



Legal Construction of Build-Operate-Transfer (BOT) Agreements on State-Owned Land

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Abstract

The *Build-Operate-Transfer* (BOT) scheme enables private investors to construct, operate, and subsequently transfer infrastructure facilities to the government after a specified period. Private participation in these strategic projects is formalized through a BOT agreement, which necessitates the professional involvement of both a Notary and a Land Deed Official (*Pejabat Pembuat Akta Tanah – PPAT*). However, there remains a legal ambiguity (*normenvaag*) regarding the appropriate form of the deed, specifically whether it should be a notarial deed or a land deed. This study aims to analyze the legal framework governing BOT agreements on state-owned land under Indonesian law, as well as to examine the legal framework and authority required for the transfer of buildings upon the agreement's expiration. Employing a normative legal research method, this study utilizes the theories of legal certainty, contract law, and legal authority as analytical frameworks. The results indicate that, under Indonesian law, BOT is classified as an unnamed contract (*innominaat*) governed by the general provisions of the Civil Code (*KUHPerdata*) and is obligatory in nature. The legal construction of a BOT agreement on state-owned land constitutes a legal relationship that integrates both contractual and property law aspects. Consequently, the expiration of the agreement must be understood not only as the termination of the contractual relationship but also as the formal transfer of the land and/or building objects back to the government, which requires the exercise of PPAT authority to ensure legal certainty.

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1. Introduction

Infrastructure development serves as a primary pillar in driving economic growth and public welfare. Within the context of national development, governments often face budgetary and resource constraints in meeting the ever-increasing demand for infrastructure. Consequently, alternative financing schemes involving private sector participation in providing public infrastructure have become essential.

In development practices, situations often arise where one party possesses substantial capital but lacks sufficient land, while another party owns land but lacks the funds to develop it. This mutual necessity fosters a collaborative relationship formalized through a cooperation agreement. One widely adopted scheme is Build-Operate-Transfer (BOT), or *Bangun Guna Serah*, which allows private investors to build, operate, and subsequently transfer infrastructure facilities to the government after a specified period. The BOT model has been implemented globally as an effective solution to bridge infrastructure financing gaps while

leveraging private sector efficiency and expertise.^[1]

The BOT scheme is also applicable to private projects, involving individual-to-individual or private-to-private entities. A BOT agreement is a form of cooperation between a land title holder and an investor, where the investor is granted the right to construct buildings for the duration of the agreement and must transfer ownership of those buildings to the land title holder upon its expiration.^[2] Such private participation can be directed toward large-scale projects, such as toll roads, oil and gas facilities, dams, malls, airport expansions, and power plants, as well as smaller-scale infrastructure like market renovations, terminals, truck depots, rest areas, and resorts.^[3]

The existence of BOT fulfills practical needs where land owners require funds for construction that are otherwise unavailable, while investors require land for development. These two needs converge within a BOT agreement. Generally, these agreements are designed according to the parties' will, provided they do not contravene prevailing laws or legal principles, both formally and substantively.^[4]

In Indonesia, legal provisions regarding land are fundamentally based on Article 33 paragraph (3) of the 1945 Constitution, further elaborated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). As a contract, a BOT agreement is governed by Book III of the Indonesian Civil Code (ICC) on Obligations, particularly Article 1338 paragraph (1) regarding the principle of freedom of contract. The legal aspects of land utilization through BOT encompass land law (as the object of the agreement utilized by the government, customary communities, or individuals) and contract law (including construction, banking credit, insurance, and lease agreements).^[5] The utilization of state land for development must be conducted through appropriate legal mechanisms that adhere to the principles of sound state asset management.

The legal practice of BOT in Indonesia was initially highlighted by the Minister of Finance Decree Number 248/KMK.04/1995, which defines BOT as a cooperation agreement between a land title holder and an investor, granting the investor the right to build and operate for a set period before transferring ownership back to the title holder.^[6] Based on this definition, the core elements of a BOT agreement consist of the investor (financier), the land, the commercial building, the duration, and the transfer.

Currently, the utilization of state or regional property is regulated under Government Regulation Number 27 of 2014 concerning the Management of State/Regional Property (GR 27/2014). Specifically, for regional property, it is further governed by Minister of Home Affairs Regulation Number 19 of 2016. GR 27/2014 explains that BOT involves the

utilization of state/regional land by another party to establish buildings or facilities, which are then utilized for a specified period and subsequently returned to the government along with all facilities upon expiration.^[7] An agreement binds the parties not only to what is expressly stated but also to everything required by equity, custom, or law based on its nature.^[8]

Legal issues arise when BOT agreements involve state land as the object. The legal construction of BOT deeds on state land is complex due to several factors: (1) the legal status of state land, which cannot be transferred; (2) the duration of land utilization; (3) the rights and obligations during the concession period; (4) the form and legal force of the deed; and (5) legal protection for both investors and state interests. The state guarantees legal certainty, order, and protection rooted in truth and justice, ensuring that societal interactions are supported by authentic evidence that clearly defines the rights and obligations of legal subjects.^[9] In the Indonesian civil law system, the Notary plays a vital role in creating authentic evidence. According to G.H.S. Lumban Tobing, the primary authority of a notary is to draft authentic deeds. This authenticity stems from Article 1 of the Law on Notary Positions, which designates the Notary as a public official.^[10] In performing these duties, Notaries must adhere to statutory regulations and the code of ethics.

The authority of a Notary is stipulated in Article 15 paragraph (1) of Law Number 30 of 2004 concerning Notary Positions (as amended by Law Number 2 of 2014). Notaries are authorized to draft authentic deeds regarding all acts, agreements, and stipulations required by law or requested by interested parties, ensuring certain dates, storing deeds, and providing copies, provided such tasks are not assigned to other officials by law.^[11] Consequently, Notaries are essential for a legally conscious society seeking legal certainty through authentic evidence.

The drafting of a BOT agreement deed on state land requires the involvement of both Notaries and Land Title Registrars (PPAT) according to their respective authorities. However, there is a "normative ambiguity" regarding which form of deed should be utilized a notarial deed or a PPAT deed given that state land possesses unique legal characteristics. Furthermore, the legal construction of a BOT agreement must align with the principles of the Indonesian Civil Code and specific administrative law provisions. State land, as a state asset, is subject to a public law regime concerning asset management, while a BOT agreement is a private law instrument. This dualism creates complexity in the legal construction of the deed.

Based on this background, this research formulates two primary problems: How is the legal concept of Build-

¹ Anita Kamilah, *Bangun Guna Serah (Build Operate and Transfer/BOT): Membangun Tanpa Harus Memiliki Tanah (Perspektif Hukum Agraria, Hukum Perjanjian dan Hukum Publik)*, 1st ed. (Bandung: Keni Media, 2013), 12.

² *Ibid.*, 6.

³ Ridwan Soleh, *Kajian Tentang Kerja Sama Pembiayaan dengan Sistem Build Operate And Transfer (BOT) di Kabupaten Pekalongan (Semarang: Diponegoro University, 2009)*, 42.

⁴ Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah Di Indonesia (Surabaya: Arkola, 2003)*, 60.

⁵ I Gede Abdhi Prabawa, *Kajian Hukum Terhadap Perjanjian Build Operate and Transfer (BOT) Untuk Melindungi Hak Milik Atas Tanah Dalam Rangka Menunjang Sektor Pariwisata (Malang: Brawijaya University, 2014)*, 8.

⁶ See Article 1 of the Minister of Finance Decree No. 248/KMK.04/1995 concerning Income Tax Treatment for Parties Conducting Cooperation in the Form of Build-Operate-Transfer Agreements.

⁷ See Article 1 point 14 of Government Regulation No. 27 of 2014 concerning Management of State/Regional Property.

⁸ See Article 1339 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*).

⁹ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia: Perspektif Hukum Dan Etika*, 1st ed. (Yogyakarta: UII Press, 2009), 13.

¹⁰ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris (Jakarta: Erlangga, 1992)*, 48.

¹¹ *Ibid.*, 49.

Operate-Transfer (BOT) agreements on state land viewed from prevailing Indonesian regulations? And how is the legal construction and authority regarding the transfer of buildings in BOT agreements on state land?

2. Research Method

The type of research conducted in this study is normative legal research. Normative research, also referred to as doctrinal legal research, examines "law in books," where law is conceptualized as principles or norms that serve as benchmarks for appropriate human behavior.^[12] According to Muhaimin, normative legal research is fundamentally a documentary study, utilizing sources of legal materials such as statutory regulations, court decisions, contracts, legal theories, and scholarly opinions.^[13]

This study employs the following approaches to address the legal issues:

2.1. Statute Approach

The statute approach is conducted by examining all laws and regulations relevant to the legal issues at hand.^[14] In normative legal research, this approach serves both practical and academic purposes by identifying the regulatory framework governing the subject matter.^[15]

2.2. Conceptual Approach

The conceptual approach examines evolving views and doctrines within legal science. By studying these doctrines, the researcher can identify the ideas that give rise to legal definitions, concepts, and principles relevant to the issues being addressed.^[16]

The legal materials for this normative research were gathered through document study techniques, including literature reviews, searching, reading, and analyzing various sources such as statutes, books, expert opinions, and reputable internet or website resources related to the research problem. The data were analyzed using a normative-qualitative analysis method. This involves analyzing descriptive data based on legal norms, theories, and doctrines to understand or interpret prevailing legal rules. This qualitative approach analyzes non-numerical data such as regulations, court rulings, and expert testimonies and organizes them systematically and logically.

Furthermore, this study utilizes systematic or logical interpretation. This method interprets a statute as an integral part of the entire legal system by connecting it with other laws. This interpretation is necessary because statutes are inherently interrelated and do not stand alone.^[17]

The nature of the analysis in this normative legal research is prescriptive, aiming to provide arguments regarding the research findings, whether to challenge, criticize, support, supplement, or comment, and to formulate conclusions through the application of the relevant theories.^[18] The underlying reasoning follows deductive logic, a method used to reach certain or logical conclusions based on established

premises or assumptions. In deductive reasoning, general premises are applied through logical rules to reach specific and concrete conclusions.

3. Discussion

3.1. The Legal Concept of Build-Operate-Transfer (BOT) Agreements on State-Owned Land Under Prevailing Indonesian Regulations

Build-Operate-Transfer (BOT) is a model for financing and infrastructure provision born from the dynamic relationship between the state and the private sector in national development. In global practice, BOT is recognized as a component of the Public-Private Partnership (PPP) scheme a collaborative framework where the state does not independently finance or manage infrastructure projects but instead engages private participation through long-term contractual mechanisms.

The economic rationale behind this model is simple yet fundamental: high development demands often exceed the state's fiscal capacity. Consequently, the state provides opportunities for investors to commit capital toward public facility development in exchange for the right to operate and derive economic benefits over a specified period. In other words, BOT serves as an instrument that bridges public interests (infrastructure provision) and private interests (capital recovery and profit).

In broad terms, the BOT construction contract model involves two primary parties: the service user (generally the government) and the service provider (the private entity). The service user authorizes the provider to construct and operate infrastructure during a designated timeframe, known as the concession period. Upon the expiration of this concession period, the service provider is required to transfer the infrastructure back to the service user.^[19]

3.1.1. Concept and Regulation of Build-Operate-Transfer (BOT) under the Indonesian Civil Code

From a contract law perspective, BOT is not an explicitly formulated agreement within the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata). Therefore, it is categorized as an innominate contract (*contractus innominatus*)—a type of agreement that emerges and evolves within societal practice.^[20] The validity of such contracts rests upon the principle of freedom of contract, as stipulated in Article 1338 of the Civil Code. This principle grants legal legitimacy to parties to create new forms of agreements, provided they fulfill the essential requirements for a valid contract under Article 1320 and do not contravene statutory regulations, public order, or morality. Thus, normatively, the existence of BOT in Indonesia derives its legality not from explicit statutory mention, but from the permissibility afforded by an open contract law system.

However, viewing the BOT concept purely as a private contract would oversimplify its legal construction, particularly when the object involved is state-owned land.

¹² Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Revised ed. (Depok: Rajawali Pers, 2018), 118.

¹³ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 45.

¹⁴ *Ibid.*, 56.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, 11th ed. (Jakarta: Kencana, 2011), 35.

¹⁶ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 9th ed. (Jakarta: PT Raja Grafindo Persada, 2016), 166.

¹⁷ "Metode Penafsiran Hukum Sudikno Mertokusumo dan A. Pitlo," *Hukumonline*, accessed November 13, 2025, <https://www.hukumonline.com/berita/a/metode-penafsiran-hukum-mertokusumo-pitlo-lt6331ab71b721c/>

¹⁸ Muhaimin, *op. cit.*, 67.

¹⁹ Lalu Hadi Adha, "Kontrak BOT Sebagai Perjanjian Kebijakan (Beleidoverenskost)," *Jurnal Law Reform* 4, no. 2 (2009).

²⁰ Salim HS & Erlies Septiana Nurbani, *Perkembangan Hukum Kontrak Innominat di Indonesia Buku Kedua* (Jakarta: Sinar Grafika, 2014), 1.

Within the framework of Indonesian agrarian law, land is fundamentally under the State's Right to Control (*Hak Menguasai Negara*), as mandated by Article 33 paragraph (3) of the 1945 Constitution and further elaborated in the Basic Agrarian Law (UUPA).^[21] The State is not positioned as an owner in a private sense, but as the holder of the right to control, authorized to regulate the allocation, use, and utilization of land for the greatest prosperity of the people. Consequently, every land utilization scheme, including BOT, must be framed within the principle that no transfer of ownership to the private sector occurs. This marks the fundamental distinction between a BOT involving state land and conventional land sale-and-purchase transactions.

Conceptually, BOT consists of three structural elements that form an inseparable unity. First, the Build phase, which entails the private party's obligation to construct facilities or infrastructure on state-provided land according to agreed technical specifications. Second, the Operate phase, the period during which the private party is granted the right to manage and utilize the object to achieve investment recovery and reasonable profit. Third, the Transfer phase, the obligation to return the buildings and facilities to the state upon the expiration of the concession period. This transfer element is essential, as it reaffirms that from the outset, the state remains the holder of ultimate control, while the investor only possesses temporary management rights based on the agreement.^[22]

3.1.2. The Concept and Regulation of Build-Operate-Transfer (BOT) under Government Regulations

In analyzing the legal concept of Build-Operate-Transfer (BOT) on state land, a pivotal regulation in the management of state assets is Government Regulation Number 38 of 2008, concerning the Amendment to Government Regulation Number 6 of 2006 on the Management of State/Regional Property. This regulation is significant as it served as the primary normative basis for the utilization of State-Owned Property (*Barang Milik Negara* or BMN) and Regionally-Owned Property (*Barang Milik Daerah* or BMD). Within the context of BOT, this regulation does not explicitly employ the term "Build-Operate-Transfer"; instead, it introduces the terminologies "Bangun Guna Serah" (BGS) and "Bangun Serah Guna" (BSG) as forms of utilization that are conceptually identical to the BOT scheme.^[23]

In general, Article 1 defines "utilization" as the optimization of State-Owned Property that is not being used to fulfill the tasks and functions of ministries, agencies, or regional government units, conducted without altering the ownership status. This normative premise is crucial, as it establishes from the outset that any form of utilization, including BGS, must not transfer the ownership of state assets. Therefore, when state land is the object of a BOT development cooperation, it legally remains categorized as BMN/BMD and its ownership cannot be transferred to private entities.^[24] More specifically, the provisions regarding *Bangun Guna*

Serah are stipulated in Articles 27 and 28 (under the structure of the amended PP 38/2008). These articles affirm that BGS is the utilization of state-owned land by another party through the construction of buildings and/or facilities, which are then utilized by said party for a specified period. Upon the expiration of the agreement, the land, along with all buildings and facilities, is transferred back to the state.^[25] This formulation substantially reflects the three core elements of BOT: build, operate (utilize), and transfer. Thus, it can be deductively affirmed that within the framework of BMN management, BOT is qualified as a form of BGS that possesses a solid basis in positive law.

Overall, the concept of BOT on state land demonstrates that it is a public asset utilization scheme executed through a private legal relationship but rooted in legitimate public authority. Under the agrarian framework of Law Number 5 of 1960, state land remains under the State's control and cannot be freely alienated; it may only be utilized through mechanisms justified by law. Further regulations, such as Government Regulation Number 27 of 2014 and Minister of Home Affairs Regulation Number 19 of 2016, institutionalize BOT (BGS/BSG) as an official method for utilizing state/regional property without relinquishing ownership. Conceptually, therefore, BOT is not a transfer of land rights, but the granting of temporary utilization rights that conclude with the restitution of the asset to the state.

Analyzed through Gustav Radbruch's Theory of Legal Certainty, BOT only fulfills the value of legal certainty if it is formulated clearly, firmly, and operationally. The status of the state land must be explicitly declared, the investor's rights must be strictly limited to temporary utilization, and the asset restitution mechanism must be defined without ambiguity. Legal certainty requires more than written rules; it demands consistency between norms, administrative authority, and the content of the agreement. In this context, an authentic deed serves as a concrete instrument to articulate legal facts transparently and prevent misinterpretation.

Furthermore, based on Max Weber's Theory of Authority, the legitimacy of BOT depends on authority derived from a recognized legal system reinforced by the state. The government may only engage in a BOT scheme if it possesses a valid administrative legal basis, and a Notary may only draft an authentic deed provided the legal actions of the parties fall within the corridor of that authority. The authority of a Notary is a form of legal-rational authority a public authority institutionalized by the state to guarantee the formal validity of a legal act. Consequently, a BOT agreement deed is not merely a contractual document but a manifestation of the state's rational and normative authority system.

Thus, it can be concluded that the concept of BOT on state land is a construction of a private legal relationship framed by agrarian law and public asset management, which must satisfy two primary prerequisites: normative certainty and the legitimacy of authority. In this regard, the Notary holds a central role as a public official who ensures that the BOT

²¹ Alganili, *et al.*, "Pelaksanaan Perjanjian Build Operate and Transfer (BOT) dalam Pembangunan Aset Milik Pemerintah Daerah (Studi Pada Proyek Pembangunan dan Pengelolaan Pasar Turi Kota Surabaya)," *Diponegoro Law Journal* 5, no. 4: 4.

²² *Ibid.*, 7.

²³ Anita Kamillah, *Bangun Guna Serah (Build Operate Transfer/BOT): Membangun Tanpa Harus Memiliki Tanah (Perspektif Hukum Agraria, Hukum Perjanjian, dan Hukum Publik)* (Bandung: Keni Media, 2023), 72.

²⁴ Ika Yulianti & Budi Santoso, "Analisis Perjanjian Build Operate and Transfer (BOT) Pada Pembangunan Aset Milik Daerah," *Jurnal Notarius* 16, no. 2 (2023): 12.

²⁵ Setlight Mercy, *et al.*, "Karakteristik Perjanjian Bangun Guna Serah," *Jurnal Lex Et Societatis* 1, no. 4 (2013): 14.

agreement is legally formed, clear, and remains within the bounds of authority recognized by the national legal system.

3.2. Legal Construction and Authority in the Transfer of Buildings within Build-Operate-Transfer (BOT) Agreements on State Land

3.2.1. Legal Construction of Building Transfer in Build-Operate-Transfer (BOT) Agreements

The legal construction of Build-Operate-Transfer (BOT) on state land is essentially a unified legal relationship designed within an integrative framework of state control, private obligations, and administrative legitimacy. It cannot be understood in isolation as a mere business contract or a pure administrative act; rather, it is a multi-layered yet cohesive normative structure. The state, as the holder of authority over land based on the principle of State Control (*Hak Menguasai Negara*) under Law Number 5 of 1960, possesses the authority to determine land allocation and utilization for the public interest. In this context, BOT serves as a legal instrument that enables the state to utilize its land through private participation without relinquishing its controlling status.^[26]

Structurally, BOT involves two primary legal subjects:^[27]

1. The State/Government as the holder of control over state land; and
2. The Private Sector (Investor) as the developer and operator.

The legal object encompasses not only the state land but also the buildings to be erected upon it. This creates a dualistic construction between land and building. Based on the principle of state control in Law Number 5 of 1960, state land remains under state control, and its ownership cannot be transferred to investors through a BOT mechanism. Thus, the primary object in the obligatory relationship is not the transfer of land, but the granting of utilization rights for development purposes.

Buildings constructed by investors are initially under the control and management of the investor during the concession period. However, normatively, these buildings are constructed from the outset as objects that will revert to the state's wealth upon the expiration of the concession. This illustrates a legal design that is reversionary in nature.^[28]

In the legal construction of BOT agreements on state or public assets, the positions of the parties must be formulated strictly and proportionally. This is because the object utilized is not merely private property but falls under the regime of state control for the greatest prosperity of the people, as stipulated in Article 2 of Law Number 5 of 1960. Therefore, the government does not act as an owner in a private sense, but as a representative of the state managing public assets. The legal implication is that every act of state land utilization, including through BOT schemes, must reflect the principles of accountability, transparency, and public interest.

Within this framework, "public consent" is not interpreted as direct individual consent, but is institutionalized through representative mechanisms, specifically the Parliament (DPR/DPRD) through its oversight and budgetary functions.

Normatively, the approval of the DPR/DPRD is not always required for every BOT agreement; however, it becomes relevant if the cooperation impacts strategic policies, budget utilization, or the use of State/Regional Property (*BMN/BMD*) that requires specific oversight under public asset management regulations, such as Government Regulation Number 27 of 2014.

Furthermore, BOT agreements can be conducted through tender mechanisms. In principle, this is encouraged as an embodiment of transparency and fair competition in managing state assets. In the practice of BMN/BMD management, asset utilization through the Bangun Guna Serah (BGS) or Bangun Serah Guna (BSG) schemes—which are conceptually aligned with BOT—is generally performed through a selection or tender process to obtain partners that best meet technical and financial criteria. This aligns with the principles of Good Governance, even if not always explicitly labeled as a "tender" in the classical sense.

Regarding whether BOT falls under the government procurement regime, a conceptual distinction must be made. Based on Presidential Regulation Number 16 of 2018, procurement of goods/services involves activities to obtain goods/services by ministries/agencies/regional units financed by the State/Regional Budget (APBN/APBD). In BOT, the private sector finances the construction and derives economic benefits during the operational period; thus, the government does not directly purchase goods or services. Consequently, BOT is fundamentally categorized not as government procurement, but more accurately as a cooperation for state asset utilization. Nevertheless, procurement principles such as transparency, accountability, and fair competition remain relevant and are often adopted in the BOT partner selection process.

The legal construction of BOT does not arise solely from private agreement. Before an obligatory relationship is formed, there must be a valid basis of public authority for the government to utilize state land. This authority stems from agrarian norms and the state/regional property management regime as regulated in Government Regulation Number 27 of 2014.

Thus, the legal construction of BOT consists of two layers:^[29]

1. Administrative Layer: The public legal act of determining that state land may be utilized through the BGS or BSG schemes.
2. Private Layer: The agreement between the government and the investor regulating the rights and obligations of the parties.

It can be concluded that the administrative layer provides the legitimacy of authority, while the private layer governs the execution mechanism of the utilization. Without administrative legitimacy, the BOT agreement loses its underlying validity.

The BOT agreement in the context of public asset utilization should be understood as a complete sequence of processes, ranging from technical execution to effectiveness evaluation. Normatively, the execution of BOT as a form of BMN/BMD

²⁶ H. Thamrin, "Kajian Build Operate Transfer (BOT) Dalam Hukum Perjanjian di Indonesia," *Jurnal Ilmu Hukum The Jurist* 1, no. 11 (2017): 16.

²⁷ *Ibid.*

²⁸ M. Z. Algabili *et al.*, "Pelaksanaan Perjanjian Build Operate and Transfer (BOT) dalam Pembangunan Aset Milik Pemerintah Daerah (Studi Pada Proyek Pembangunan dan Pengelolaan Pasar)," *Diponegoro Law Journal* 5, no. 4 (2016): 13.

²⁹ [4] A. Kamilah, "Kedudukan Perjanjian Bangunan Guna Serah (Build Operate and Transfer/BOT) Dalam Hukum Tanah Nasional," *Jurnal Ilmu Hukum Litigasi* 5, no. 2 (2019): 13.

utilization finds its legal basis in Government Regulation Number 27 of 2014, further detailed in Minister of Home Affairs Regulation Number 19 of 2016. Within this framework, the structured stages include asset utilization planning, feasibility assessment, partner selection, signing of the agreement, construction by the partner, operation for a specified period, and finally, the transfer of the object back to the government. Thus, BOT is not merely a contractual relationship but an integral part of the public asset management system under the state's administrative supervision.

Legally, BOT is qualified as:^[30]

1. An innominate contract (*contractus innominatus*);
2. Bilateral (reciprocal) in nature;
3. Consensual;
4. A term contract (containing a time element); and
5. A hybrid legal construction (possessing a mixed public-private nature).

Literally, BOT is not a form of sale-and-purchase, nor a standard lease, nor a grant of ownership. It is a form of utilization cooperation with a specific design encompassing construction, management, and restitution. This construction makes it *sui generis*, as it is not fully subject to pure private law nor pure administrative law; it stands between the two.^[31]

The most fundamental characteristic of the BOT legal construction is its temporary nature. The investor's right to manage and derive benefits is not permanent; from the outset, the agreement defines a specific concession period. Furthermore, it incorporates the element of reversionary rights, which is the state's right to repossess the buildings upon the expiration of the concession. Legally, the buildings are structured to return as part of the state/regional assets. This is what distinguishes BOT from other forms of cooperation. While a sale-and-purchase transaction results in a permanent transfer of ownership, BOT facilitates a temporary utilization that concludes with restitution.

In BOT practices involving state land, certain rights (such as a Right to Build/HGB over a Right to Manage/HPL) are often granted to support financing and provide legal certainty for the investor. However, such proprietary rights remain derivative and cannot exceed the concession period. Here, the BOT legal construction demonstrates the relationship between:^[32]

1. Obligatory Rights (arising from the agreement);
2. Proprietary Rights (if granted to support implementation); and
3. The State's Right to Control as the primary basis.

Any proprietary rights that may arise do not stand independently but exist within the framework and limits of the BOT agreement itself. At the end of the concession period, the following legal events occur:

1. The expiration of the investor's utilization rights;
2. The termination of any attached proprietary rights; and

3. The transfer of the buildings to the state.

This event is not a new transaction but the fulfillment of a contractual obligation established from the beginning. Thus, the transfer phase is not a transfer of rights in the sense of a sale, but the realization of a normative design constructed at the inception of the agreement.

Systematically, the legal construction of BOT on state land consists of:

1. The principle of the State's control over land as the basis of legitimacy;
2. Administrative acts granting utilization authority;
3. An obligatory agreement governing construction and management;
4. The granting of limited derivative rights (if applicable); and
5. The reversion obligation as the ultimate objective of the legal relationship.

Thus, the BOT legal construction is not merely a cooperation agreement, but a normative structure designed to optimize the utilization of state land without diminishing the supremacy of state control or creating a permanent transfer of ownership.

3.2.2. Authority and Mechanisms of Building Transfer in Build-Operate-Transfer (BOT) Agreements

The transfer of buildings in a BOT agreement is not an isolated legal event but an integral part of the BOT normative design. From the moment the agreement is signed, the legal relationship between the state and the investor is oriented toward the eventual return of the buildings. Consequently, the transfer phase is the realization of an inherent obligation within the BOT structure.^[33]

In civil matters, transfer (levering) generally relates to the transfer of proprietary rights, such as in a sale. However, in BOT, the transfer of buildings cannot be classified as a sale, grant (*hibah*), or exchange (*ruilover*). The transfer is the fulfillment of a previously agreed-upon performance (*prestasi*). This means the investor's control over the buildings is temporary from the start; once the concession expires, the rights automatically terminate, and the buildings are transferred to the state as a contractual consequence. Therefore, the transfer in BOT is:^[34]

1. Consequential (a direct result of the concession's end);
2. Non-transactional (not a new agreement); and
3. Reversionary (returning to the original owner).

Under the Indonesian agrarian system (Law No. 5 of 1960), the principle of horizontal separation between land and buildings is recognized. This means buildings do not automatically follow the status of the land. In BOT, this separation is functional and temporary. During the concession, the land remains under state control, while the buildings are under the investor's control and utilization. However, this is not permanent. The principle of horizontal separation in BOT only applies during the operational period

³⁰ Ibid., 16.

³¹ Rahmat Ramadhani, "Konstruksi Hukum Kepemilikan Bangunan di Atas Tanah Hak Milik Orang Lain berdasarkan Perjanjian Build Operate and Transfer (BOT)," *Jurnal EduTech* 4, no. 1 (2018): 15.

³² Ibid.

³³ V. Aryanti, "Akibat Hukum Pembatalan Perjanjian BOT (Build Operate Transfer) yang Dibatalkan Secara Sepihak Oleh Pemegang Hak Atas Tanah (Studi Kasus: Putusan No. 97/PK/PDT/2017)," *Jurnal Hukum Adigama* 1, no. 1 (2017): 11.

³⁴ Ibid., 12.

and concludes upon the expiration of the concession.^[35]

The transfer of buildings in BOT possesses a dual character:^[36]

1. Civil Aspect: The transfer is the fulfillment of an obligation (*prestasi*) arising from the contract. The end of the concession leads to the termination of the investor's rights and the birth of the obligation to transfer the buildings.
2. Administrative Aspect: Since the objects are state/regional property, the transfer must be followed by recording and recognition as a state asset. The public asset management regime under Government Regulation No. 27 of 2014 affirms that the results of BGS construction become state/regional property after the utilization period ends.

The authority of the Notary in BOT lies in the fact that BOT is fundamentally an agreement. As such, it requires a legal instrument capable of authentically articulating the parties' intentions, the scope of rights and obligations, project financing, operational duration, profit sharing, maintenance responsibilities, force majeure, default, dispute resolution, and the transfer mechanism. These aspects constitute the substance of the obligation, not merely a land law act. Therefore, the Notary's authority is based on Article 15 paragraph (1) of Law No. 2 of 2014, which authorizes Notaries to draft authentic deeds regarding all acts, agreements, and stipulations required by law or requested by the parties. As long as the act involves formulating a civil legal relationship "who does what, for how long, at what risk" the Notary is the relevant official. The BOT agreement as the master deed falls under the Notary's jurisdiction because it does not immediately transfer land rights but creates an obligatory relationship.

Conversely, the authority of the Land Title Registrar (PPAT) in BOT arises not when the contract is formed, but when the BOT initiates or executes a legal act regarding land and/or buildings. While the financing and operation remain in the realm of obligations (Notary), any action touching upon legal status, possession, derivative rights, encumbrances, or the formal restitution of land/buildings that impacts agrarian data enters the PPAT's jurisdiction. This is based on Article 2 paragraph (1) of Government Regulation No. 37 of 1998, which tasks the PPAT with land registration activities by drafting deeds as evidence of specific legal acts (such as granting HGB/Right to Use or encumbering with a Mortgage/Hak Tanggungan). Once the BOT triggers these specific legal consequences, authority shifts to the PPAT.

Based on the theory of authority, the Notary's jurisdiction within a BOT scheme is valid because the law grants Notaries the power to draft authentic deeds regarding acts and agreements. In this regard, Notaries possess attributive authority derived from the Law on Notary Positions to handle all civil legal relationships intended by the parties to be formalized in an authentic deed. Since a BOT is fundamentally an investment or asset utilization agreement, the Notary's authority stems directly from this attribution norm. Conversely, the authority of the Land Title Registrar (PPAT) in a BOT is also attributive, yet its scope is narrower

and more specific, limited to certain legal acts regarding land rights. Consequently, a PPAT is not authorized to draft all aspects of a BOT, but only those components qualified by law as land-related legal acts. Thus, under the theory of authority, the PPAT's competence is more specialized and limitative, whereas the Notary's competence is broader in the realm of obligations, though it does not automatically extend into land acts explicitly assigned to the PPAT.

From the perspective of the theory of authority, the distinction between these two roles demonstrates the principle of jurisdictional specialization. A Notary may not take over land acts that are strictly within the PPAT's limitative authority, and likewise, a PPAT is not authorized to draft the entirety of a BOT agreement whose substance exceeds land-related legal acts. In other words, the validity of an official's act is determined by the alignment between the type of legal act and its normative basis of authority. On this basis, it is appropriate for the master BOT deed to be drafted by a Notary, as the object of authority is an agreement. On the other hand, if a specific stage of the BOT requires a deed that impacts the status of land rights, then the PPAT must act. If an official exceeds their jurisdiction, the action risks a defect of authority (*bevoegdheidsgebrek*), which theoretically jeopardizes the formal validity of the deed.

Based on the above explanation, the existence of both Notarial and PPAT authority in BOT is not a contradictory dualism, but a logical consequence of BOT's nature as a hybrid legal relationship between obligations and property. Notarial authority is required because BOT originates as an agreement that organizes the will and interests of the parties. Meanwhile, PPAT authority is necessary because the execution of BOT may touch upon land rights and buildings as immovable objects, which legally require specific land-related formalities.

Furthermore, Peter Marzuki, in formulating the theory of contract, emphasizes that an agreement is formed through a process of communication, transparency, and clarity regarding the parties' rights and obligations. In the context of BOT, the legal relationship between the landowner and the investor arises from a consensus governing construction, operation, and the restitution of buildings upon the cooperation's expiration. Therefore, the drafting of a BOT agreement requires a dialogical process through negotiation, ensuring that all provisions regarding financing, management, duration, and restitution mechanisms are proportionally formulated and mutually understood.

In the construction of a BOT agreement, the restitution of buildings at the end of the term is a calculated component from the outset. Thus, provisions regarding the operational duration, the condition of the buildings upon return, and the handover procedures must be clearly formulated to ensure orderly execution and avoid potential misinterpretations in the future. This aligns with the principle of legal certainty in contracts, as reflected in the Indonesian Civil Code, which stipulates that a legally formulated agreement binds the parties as law (*pacta sunt servanda*).

Regarding the formation of such agreements, the Notary's role is relevant because a BOT agreement is essentially a civil legal relationship formalized in an authentic deed. Under Law

³⁵ I.G.A. Prabawa, *Kajian Hukum Terhadap Build Operate and Transfer (BOT) untuk Melindungi Hak Milik atas Tanah dalam Menunjang Sektor Pariwisata* (Malang: Universitas Brawijaya, 2019), 41.

³⁶ Ade Miladi Firmansyah & Ana Silviana, "Perlindungan Hukum Kepemilikan Sarusun Pada HGB di atas Hak Pengelolaan Dengan Perjanjian BOT," *Jurnal Notarius* 16, no. 3 (2023): 1415.

Number 2 of 2014, Notaries are authorized to draft authentic deeds concerning legal acts and agreements desired by the parties, provided such authority is not specifically granted to another official by law. Consequently, the legal formulation of a BOT agreement is more appropriately formalized in a Notarial deed as an instrument that provides perfect probative force (*volledig bewijskracht*) regarding the parties' consensus.

Berikut adalah kesimpulan komprehensif dari artikel tersebut dalam versi bahasa Inggris formal, yang merangkum seluruh temuan penelitian dan argumen hukum yang telah dibahas:

4. Conclusion

Based on the research and legal analysis conducted, several fundamental conclusions regarding the legal construction of Build-Operate-Transfer (BOT) agreements on state land can be drawn:

4.1. The Legal Concept of BOT as a Hybrid Innominate Contract

The Build-Operate-Transfer (BOT) scheme in Indonesia is fundamentally a "hybrid" legal construction that bridges the realms of private law and public administrative law. Under the Indonesian Civil Code, BOT is classified as an innominate contract (*contractus innominatus*) governed by the principle of freedom of contract. However, when the object is state land, this private relationship is strictly framed by Law No. 5 of 1960 (UUPA) and Government Regulation No. 27 of 2014. Conceptually, BOT does not constitute a permanent transfer of ownership; rather, it is a temporary granting of utilization rights over state assets. The legal design is essentially reversionary, ensuring that the state maintains ultimate control and that all assets return to the state's wealth upon the expiration of the concession period.

4.2. Jurisdictional Specialization: The Role of Notaries and Land Title Registrars (PPAT)

The research clarifies that the involvement of both Notaries and PPATs in a BOT project is not a normative conflict but a manifestation of jurisdictional specialization.

- The Notary holds the attributive authority to draft the Master BOT Agreement, as its primary substance concerns the creation of an obligatory relationship (financing, construction stages, management, and dispute resolution).
- The Land Title Registrar (PPAT) exercises authority at the stage where the BOT agreement triggers specific land-related legal acts, such as the granting of derivative rights (e.g., HGB over HPL) or the formal registration of the building's restitution into the state's agrarian data.

Ensuring that each official acts within their respective legal-rational corridor is vital to maintain the formal validity of the deeds and to avoid a defect of authority (*bevoegdheidsgebrek*).

4.3. Legal Certainty and Asset Restitution

To ensure absolute legal certainty and protect state interests, the BOT agreement must explicitly define the mechanism for the restitution of buildings (*transfer phase*). This phase is a consequential and non-transactional legal event meaning it is the realization of a pre-existing contractual obligation rather than a new transaction. By formalizing these agreements through authentic deeds, the parties establish perfect

probative force, minimizing future misinterpretations and ensuring that the utilization of state land remains accountable, transparent, and aligned with the constitutional mandate for the greatest prosperity of the people.

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