



Legal Analysis Of The Failed Investment Of The Jakarta-Bandung High-Speed Rail Project: Ambition Vs Reality

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ABSTRACT

The Jakarta-Bandung High-Speed Railway (KCJB) project, operated by PT Kereta Cepat Indonesia China (KCIC), represents Indonesia's strong ambition to accelerate national strategic infrastructure development and strengthen bilateral cooperation with China. Nevertheless, behind its physical progress, the project has encountered serious challenges characterized by investment failure, including cost overruns, construction delays, and potential legal disputes. This article aims to analyze the failure of the KCJB investment from a legal perspective by examining the gap between infrastructure ambitions and Indonesia's regulatory realities. This study employs a normative legal research method using statutory and conceptual approaches, supported by an extensive review of primary, secondary, and tertiary legal materials. The analysis reveals that the KCJB investment failure is largely driven by weak regulatory harmonization, legal uncertainty, imbalanced contract structures, and the complexity of financing schemes that were insufficiently anticipated within the existing legal framework. Furthermore, the absence of competitive tendering processes, overlapping authorities between central and regional governments, and limited legal protection for public interests have significantly increased investment risks. These conditions have ultimately undermined legal certainty and the effectiveness of project governance. The article concludes that strengthening regulatory frameworks, enhancing contractual transparency, and restructuring public-private partnership mechanisms are essential to mitigate the risk of investment failure in future large-scale infrastructure projects and to ensure that development ambitions align with the principles of legal certainty and good governance.

Keywords: Investment; Failure; Legal Analysis; Infrastructure; Regulation.

ABSTRAK

Proyek Kereta Api Cepat Jakarta-Bandung (KCJB) yang dijalankan oleh PT Kereta Cepat Indonesia China (KCIC) merupakan simbol ambisi besar Indonesia dalam percepatan pembangunan infrastruktur strategis nasional sekaligus kerja sama bilateral dengan Tiongkok. Namun, di balik narasi keberhasilan pembangunan fisik, proyek ini menghadapi persoalan serius berupa kegagalan investasi yang ditandai dengan pembengkakan biaya, keterlambatan pelaksanaan, serta potensi sengketa hukum yang kompleks. Artikel ini bertujuan untuk menganalisis kegagalan investasi proyek KCJB dari perspektif hukum dengan menyoroti kesenjangan antara ambisi pembangunan infrastruktur dan realitas regulasi di Indonesia. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual, serta didukung oleh studi kepustakaan terhadap bahan hukum primer, sekunder, dan tersier. Hasil analisis menunjukkan bahwa kegagalan investasi KCJB dipengaruhi oleh lemahnya harmonisasi regulasi, ketidakpastian hukum, struktur kontrak yang tidak seimbang, serta kompleksitas skema pembiayaan yang tidak sepenuhnya diantisipasi dalam kerangka hukum nasional. Selain itu, proses tender yang tidak kompetitif, tumpang tindih kewenangan antara pemerintah pusat dan daerah, serta minimnya perlindungan hukum terhadap kepentingan publik turut memperbesar risiko investasi. Kondisi tersebut berdampak pada menurunnya kepastian hukum dan efektivitas tata kelola proyek. Artikel ini menyimpulkan bahwa penguatan kerangka regulasi, peningkatan transparansi kontrak, serta penataan ulang skema kemitraan pemerintah dan swasta menjadi langkah strategis yang mendesak untuk mencegah kegagalan investasi pada proyek infrastruktur berskala besar di masa mendatang.

Kata kunci: *Investasi; Kegagalan; Analisis Hukum; Infrastruktur; Regulasi.*

Introduction

Infrastructure development has been one of the Indonesian government's top priorities in recent years, as reflected in various national strategic projects. One of the projects that has attracted the most attention is the Jakarta-Bandung Fast Train (KCJB), operated by PT. Kereta Cepat Indonesia China (KCIC), a joint venture between Indonesia and China.

This project is not only considered a breakthrough in mass transportation systems, but also a symbol of bilateral cooperation between the two countries. However, behind the euphoria and ambition to create high-tech infrastructure, the KCIC project has a number of complex issues that have led to investment failures in financial, technical, and legal terms.

The government's ambition to realize Indonesia's first high-speed rail project is driven by the desire to boost economic growth, reduce traffic congestion, and improve connectivity between Jakarta and Bandung. The project is expected to cut travel time from three hours to only about 45 minutes. However, the reality on the ground shows that this project faces major obstacles, including cost overruns, construction delays, and land acquisition issues. Furthermore, regulatory aspects are a significant weak point. Regulations in Indonesia are often considered unprepared to accommodate the complexity of large-scale infrastructure projects, which involve multiple stakeholders and complex funding schemes.

The failure of the KCIC investment project has not only resulted in financial losses, but also has the potential to damage the investment climate and bilateral relations. Therefore, a legal analysis of the root causes of this problem is important in order to understand how infrastructure ambitions must be balanced with the realities of existing regulations. This article will examine the legal issues underlying the failure of KCIC's investment, focusing on contractual aspects, compliance with laws and regulations, and legal protection for the parties involved.

At the domestic level, the euphoria surrounding infrastructure development under Joko Widodo's administration has created an environment in which projects are pushed to be completed in a short period of time. The pressure to showcase the success of this development vision often clashes with complicated legal and administrative procedures.

In the context of KCIC, accelerating the project through a Government Regulation in Lieu of Law (Perppu) and special policies raises issues of legality and the principles of good governance. These measures, although intended to cut red tape, have instead created a dangerous precedent whereby the legal framework can

be bypassed in the name of “national strategic projects.” This situation creates legal uncertainty that is counterproductive to the long-term investment climate.

The failure of infrastructure projects is also often linked to political dynamics, as revealed by Lee et al. (Lee, O. K., Kim, Y., & Yang, J., 2018) “political risk can significantly delay project completion and increase costs, particularly in developing countries”. Thus, analysis of the failure of the KCIC investment cannot be separated from the complex interaction between domestic political dynamics, international relations, and an immature legal framework. This article argues that the failure was essentially a logical consequence of the neglect of legal principles and good governance in pursuit of infrastructure ambitions laden with political interests.

Research Methods

This study uses normative legal research methods (doctrinal research). The approaches used are the statute approach and the conceptual approach. Secondary legal materials include international journals, books, scientific articles, and analysis reports from trusted institutions. Tertiary legal materials such as legal dictionaries and encyclopedias are also used to strengthen the analysis. Data collection techniques were carried out through library research. The collected data were analyzed qualitatively using descriptive analytical techniques to answer the research questions.

Results and discussion

1.1 Regulatory Context for Large-Scale Infrastructure Projects in Indonesia

Indonesia has sought to create a conducive investment climate through a series of regulations, including Law No. 11 of 2020 on Job Creation, which aims to simplify licensing and improve competitiveness. However, these regulations are often not matched by consistent and harmonious implementation. As stated by Wells (Wells, J., 2014), “infrastructure projects in developing countries often face regulatory uncertainty, which increases investment risks and costs”. This is reflected in the KCIC project, where the existing legal framework is not fully capable of accommodating the complexity of the project.

The KCIC project involves a unique financing scheme, namely a business-to-business (B2B) scheme with soft loans from the China Development Bank. This scheme raises questions about the government's position in terms of oversight and responsibility. On the one hand, the government acts as a regulator, but on the other hand, it is involved in investment agreements through state-owned enterprises. This situation creates conflicts of interest and legal uncertainty, especially when disputes arise. A study by Zhang et al. (Zhang, S., Zhang, Y., & Gao, Y., 2019) states that, the success of public-private partnership (PPP) projects heavily relies on a clear

legal framework and government support. In the context of KCIC, the absence of specific legal protection for high-speed rail projects exacerbates investment risks.

The fragmented regulatory framework is also a major problem. The KCIC project must comply with multiple layers of regulations, ranging from laws on railways, labor, the environment, to spatial planning. Not to mention local regulations in West Java, Banten, and DKI Jakarta, which are not always consistent. This inconsistency creates a “legal minefield” that investors must navigate. A report from the (OECD., 2019) emphasizes that, regulatory coherence across different levels of government is a critical factor for attracting infrastructure investment. In the case of KCIC, overlapping authority between the central and regional governments in issuing permits, particularly environmental and land use permits, has been a source of significant delays and additional costs. According to Aizawa et al. (Aizawa, T., Takagi, K., & Yamamoto, T., 2020), “environmental considerations play a crucial role in the planning and approval stages of infrastructure projects and can significantly affect project viability”. Investors are faced with the reality that promises to simplify licensing at the central level are not necessarily implemented at the regional level.

1.2 Contract Structure and Compliance Aspects

The KCIC investment agreement was built on the basis of cooperation between an Indonesian and Chinese consortium. However, this contract was considered non-transparent and tended to favor one party. For example, the clause regarding risk allocation was not explained in detail, so that when costs ballooned from Rp 66 trillion to nearly Rp 100 trillion, there were conflicting opinions regarding responsibility for the additional financing. According to Guasch (Guasch, J. L., 2004), incomplete contracts are a major source of renegotiation and failure in infrastructure projects. The lack of competition in the KCIC tender has the potential to reduce efficiency and increase project costs.

In addition, the KCIC project tender process was considered uncompetitive. The Indonesian government opted for direct negotiations with China, without involving other players such as Japan, which had previously expressed interest. This raises questions about compliance with the principles of fair business competition, as stipulated in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. In fact, as emphasized by Estache & Wren-Lewis (Estache, A., & Wren-Lewis, L., 2009) “competitive tendering is crucial for ensuring value for money in public infrastructure projects”. The lack of competition in the KCIC tender has the potential to reduce efficiency and increase project costs.

The construction of the KCIC contract also shows haste that disregards thorough legal due diligence. Critical clauses, such as Force Majeure, Governing

Law, and Dispute Resolution, are formulated ambiguously. For example, when the COVID-19 pandemic hit, a dispute arose as to whether it was covered by the force majeure clause that exempts parties from their obligations. This kind of ambiguity is a time bomb that could explode into costly international arbitration disputes. Furthermore, the choice of governing law and dispute resolution forum is also questionable. Although the project is located in Indonesia, there are concerns that political and economic pressures could influence the neutrality of the legal process. According to Salomon (Salomon, M., 2019), in complex international infrastructure contracts, the choice of law and arbitration venue is a primary indicator of risk allocation and bargaining power. In this case, the imbalance of bargaining power between Indonesia and China is reflected in the construction of contracts that do not adequately protect national interests.

1.3 The Impact of Legal Uncertainty on Investment

Legal uncertainty is a classic problem in infrastructure projects in Indonesia. In the KCIC project, this uncertainty is reflected in the slow land acquisition process, which is the responsibility of the Indonesian government. These delays have resulted in construction delays and increased project costs. According to research conducted by Flyvbjerg (Flyvbjerg, B., 2007), megaprojects are often plagued by cost overruns and delays due to regulatory and political risks. This is consistent with the KCIC situation, where regulatory and political uncertainty has worsened investment performance. A study by Zhang et al. (Zhang, S., Zhou, Q., & Cai, W., 2021) concluded that “the lack of clear regulatory guidance can deter foreign investment in large-scale infrastructure projects, as seen in various cases worldwide”.

At the implementation level, the KCIC project also faces overlapping authorities between the central and regional governments. Although the Job Creation Law has simplified licensing, its implementation in the field still faces bureaucratic obstacles. As a result, foreign investors often feel that they are not legally protected. A report from the World Bank (World Bank., 2020) states that “regulatory fragmentation and lack of coordination among government agencies are significant barriers to infrastructure investment in Indonesia”. This situation reinforces the argument that the failure of KCIC's investment was not only caused by technical factors, but also by weaknesses in the regulatory system.

Another aspect of legal uncertainty is the absence of clear mechanisms for handling lawsuits from affected communities. The construction of high-speed railways involves massive land acquisition, which has the potential to cause social and legal conflicts. Van der Meer et al. (Van der Meer, J., Koomen, E., & Harkema, J., 2017) stated, “effective stakeholder engagement and social risk management are essential for infrastructure project sustainability”, which is important in the context

of the KCIC project that affects many residents. In some cases, class action lawsuits from residents who feel aggrieved can halt project operations for long periods of time. Indonesia's overloaded judicial system is not always able to provide certainty and speed in resolving such disputes. This condition creates a fragile “social license to operate” for KCIC. A study by Vanclay (Vanclay, F., 2017) states that, the failure to adequately manage social and human rights risks can lead to significant legal and reputational costs for infrastructure projects. KCIC, with its rushed land acquisition model, has neglected this critical aspect, leading to prolonged resistance and legal protests, which ultimately contributed to the overall failure of the investment.

1.4 Analysis of Financing Schemes and Sovereign Risk

The KCIC financing scheme, which relies on soft loans from the China Development Bank, also poses serious legal issues. Although it is referred to as a B2B scheme, the Indonesian government's role in providing covert guarantees poses a sovereign risk. Fattore & Celesia (Fattore, G., & Celesia, C., 2019) emphasizing that “financial risks are exacerbated in megaprojects due to their complexity, scale, and the often unpredictable nature of infrastructure financing”. The implication of this scheme is that the debt burden is not directly recorded in the State Budget (APBN), but may ultimately become a contingent liability for the government. This means that if KCIC fails to pay its obligations, political and economic pressure will force the government to bail it out, and the burden will ultimately be borne by the people.

The clauses in financing agreements with China are also often considered non-transparent and potentially infringing on sovereignty. Although the text of the KCIC agreement is not fully open to the public, patterns from Chinese projects in other countries indicate the existence of clauses requiring arbitration outside the jurisdiction of the recipient country, as well as collateral in the form of strategic assets. This model, often referred to as “debt-trap diplomacy,” creates dangerous legal and financial dependencies. In the context of KCIC, an inability to pay could result in the loss of control over national strategic assets. This would constitute an investment failure that is not only financial in nature, but also has very serious legal sovereignty implications.

1.5 Implications for Future Infrastructure Project Management

The failure of the KCIC investment provides valuable lessons for Indonesia in managing large-scale infrastructure projects in the future. A study by Kim & Park (Kim, J., & Park, Y., 2020) shows that “sustainable practices in infrastructure development are increasingly necessary to mitigate long-term risks and ensure project longevity”. First, the government needs to develop regulations specifically governing strategic projects under PPP schemes. These regulations must include clear clauses on risk allocation, dispute resolution mechanisms, and the roles of each

party. Second, transparency in the tender process must be improved to ensure fair competition and cost efficiency. As stated by Hodge & Greve (Hodge, G. A., & Greve, C., 2007), “transparency in the procurement process is vital for ensuring competitive bidding and preventing corruption in PPP projects”.

In addition, the government needs to strengthen institutional capacity in overseeing infrastructure projects. As suggested by Bing et al. (Bing, L., Akintoye, A., Edwards, P. J., & Hardcastle, C., 2005), “effective regulatory institutions are essential for mitigating risks in large-scale infrastructure investments”. According to Perera et al. (Perera, S., Shakya, S., & Osmani, M., 2019), “the integration of advanced technologies in infrastructure projects can improve efficiency and reduce risks associated with delays and cost overruns”. By improving these aspects, Indonesia can reduce the risk of investment failure and create a more conducive climate for both domestic and foreign investors.

The lessons from KCIC also emphasize the need for a more cautious approach to projects funded by foreign parties, especially those involving sovereign loans. Legal and financial due diligence must be conducted independently and thoroughly before contracts are signed. All agreement documents, including financing agreements, must be open to scrutiny by parliament and independent audit institutions to prevent clauses that are detrimental to national sovereignty. Furthermore, Indonesia needs to build its own legal capacity in complex international contract negotiations. According to Matteis et al. (Matteis, R., Lamberti, L., & Morandi, A., 2021), “the balance of power in contractual agreements significantly influences the negotiation outcomes in international infrastructure projects”. Dependence on foreign legal consultants who may have conflicts of interest must be avoided. Strengthening the Legal Divisions in technical ministries and state-owned enterprises is a must. Nowak et al. (Nowak, M., Gawrysiak, S., & Stasiak, S., 2020), “innovative procurement practices can enhance project efficiency and stakeholder satisfaction, ultimately leading to better project outcomes and returns”. Only with strong legal capacity and a solid regulatory framework can Indonesia's infrastructure ambitions go hand in hand with legal certainty and the principles of good governance.

Conclusion

Based on the analysis conducted, it can be concluded that the failure of PT. Kereta Cepat Indonesia China (KCIC)'s investment in the Jakarta-Bandung High-Speed Railway project was caused by a mismatch between infrastructure ambitions and regulatory realities in Indonesia. Regulatory weaknesses, legal uncertainty, and incomplete contract construction were the main factors that exacerbated investment risks. As a result, the project faces serious challenges in terms of financing, delays, and potential disputes.

To prevent similar failures in the future, the Indonesian government needs to overhaul regulations for large-scale infrastructure projects, increase transparency in the tender process, and strengthen supervisory institutions. With these measures, it is hoped that infrastructure development ambitions can be realized without sacrificing legal certainty and investment efficiency.

Suggestion

Based on the findings of this study, the author would like to offer several constructive suggestions to key stakeholders of the KCIC project. First, to the Indonesian government, both as a regulator and a party to the agreement, we recommend immediate consolidation and harmonization of regulations. A law or government regulation specifically governing the Public-Private Partnership (PPP) scheme for high-tech strategic infrastructure projects is urgently needed. This regulation must clearly stipulate risk allocation, clear and independent dispute resolution mechanisms, and ensure transparency in all tender and negotiation processes. Second, we advise PT. KCIC and investors, especially those from China, to adopt a more open and cooperative approach. Opening a dialogue to review and supplement ambiguous contract clauses, particularly those related to additional financing and force majeure, is a strategic step to prevent future escalation of disputes.

In addition, the commitment to technology transfer and capacity building of local human resources must be realized in practice, not merely as promises in contracts, as a form of social responsibility and long-term investment to build trust. Finally, we encourage local governments and affected communities to engage in the environmental impact assessment (EIA) and land acquisition processes in a more participatory and equitable manner. Local governments need to strengthen coordination with the central government to ensure clarity on compensation and sustainable corporate social responsibility (CSR) programs, so that this project does not merely become an infrastructure ivory tower, but also directly benefits local communities.

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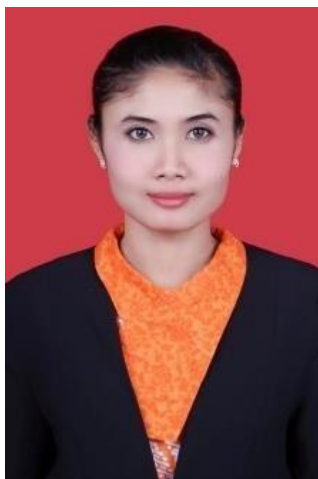
we express our highest appreciation to the communities along the Jakarta-Bandung high-speed railway line, who have indirectly inspired us to raise the issue of social and legal sustainability in infrastructure projects. We hope that the criticism and suggestions presented in this article will be accepted as a form of concern and contribution to improving the governance of future national strategic projects. Finally, all interpretations and conclusions presented are entirely the responsibility of the author.

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