contractual justice, and the sustainability of accountable public infrastructure in line with SDG Goal 9.

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