



DOI: <https://doi.org/10.38035/jlph>
<https://creativecommons.org/licenses/by/4.0/>

Screening Public Private Partnership Projects as An Implementation of the Middle Path Theory in Indonesian Investment

Wahyu Agung Laksono¹, Prita Amalia², Adi Nurzaman³.

¹Padjadjaran University, Sumedang, Indonesia, wahyu22010@mail.unpad.ac.id.

²Padjadjaran University, Sumedang, Indonesia, prita.amalia@unpad.ac.id.

³Padjadjaran University, Sumedang, Indonesia, adi.nurzaman@unpad.ac.id.

Corresponding Author: wahyu22010@mail.unpad.ac.id¹

Abstract: Investment in Indonesia has existed since the colonial period, which then experienced developments in 1945, 1966, 1998, until the current reform era as outlined in Law Number 25 of 2007 concerning Investment. Investment activities are currently experiencing many developments, one of which is the presence of Government Cooperation with Business Entities as an alternative to infrastructure provision and management. However, this method is considered slow due to the screening project stage so that an analysis is needed regarding the origin of the stage through the middle path theory. This research uses legal research method with normative juridical approach. The research specification is descriptive analytical with legal interpretation analysis method. The data used is secondary data, consisting of primary, secondary, and tertiary legal materials. The results of this study show that the screening project stage consisting of needs analysis, compliance criteria, criteria for determining the value of money benefits, analyzing potential income, as well as recommendations and follow-up is an implementation of the principle of Government Cooperation with Business Entities, which explicitly shows that Indonesia uses the middle path theory. This is supported by the principles and content material of the project screening process which emphasizes the implementation of PPP in Indonesia based on government intervention and openness to Business Entities that will and/or enter into the PPP process. The middle path theory can serve as the basis for the implementation of PPP in terms of investment because it can attract investors to invest in Indonesia while at the same time suppressing the negative impact of investment activities, especially those carried out by multinational companies.

Keyword: Investment, Screening Project, Middle Path, PPP.

INTRODUCTION

Investment is described as the movement of both tangible and intangible assets between countries with the goal of creating wealth while maintaining overall or partial control by the asset owner. According to Indonesian national law, investment encompasses all types of investment activities carried out by both domestic and foreign investors for business operations within Indonesia. Investment has existed since the colonial period. The Dutch when colonizing Indonesia, introduced the plantation system as a model of colonial economic management (commercial agricultural economic system (Nurhajarini, 2018)). After Indonesia's independence in 1945, the Indonesian government began to pursue economic development by attracting foreign investment and creating various laws and regulations that support the investment climate, such as the Decree of the Provisional People's Consultative Assembly of the Republic of Indonesia (hereinafter referred to as Decree MPR) No. XXIII / MPRS / 1966 concerning Renewal of Economic, Financial and Development Policy Foundations and Memorandum I MPRS / 1966 concerning Foreign Policy based on Pancasila as a consideration for the implementation of investment in Indonesia after independence.

In the New Order era, the Indonesian government implemented a policy of economic development through the opening up of foreign investment. The government introduced investment laws and provided tax incentives for foreign investors. This was successful in attracting foreign investment to Indonesia, especially in the oil and gas, mining and plantation sectors. After the crisis in 1997, the International Monetary Fund (hereafter IMF) suggested structural reforms to the country's finances by allowing foreign investment ownership of up to 100% for the establishment of PMA, foreign banks and shares of companies that have gone public, except for the shares of national banks that have gone public. The IMF also suggested removing restrictions related to the opening of branches for foreign banks, investment permits in wholesale and retail trade, and trade liberalization that is much more liberal than the government's official commitments in the WTO, AFTA and APEC forums (Tarmidi, 1999).

In the Reform Era, there were changes in the provisions regarding investment in Indonesia, especially the amendment of Law No. 1 of 1967 on Foreign Investment and Law No. 6 of 1968 on Domestic Investment which were combined into Law No. 25 of 2007 on Investment, with a philosophical spirit to realize a just and prosperous society based on Pancasila and the 1945 Constitution, The realization of economic democracy based on the Decree MPR Number XVI/MPR/1998 on Economic Politics in the framework of Economic Democracy, Speeding up national economic growth, achieving Indonesia's political and economic independence, adapting to global economic shifts, and engaging in various international collaborations.

On the implementation of current investment activities, there are various views on the implementation of investment, including the following (Hemanona & Suharyono, 2017):

1. In the classical view, investment is considered to benefit the economy of the recipient country through the advancement of development and economic prosperity. Investment activities will assist the government in terms of expertise, management, marketing, and technology used as a means for the delivery of public services.
2. In the dependency view, investment activities have the aim of increasing corporate profits and shareholders. The capital-receiving country will experience a slowdown in economic development because the capital-receiving country only functions as an economic servant, capitalizes the results of investment activities to the capital provider country, dominates the political elite, uses local natural resources, practices transfer pricing (tax), and creates state dependence on the company (Multinational company).
3. In the view of the Middle Path, investment activities are a strategy in national economic development, so as to reduce the impact caused and maximize the benefits of the

implementation of investment activities. In its implementation, the state must have a role in the investment strategy, so it is possible for the state to intervene in the implementation of investment activities if it is not in accordance with the purpose and objectives of investment activities.

Regardless of these various views, the implementation of investment activities currently continues to be carried out with various developments. One of the implementation of investment in Indonesia is carried out through alternative infrastructure financing schemes based on Perpres 38 of 2015 concerning KPBU. departing from the regulation, in relation to this problem, it can be explained that to expedite infrastructure development, it is essential to implement comprehensive strategies to foster an investment-friendly environment and to promote the involvement of businesses in providing infrastructure and services according to solid business practices.

On the basis of these arrangements, the Perpres KPBU is made with the aim of accelerating infrastructure development in Indonesia, which is assisted by various measures that encourage the participation of business entities to provide and service public infrastructure.

The interest in infrastructure development in Indonesia does not necessarily make business entities free to participate in the provision and service of basic infrastructure, because the Indonesian government establishes various arrangements and stages in assessing the feasibility of infrastructure development projects called screening projects. The regulations underlying the implementation of the screening project are the Presidential Regulation on PPP, Regulation of the Minister of National Development Planning/Head of the National Development Planning Agency Number 2 of 2020 concerning Amendments to Regulation of the Minister of National Development Planning/Head of the National Development Planning Agency (hereinafter referred to as Permen PPN) Number 4 of 2015 concerning Procedures for Implementing Government Cooperation with Business Entities in the Provision of Infrastructure and Permen PPN Number 4 of 2015 concerning Procedures for Implementing Government Cooperation with Business Entities in the Provision of Infrastructure (hereinafter referred to as Permen PPN 4/2015).

Regarding the screening project, the Perpres KPBU states that:

1. Article 20: The planning of infrastructure activities involving Public-Private Partnerships (PPPs) involves several crucial steps. First, the Minister, Head of Institution, or Regional Head must identify and establish the necessary PPPs by recognizing potential partners and setting up collaborative agreements. Following this, appropriate budgeting must be undertaken to allocate and plan the financial resources required for the PPP projects. Finally, the categorization of PPPs is essential to classify and organize the projects effectively. This comprehensive approach ensures that the planning and implementation of infrastructure activities are well-structured and efficient.
2. Article 21: identifying infrastructure provisions for cooperation with business entities requires a comprehensive assessment. The Minister, Head of Institution, or Regional Head must ensure that the proposed infrastructure aligns with the National or Regional Medium-Term Development Plans and strategic infrastructure sector plans. Additionally, the identification process must consider conformity with Spatial and Regional Plans, assess linkages between different infrastructure sectors and regions, and include analyses of benefits, social costs, and value for money. This thorough evaluation ensures that infrastructure projects are strategically aligned, economically viable, and beneficial to the community.

Based on these provisions, the screening project is an activity to identify the provision of infrastructure to be cooperated with Business Entities by considering the National Medium-Term Development Plan/Regional Medium-Term Development Plan (hereinafter

referred to as RPJMN/D), infrastructure sector strategic plans (hereinafter referred to as Renstra), Spatial and Regional Plans (hereinafter referred to as RTRW), linkages between infrastructure sectors, cost benefit and social analysis, and value for money.

In reality, the use of PPP as an alternative infrastructure financing scheme has various challenges, such as the process of preparing specifications, risk allocation, business entity auctions, and completion methods that have high complexity and are not instantaneous. The planning and preparation stages of projects with high value and capacity take at least 6 months to 2 years. In addition to time and cost, PPP must also pay attention to other aspects such as legal, technical, and substantive aspects, including the availability of qualified human resources for the formation of PPP teams (Kemenkeu, n.d.).

In particular, the project screening stage in PPP is seen as one of the processes that hinder infrastructure development activities because there are many aspects that need to be considered in accordance with the provisions of laws and regulations (Perpres KPBU, Permen PPN 2/2020, and Permen 4/2015 including sector regulations).

However, the government wants this stage to be regulated to realize the objectives of PPP as stipulated in Article 3 Perpres KPBU, if we look at to Article 3 it can be explained that PPP should be done with the aim of:

1. To address the sustainable funding requirements for infrastructure development by mobilizing private sector investment.
2. To achieve high-quality, effective, efficient, targeted, and timely infrastructure delivery.
3. To promote the principle where users pay for the services they receive, while also considering their ability to pay in certain situations.
4. To ensure a reliable return on investment for businesses involved in infrastructure by implementing a system of periodic government payments to these entities.

The various stages and objectives of PPP attract the author's attention to find out whether the screening project has relevance to the middle path theory in order to realize the objectives of PPP in Indonesia.

Based on this background, the researcher formulated a study with the title " Screening Public-Private Partnership Projects As An Implementation Of The Middle Path Theory In Indonesian Investment" with the following problem formulation:

1. How is the screening of public-private partnership projects regulated in Indonesia?.
2. How is the middle path theory relevant to the screening arrangements for public-private partnership projects in Indonesia?.

METHOD

The research will employ a normative juridical approach, focusing on the examination of secondary data obtained from library sources, including laws, regulations, books, legal journals, newspapers, magazines, and official government documents, supplemented by legal theories. This approach emphasizes analyzing these secondary sources, with support from primary data where necessary. The specification of this research is descriptive analytical, which describes the data or description as carefully as possible about the object of the problem. Descriptive research seeks to address current issues by gathering data or information that is then compiled, explained, and analysed (Saebani, 2008). This description includes information paired with a precise analysis of relevant laws and regulations, as well as legal theories related to the authority, oversight, and execution of education.

The method of analysis is carried out by means of legal interpretation. Legal interpretation is carried out by analyzing *das sein* in the form of data, facts in the field and then connected with *das sollen* in the form of applicable laws and regulations related to land registration, legal theories, which are expected from the analysis to obtain content material for regional regulations that are just and legally certain and provide benefits to Padjadjaran

University in particular, and universities in general in the implementation of investment activities and infrastructure development.

This research utilizes library research techniques to collect data, specifically focusing on the examination of secondary sources. The method of analyzing data that has been obtained from library research is collected and analyzed normatively qualitatively arranged systematically. This research starts from the applicable laws and regulations as positive legal norms. It is said to be qualitative because the data obtained is then analyzed based on the norms to achieve clarity of the problems to be discussed and analyzed using legal interpretation techniques. Legal interpretation techniques are carried out to find prescriptive discipline, because it is a system of teachings about reality that should be (Soekanto, 1986).

This research is grounded in the recognition that infrastructure is a fundamental driver of economic growth within a nation. To support this, the government has concentrated on implementing various strategies to optimize the development of infrastructure projects that serve the public interest. Given the limitations of the national budget (APBN) in financing infrastructure development, as outlined in the 2015-2019 National Medium-Term Development Plan (RPJMN), the government has been compelled to explore alternative funding mechanisms. One such alternative is the adoption of a development cooperation scheme involving the private sector, known internationally as the Public-Private Partnership (PPP) and referred to in Indonesia as *Kerjasama Pemerintah dan Badan Usaha (KPBU)*.

In recent times, PPP schemes have become increasingly popular, especially in Indonesia, due to their many advantages for the private sector. Other benefits can be obtained from public sector investment to the private sector based on an agreement (Amalia & Budhijanto, 2018). The amount of public service infrastructure needed by the government and the development of the private sector in procuring public infrastructure, makes the PPP scheme a potential method of infrastructure development in Indonesia.

PPP is a public infrastructure provision scheme that involves the role of the private sector (Abbas, 2018). Public Private Partnership is a contract-based relationship that specifies in detail the responsibilities and obligations of the partners. Public Private Partnership is also defined as a framework involving the private sector and the government. There are four important aspects of a PPP: A long-term concession contract; Design, construction, financing and operation phases undertaken by the private sector; Use of tariffs and/or service availability payments during the concession period; and Transfer of assets to the government at the end of the concession (Graciela et al., 2021).

RESULTS AND DISCUSSION

Arrangement of Screening Public-Private Partnership Projects in Indonesia

Screening of PPP projects actually includes criteria which are in accordance with the standardization set by the government as a means of fulfilling the public interest. The PPP Book is also realized as a general list of government partnership projects with private entities that are planned to be held in Indonesia. The PPP Book itself is divided into two categories namely: (i) Under Preparation Projects; and (ii) Ready to Offer Projects (Kementerian PPN/Bappenas, 2017). The PPP Book can also be categorized as a reference for the government and the private sector so that the projects produced remain in accordance with the government's work plan process each year. Therefore, the PPP Book is always updated regularly so that both the government and investors can directly see and monitor the progress of the projects that have been launched by the government in the RPJMN.

The procedure for registering PPP projects to be listed in the PPP Book starts from the Minister, Head of Institution or Head of Local Government who are required to submit their respective project proposals to the BAPPENAS agency along with a statement that the Ministry / Institution or local government will be responsible for the planning, preparation,

and financing stages proposed in the related PPP project (Kementerian PPN/Bappenas, 2017). The government certainly realizes that any information that provides investors with a deeper understanding of the technical requirements of the project, will help the parties to arrange consortium partners appropriately, thus making the investors more likely to have the opportunity to participate in the project field. An overall description or summary and performance specifications of the facility will prove helpful for potential investors to understand the benefits of the project assets that will be generated, thereby influencing the need for partners.

The following are the forms of proposals found in PPP projects:

1. Solicited Proposals

Solicited proposals are proposals that are addressed to parties outside the company because of their need for the product or business plan that has been proposed. This form of proposal in the PPP project cycle has three stages which include the planning stage (identification, selection, and submission of priority scale), project preparation stage (pre-feasibility study), and transaction stage (purchase, contract signing, and Financial close) (Kementerian PPN/Bappenas, 2017).

2. Unsolicited Proposals

Unsolicited proposals are proposals that are submitted to other parties at the initiative of the company without the business plan or need for the project being presented by an external party. The mechanism for handling unsolicited proposals includes two stages, the first of which is standardization and starts from the time the PJKP presents the project to the government until all forms of testing and approvals have been completed and the project is ready to be tendered directly to the public. The next stage involves the tendering process of the bidders, whose approach is likely to differ from the incentives or benefits of the original project proposal prepared by the PJKP (Kementerian PPN/Bappenas, 2017). The principle in designing procedures for unsolicited proposals is that the PJKP should know exactly who and where to submit the proposal to, what information is required, and the steps and timeline to facilitate appropriate decision making on the specialization of the PPP project.

Before a project is included in the PPP Book and announced to the public, the PPP Planning stage is carried out. In this stage, the Minister / Head of Institution / Head of Region / Director of BUMN / BUMD prepares a budget plan for funds, identification, decision making, preparation of the PPP Plan List. The output of the planning stage is a list of project priorities and preliminary study documents submitted to the Ministry of National Development Planning/BAPPENAS to be compiled as a PPP Plan List. In this planning stage, it includes identification and determination of PPP. Therefore, the central and/or regional governments are mandated to prepare a preliminary study that includes studies on:

1. Needs Analysis

It is a stage that describes that there is certainty in the PPP that will be implemented, by explaining the technical and economic rationale for sustainable demand power and measured by service inadequacy, and ensuring PPP has the support of relevant stakeholders.

2. Compliance Criteria

It is a step to identify the rules that are mandatory in accordance with the applicable laws and regulations, including the determination of delegation from the government as a public representative who will become PJKP. Not only that, the PPP project candidate is also a project launched in the National / Regional Medium-Term Development Plan (RPJMN / D), as well as the linkage of the scope of infrastructure with other regional sectors (cooperation is possible).

3. Criteria for determining the Value for Money of enterprise participation

This is an explanation that has content to ensure the effectiveness, accountability and equitable distribution of services to the public interest in the long term, transfer of knowledge

and technology, and participation of the private sector in the implementation of PPP which includes risk allocation.

4. Analyze revenue potential and Project Financing Scheme.

This is a general description to see the possibility of the ability of facility users to pay, the fiscal capacity of financing from the central government / local government / Business Entity implementing PPP, and estimates of government support that will be given to the PPP project.

5. Recommendations and follow-up plan

In the form of recommendations on the form of PPP to be used (solicited or unsolicited), recommendations on the main criteria in the selection of business entities, and a schedule plan for PPP preparation and transaction activities.

Relevance of Middle Path Theory on the implementation of Screening Public-Private Partnership Projects in Indonesia

Existing studies distinguish three types of theories on the relationship between investment and national economic development, consisting of dependency theory, middle path theory, and classical theory (Gammoudi et al., 2016). Dependency theory, rooted in Marxist ideology, interprets globalization as a process marked by the exploitation of inexpensive labor, the spread of market capitalism, and the trade of primary resources for outdated technological goods from more advanced nations. Supporters of this theory assert that the potentially harmful impact of investment on development in developing countries can be demonstrated in the following ways (Asongu et al., 2018):

1. The benefits of investment are not equally shared between host countries and multinational corporations (MNCs), with MNCs often reaping the majority of the rewards. Furthermore, exploitation in investment can lead to profits being sent back to the investor's wealthy home country, while foreign investors might displace local resources that could be used by the government for regional development.
2. MNCs contribute to domestic economic instability by disrupting local investment patterns. They use capital-intensive technologies that result in increased unemployment, greater income inequality, and shifts in consumer preferences, which in turn undermines local cultural values.
3. Frequently, citizens of underdeveloped host countries are left out of the benefits of foreign direct investment (FDI) due to collusions between local political and economic elites and foreign investors.

Proponents of classical theory contend that foreign direct investment (FDI) can benefit the economies of developing countries in various ways. These benefits include enhancing the balance of payments, facilitating the transfer of capital, skills, and advanced technology, boosting foreign exchange earnings, broadening the tax base through FDI-related exports, integrating the domestic economy into global markets, and improving domestic infrastructure. The positive outcomes of such investments are wide-ranging, encompassing better work practices, improved management skills, job creation, increased household incomes, and higher productivity.

The middle path theory blends elements from both of the earlier theoretical approaches. Essentially, it applies the precautionary principle to the effects of development driven by foreign direct investment. While dependency theory emphasizes the negative consequences of investment and classical theory highlights its benefits, the middle path theory suggests that the objective of a domestic economy should be to attract investment, with government intervention through policies and regulations serving to minimize its potential downsides.

All the discussed theories recognize key factors that affect investment. These factors encompass policy indicators such as taxation, trade policies, privatization, and

macroeconomic strategies; business dynamics including incentives for investment; market-related elements like market structure, growth, and size; resource-oriented aspects such as technology availability, labor costs, and raw materials; and factors driving economic efficiency, such as labor productivity and the costs of transportation and communication.

Investment is intrinsically linked to multinational corporations (MNCs), which are key players in investment law. Over the years, the motivations for MNCs to invest have been expanded and justified by various theoretical perspectives, such as neoclassical trade theory, market imperfections, product life cycle theory, and the eclectic paradigm. Neoclassical trade theory, based on the Heckscher-Ohlin model, posits that trade opportunities and capital flows between two countries are determined by their relative factor endowments, leading MNCs to invest in countries where they can gain higher returns or benefit from lower production costs. In contrast, market imperfection theory posits that due to market inefficiencies, multinational corporations (MNCs) establish their operations in these countries to capitalize on economies of scale, ownership benefits, and government incentives. Furthermore, the theory argues that imperfections in developing countries lead MNCs to internalize their operations there as a cost-effective strategy to safeguard their intangible assets (Asongu et al., 2018).

Vernon's product life cycle theory suggests that a product progresses through four stages: introduction, growth, maturity, and decline. The development of a product typically follows a pattern where it is initially launched in developed countries before gradually expanding to developing nations. Consequently, these stages of the product life cycle shape an MNC's decision to either export the product or set up a production facility in a foreign market. The primary objective for the MNC is to reduce production costs while satisfying the increasing demand for its products in both foreign and domestic markets at competitive prices. Additionally, the eclectic paradigm, formulated by Dunning, provides one of the most comprehensive theoretical frameworks for understanding why MNCs decide to invest capital. This paradigm argues that the scope, geographic distribution, and industry focus of MNC investments are shaped by the interplay of three interdependent sets of variables. These variables include components from three key areas: ownership-specific advantages, location-specific factors, and the need for internalization.

The link between the theory of investment relations and the implementation of PPP screening projects in Indonesia, is the existence of "intervention" and "openness" in the regulation of the Perpres KPBU as stated in Article 4 which can be explained like this:

1. Partnership: Collaboration between the government and business entities based on legal provisions and requirements that address the needs of both parties.
2. Benefit: Infrastructure projects carried out by the government with business entities aimed at delivering social and economic advantages to the community.
3. Competing: The process of selecting business partners involves fair, open, and transparent procedures while adhering to principles of fair competition.
4. Risk Control and Management: Infrastructure projects are conducted with thorough risk assessment, strategic management development, and risk mitigation measures.
5. Effective: Collaboration in infrastructure development should accelerate progress and improve the quality of infrastructure management and maintenance.
6. Efficient: Collaboration in infrastructure projects must ensure sustainable funding needs are met through private sector support.

The principle in the provision explicitly emphasizes that the Indonesian government seeks to carry out investment activities in the field of economic and social infrastructure through "openness" to attract investors while minimizing the negative impacts and risks of the implementation of investment through laws and regulations and specified requirements, taking into account the needs of both parties.

"Intervention" and "openness" as the main point of PPP implementation in Indonesia are implemented in a series of PPP stages, especially the screening project stage. Needs analysis is intended as an initial identification of demand and inadequacy of services and stakeholder support. Compliance criteria are intended to ensure that the government's authority in the implementation of PPP is carried out in accordance with the RPJMN / D and laws and regulations in the sector. Value for money needs to be analyzed to ensure effectiveness, accountability, equitable distribution of services, technology transfer, and involvement of business entities. The analysis of revenue potential is aimed at obtaining an overview of the ability to pay the surrounding community for the infrastructure to be provided. Finally, the follow-up plan is to ensure the government's future steps to own the Business Entity and the planned activities that will be held in the future. The series of screening projects contains the spirit of "regulation" of investment activities through needs analysis and compliance analysis. While the spirit of "openness" is reflected in the analysis of potential income, value for money benefits, and follow-up recommendations.

The presence of "intervention" and "openness" in the implementation of PPP in general and the implementation of screening projects as part of the stages of PPP implementation, shows that Indonesia is a supporter of the middle path theory, by opening opportunities and information related to infrastructure projects in Indonesia. However, if the Business Entity plans to participate in the development process, it is obliged to follow the provisions of laws and regulations and requirements determined by the government. This is done to minimize the negative impact of investment activities, especially those of MNCs, as well as to attract investors to invest in Indonesia.

The form of intervention and openness of PPP implementation is not only a reflection of Indonesia adapting the middle path theory approach, but also a reflection of Indonesia following the principles of international law as mandated in the 1945 Constitution of the Republic of Indonesia to participate in world order based on eternal peace and social justice. One of the principles embodied in the PPP screening project is the Most Favored Nation (MFN) and National Treatment principles in international investment.

The MFN principle is known as a basic principle in the General Agreement on Tariffs and Trade (GATT) which was ratified by Indonesia in 1994 through Law No. 7 of 1994 on the Ratification of the Agreement Establishing the World Trade Organization, according to that rules the principle can be explained that " this principle states that any benefit, favor, privilege, or exemption granted by any contracting party to a product from or destined for another country must be extended immediately and unconditionally to similar products from or destined for the territories of all other contracting parties.

Under the WTO agreement, countries are generally prohibited from discriminating between their trading partners, such as granting special advantages like lower import duties to certain countries without offering the same to all WTO members (WTO, n.d.). These principles, which are general and unconditional once a country joins the treaty, can be controversial as they guarantee Most-Favored-Nation (MFN) treatment from all other members regardless of the country's conduct (Cebi & Ludema, 2002). The 1947 signing of the GATT was a pivotal moment for the MFN clause, both in its scope and the support it received from participating nations. The United States strongly supported the broad and unconditional MFN language of the GATT. Prior to 1923, the U.S. used a conditional MFN approach, where preferential tariffs given to one country had to be reciprocated by the MFN partner with equivalent tariff reductions. However, the GATT's unconditional MFN clause eliminated the need for such reciprocity.

During the Tokyo Round (1973-79), industrialized nations began to express concerns about the "free rider" problem, where smaller countries that did not participate in reducing trade barriers still benefited from these reductions through the MFN clause by larger nations.

The U.S. Congress, in particular, addressed this issue in its 1974 trade law by making MFN status conditional on the Tokyo Round. Consequently, some agreements were negotiated as "plurilateral" deals, meaning they applied only to GATT members who agreed to them. The Uruguay Round (1986-1994) addressed the free rider issue by replacing GATT with a new agreement that required all countries to join the World Trade Organization (WTO), which included GATT, GATS, TRIPs, and TRIMs. Additionally, these new agreements introduced several exceptions to the MFN clause, particularly in the areas of financial services and information technology (Cebi & Ludema, 2002).

Alongside the MFN principle, the principle of National Treatment requires that each country must treat foreign and domestic investors equally. This principle mandates that imported goods should be given the same treatment as locally produced goods once they enter the market. Similarly, foreign and domestic services, as well as foreign and local trademarks, copyrights, and patents, should be treated on an equal footing (WTO, n.d.). While rules and principles against discrimination are relatively straightforward to articulate, applying them to specific situations is often challenging. This discrepancy between stating non-discrimination principles and implementing them is evident with the National Treatment provision in Article III of the GATT. Although the National Treatment principle appears sensible, clear, and straightforward at a general level, its application can be complex. Whether expressed as the formal requirement that member states must not treat foreign products worse than domestic products (except under Article XX) or as the common variant that WTO members should not discriminate based on the product's country of origin (again, except under Article XX), the principle seems self-executing. Nonetheless, this foundational principle of the WTO system offers limited guidance on how to determine if a domestic measure unfairly treats imports compared to domestic goods or discriminates based on origin (Gerhart & Baron, 2003).

Anti-discrimination provisions such as the Most Favored Nation and National Treatment principles are drafted and enacted to help put them into practice, but moving from general provisions to implementation in specific cases can be problematic. After all, anti-discrimination provisions are designed to prevent "hidden protectionism" and to prohibit measures equivalent to tariff barriers, with the aim of protecting commitments made by WTO members to reduce tariffs and other trade barriers and to ensure a level playing field. However, identifying hidden protectionism or measures that circumvent the rules against trade barriers is a tricky job (Gerhart & Baron, 2003).

With the implementation of PPP project screening, the application of Most Favored Nation and National Treatment is a realization in practice. Through intervention and openness in PPP project screening, it can ensure that the implementation of PPP is free from discriminatory practices through an assessment of the needs analysis of compliance criteria value for money criteria potential revenue and financing schemes as well as recommendations and follow-up plans. The government sets the same criteria and is open to all parties to the PPP field, including investors who will and / or want to play a role in PPP.

CONCLUSION

The implementation of the PPP project screening stage in Indonesia is carried out through various series, such as needs analysis, compliance criteria, value for money benefits, potential revenue analysis, and follow-up plans as outlined in the form of preliminary studies, solicited proposals, and unsolicited proposals as part of PPP planning. This is an implementation of the PPP principle, which is explicitly included in the theory of the relationship between investment and national economic development with the type of middle path theory.

Middle path theory is the basis for the implementation of PPP in terms of investment in Indonesia, because the implementation of PPP, especially screening projects, seeks to attract investors to invest in Indonesia while suppressing the negative impact of investment activities, especially those carried out by MNCs while realizing various principles in international law such as Most Favored Nation and National Treatment can be realized in real practice. Thus, investment in Indonesia through PPP is free from discriminatory actions that realize openness in investment activities in Indonesia.

REFERENCE

- Abbas, M. Y. (2018). *Public Private Partnership dalam Pembangunan dan Pengelolaan Suncity Plaza Sidoarjo*. Universitas Airlangga.
- Amalia, P., & Budhijanto, D. (2018). The force of strategic infrastructures: The role of public-private-partnership to strengthen sustainable developments in Indonesia. *Central European Journal of International & Security Studies*, 12(4).
- Asongu, S., Akpan, U. S., & Isihak, S. R. (2018). Determinants of foreign direct investment in fast-growing economies : evidence from the BRICS and MINT countries. *Financial Innovation*, 4(6). <https://doi.org/10.1186/s40854-018-0114-0>.
- Cebi, P., & Ludema, R. (2002). *The Rise and Fall of the Most Favored Nation Clause* (No. 2002-06-B).
- Gammoudi, M., Cherif, M., & Asongu, S. A. (2016). *FDI and growth in the MENA countries: are the GCC countries different?* (WP/16/015).
- Gerhart, P. M., & Baron, M. S. (2003). Understanding National Treatment: The Participatory Vision of the WTO. *Ind. Int'l & Comp. L. Rev.*, 14, 505.
- Graciela, S. A., Chandrawulan, A. A., & Amalia, P. (2021). The Implementation of The FET Principle In PPP Project Foreign Investor's Protection Towards Non -Commercial Risks In Indonesia's PPP Infrastructure Project. *South East Asia Journal of Contemporary Business, Economics and Law*, 24(5), 95–101.
- Hemanona, V., & Suharyono. (2017). Analisis Pengaruh Foreign Direct Investment terhadap Country Advantages Indonesia. *Jurnal Administrasi Bisnis*, 52(1), 16–25.
- Kemenkeu. (n.d.). *Efisiensi KPBU dalam Penyediaan Infrastruktur*. Kpbu.Kemenkeu.Go.Id. Retrieved June 10, 2024, from <https://kpbu.kemenkeu.go.id/read/73-220/umum/kajian-opini-publik/efisiensi-kpbu-dalam-penyediaan-infrastruktur>
- KementerianPPN/Bappenas. (2017). *Public Private Partnerships Infrastructure Projects Plan in Indonesia*. Kementerian PPN/Bappenas RI.
- Nurhajarini, D. R. (2018). *Sejarah Perkebunan di Indonesia*. PT. Cempaka Putih.
- Saebani, B. A. (2008). *Metode penelitian hukum*. Pustaka Setia.
- Soekanto, S. (1986). *Pengantar penelitian hukum*. UI Press.
- Tarmidi, L. T. (1999). Krisis moneter Indonesia: Sebab, dampak, peran IMF dan saran. *Bulletin of Monetary Economics and Banking*, 1(4), 1–25.
- WTO. (n.d.). *Principles of the trading system*. [https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#:~:text=Most-favoured-nation\(MFN,for all other WTO members](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#:~:text=Most-favoured-nation(MFN,for all other WTO members)