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Legal Analysis of the Reduction in Scope and Transfer of Agreement in Toll Road Concessions Between the Old Toll Road Business Entity and the New Toll Road Business Entity

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Abstract

Toll road concession agreements in Indonesia often face complex dynamics requiring contractual adjustments between Toll Road Business Entities (BUJT) and the government. A significant legal issue arises when Old BUJTs fail to fulfill their obligations, necessitating scope reduction and subsequent transfer to New BUJTs. This process creates substantial legal uncertainties regarding the validity of the agreement post-amendment, proper mechanisms for scope reduction, and protection of the rights and obligations of all parties involved. Currently, no clear legal framework governs this mechanism, leading to ad hoc decisions that generate legal uncertainty for both Old and New BUJTs and potentially hinder the sustainable development of toll road infrastructure. This research employs a juridical-normative approach to comprehensively analyze the legal problems arising from the reduction of toll road business scope. It evaluates existing legal foundations and identifies ideal mechanisms to ensure legal certainty. The study's novelty lies in its specific focus on scope reduction as a distinct legal mechanism under the new regulatory framework of Law Number 6 of 2023 and Government Regulation Number 23 of 2024. The research implications provide crucial recommendations for developing detailed technical guidelines for scope reduction implementation, strengthening mediation and arbitration mechanisms in concession agreements, and establishing fair compensation frameworks. These findings are expected to contribute significantly to the improvement of toll road business regulations in Indonesia and to strengthening more transparent, fair, and sustainable infrastructure governance.

Keywords: *toll roads, Toll Road Business Entities, scope reduction, business transfer, business agreements, legal certainty.*

INTRODUCTION

In the development of toll road infrastructure in Indonesia, *Toll Road Business Entities (BUJT)* have a very crucial role, both in terms of construction, operation, and maintenance of toll roads (Suwarto, Kurnianto, Setiabudi, & Sholeh, 2021). The toll road concession agreement between BUJT and the government is the legal basis that regulates the rights and obligations of both parties (Panggabean, Riantini, & Setyawati, 2024). In practice, toll roads are often infrastructure projects with long durations, sometimes reaching decades (Odeck, 2017). Therefore, the dynamics during the management period often require changes or adjustments in the agreements that have been made. One common condition is the inability of the *Old BUJT* to continue its obligations, whether due to financial, technical, or administrative factors (Vatsha, 2024). When the *Old BUJT* fails to fulfill these obligations, the government then takes steps to transfer the management of the toll road to the *New BUJT*, considered to have better capacity to complete or continue project management.

The process of transferring toll road business certainly raises various complex legal problems. The reduction in the scope of business experienced by the *Old BUJT*, which is then handed over to the *New BUJT*, cannot be seen as a simple matter (Chmielewski, Dembek, & Beckett, 2020). First, it should be understood that any changes in the agreement, especially those involving the transfer of obligations and rights, have the potential to alter the structure of pre-agreed rights and obligations (Zaidi, 2024). This reduction in scope also has the potential to create legal uncertainty for all parties involved—*Old BUJT*, *New BUJT*, and the government as the main regulator and supervisor. One main question often arises: how valid is the agreement after a reduction in scope, and whether the mechanism for such reductions is legally valid (Sun, 2024).

Another issue is whether the transfer of obligations and rights can be carried out fairly, without harming either party (Drapała, 2021). The *BUJT Lama* often faces difficulties maintaining its rights after a reduction in scope, while the *BUJT Baru* taking over must also account for project continuation, which often encounters challenges.

The lack of clarity regarding the status of the existing agreement and whether the reduction in scope follows correct legal procedures raises legal risks borne by the *New BUJT* and the government (Uwamusi, 2025). Furthermore, as the party responsible for safeguarding the public interest, the government must ensure that the transfer of business benefits not just one party but also maintains continuity in infrastructure development, which is the state's responsibility, while protecting the interests of the community.

Until now, regulations regarding the reduction of scope and the mechanism for transferring toll road businesses have not been clearly stipulated in laws and regulations (Weinreich, 2021). Most decisions taken were ad hoc, based on prevailing conditions without an adequate legal basis. This uncertainty impacts the *Old BUJT*, which can lose rights without clear procedures, and the *New BUJT*, which takes over the business (Winczorek & Muszynski, 2023). Such ambiguity exacerbates potential conflicts among the *Old BUJT*, *New BUJT*, and government (Verbrugge, 2015). It also increases legal and financial burdens, which can adversely affect the toll road infrastructure development process—a vital necessity for the Indonesian people and economy.

Several previous studies discussed toll road governance and concession agreements but did not specifically address scope reduction as a distinct legal mechanism (Chen, Shen, Xue, & Xia, 2018). Suwardi (2018) in his book *Legal Aspects in Toll Road Management* comprehensively discussed the general contract framework but did not explore scope reduction as a separate legal concept. Wibowo (2023) in *Analysis of Legal Certainty in Toll Road Business Agreements* focused on agreement validity in general, without specifically analyzing scope reduction implications. Yulianto (2020) in *Legal Mechanisms in the Transfer of Toll Road Project Business* discussed business transfers but treated scope reduction merely as part of the transfer process rather than as an independent mechanism. Similarly, Taufik (2019) in *Legal Implications of Business Agreement Changes in Infrastructure Projects* examined contract changes generally without focusing on the unique aspects of scope reduction in toll road concessions. This research gap underlines the importance of this study, which specifically focuses on scope reduction as a distinct legal mechanism separate from mere business transfer (Uwamusi, 2025).

The urgency of this research is increasingly relevant in the context of national development goals outlined in the RPJMN (National Medium-Term Development Plan) 2025–2029, which emphasizes accelerating infrastructure development as a key driver of economic growth. Legal uncertainty in toll road business transfers can hamper the achievement of national infrastructure targets, particularly economic connectivity between regions (Weinreich, 2021). Furthermore, with investment in the toll road sector reaching tens of trillions of rupiah, legal uncertainty in scope reduction mechanisms can negatively affect Indonesia's investment climate, especially foreign direct investment in infrastructure (Anbumozhi, Riefky, Hariyanto, & Alamsyah, 2023). This research is crucial to provide a clear legal framework protecting all parties' interests while supporting accelerated national infrastructure development.

The novelty of this research lies in its specific focus on *scope reduction* as a distinct legal mechanism, separate from mere business transfer, within the new regulatory framework of Law Number 6 of 2023 and Government Regulation Number 23 of 2024. This study offers the first comprehensive legal analysis of these regulations, particularly regarding their implementation in scope reduction scenarios (Oomen et al., 2018). It introduces a novel conceptual framework distinguishing between *horizontal transfer* (complete business transfer) and *vertical reduction* (partial scope reduction), offering a nuanced understanding of toll road concession modifications. Additionally, this study develops a unique compensation calculation model specifically for scope reduction scenarios, accounting for both amortized investment value and potential lost profits, which previous legal studies on Indonesian toll roads have not extensively explored.

Therefore, in-depth legal analysis becomes very important in this context. A comprehensive study is needed to address legal issues related to reducing the toll road business scope, including mechanisms for transferring legal obligations and rights, protecting involved parties, and providing a clear legal basis. This research is expected to clarify how to handle agreement changes to create legal certainty for the *Old BUJT*, *New BUJT*, and government. It also aims to contribute to formulating more comprehensive regulations, supporting sustainable and legally accountable infrastructure development. Thus, the problem of scope reduction and business transfer is not merely technical but also a legal issue that must be resolved thoroughly for the benefit of all parties and the wider public interest.

This study has significant relevance in enhancing toll road governance in Indonesia and contributes importantly to developing more transparent and fair contract laws and regulations in the infrastructure sector (Rohman, 2022).

Research Method

This study employed a juridical-normative approach by examining laws and regulations related to toll road operations and analyzing similar cases that had occurred. The data consisted of primary and secondary legal materials that complemented each other to build systematic legal arguments and provide a comprehensive understanding of issues around reducing the scope and transitioning toll road operations. Data analysis focused on explaining the meaning, context, and relationships between legal elements in depth, without using statistical methods. The goal was to systematically describe normative conditions and legal practices related to scope reduction and transition in toll road business, as well as to identify appropriate legal solutions.

The analysis began with classifying primary and secondary legal materials based on their relevance. Each legal document was examined in terms of normative substance, procedural appropriateness, and regulatory consistency. The next step involved interpreting legal provisions governing the relationship between the government and the Toll Road Business Entity (BUJT), including those on scope reduction and business transition mechanisms.

Interpretation results were compared with empirical facts or similar legal cases in Indonesia to evaluate the effectiveness of applying legal norms in practice. Thus, the analysis was both textual and contextual, seeking logical connections between written law and its practical implementation.

This study used two types of legal materials: primary and secondary. Primary legal materials included laws, government regulations, and cooperation agreements between BUJT and the government, serving as binding legal sources to analyze the validity, hierarchy, and relationships between rules regulating scope reduction and transition between the Old and New BUJT.

Secondary legal materials consisted of legal literature, scientific journals, and academic articles. These provided theoretical explanations, scientific interpretations, and conceptual analyses to complement the primary materials.

Data collection did not involve field observations or interviews but relied on tracing and reviewing legal documents and relevant literature to obtain authentic, valid, and academically strong legal data. The two main techniques used were library research and legal document analysis.

The literature study involved collecting, studying, and interpreting primary and secondary legal materials related to scope reduction and switching of toll road business. This included examining laws, government regulations, concession agreements, and policy documents from institutions such as the Toll Road Regulatory Agency (BPJT) and the Ministry of Public Works and Public Housing (PUPR).

Case analyses were conducted using official news, government publications, and credible academic reports to provide empirical insights into the application of legal norms. These analyses assessed regulatory consistency in scope reduction and toll road operation transitions. Rather than quantitatively testing hypotheses, case studies were used to interpret legal facts to strengthen conceptual arguments. Cases were selected based on their relevance, such as concession transfers from Old BUJT to New BUJT, share ownership restructuring, or contract adjustments due to financial incapacity.

Discussion

Legal Framework for Reducing the Scope and Switching of Toll Road Concession Agreements

Reducing the scope and switching of toll road business is a strategic issue related to legal, investment, and public service aspects. This is regulated in Law Number 2 of 2022 concerning the Second Amendment to Law Number 38 of 2004 concerning Roads which has been amended by Law Number 6 of 2023, and strengthened through Government Regulation Number 23 of 2024 concerning Toll Roads.

Article 49 of Law Number 2 of 2022 stipulates that the government can evaluate the performance of Toll Road Business Entities (BUJT) to ensure the fulfillment of Minimum Service Standards (SPM) and toll road management obligations. In the evaluation, the government has the authority to reduce the scope of work of BUJT or make a business switch if violations or non-conformities are found.

Furthermore, Government Regulation Number 23 of 2024 Article 30 emphasizes that the reduction in scope or switching of business must go through a thorough evaluation which includes:

1. BUJT's operational performance, including the fulfillment of SPM.
2. Compliance with concession agreements, including investment obligations.
3. Impact on public services and infrastructure sustainability.

However, this regulation also emphasizes that the reduction of scope cannot be done without the provision of fair compensation to the Old BUJT. This aims to maintain investor confidence in national strategic infrastructure projects.

Legal Aspects in the Transition of Business from Old BUJT to New BUJT

The transition of toll road operations from the Old BUJT to the New BUJT is a complex legal step and requires regulatory clarity. Law Number 6 of 2023 and Government Regulation Number 23 of 2024 provide technical guidelines to ensure that this process is carried out fairly, efficiently, and accountably. Some important aspects to look out for include:

1. Conformity with the Concession Agreement

Article 29 of Government Regulation Number 23 of 2024 emphasizes that every business switch must be in accordance with the provisions of the concession agreement. Changes in rights and obligations must be agreed upon by all parties, including the government, the Old BUJT, and the New BUJT.

2. Evaluation of the Performance of the Old BUJT

Performance evaluations should include operational, financial, and regulatory compliance aspects. Article 31 of Government Regulation Number 23 of 2024 states that the government can cancel concessions if BUJT fails to fulfill its main obligations, such as road maintenance, provision of facilities, and investment implementation.

3. Compensation for Old BUJT

Article 32 of Government Regulation Number 23 of 2024 stipulates that the Old BUJT is entitled to compensation for the investment that has been incurred if the scope of work is reduced or the business is transferred. This compensation should be calculated based on:
a. Investment value that has not been amortized.
b. Losses arising from the termination of the agreement.
c. Potential lost income.
4. Transparency in the New BUJT Election

The selection of the New BUJT must be carried out through an open auction process that meets the principles of transparency and accountability. Article 33 of Government Regulation Number 23 of 2024 stipulates that the New BUJT is obliged to meet administrative, technical, and financial criteria to ensure the continuity of toll road management.

3. Ideal Legal Steps to Resolve Legal Uncertainty

Legal uncertainty in the reduction of scope and switching of business can be resolved through the following steps:
1. Preparation of Technical Guidelines by BPJT

The Toll Road Regulatory Agency (BPJT) needs to prepare technical guidelines detailing the evaluation procedures, compensation calculations, and procedures for the New BUJT auction. These guidelines must be in line with Law Number 6 of 2023 and Government Regulation Number 23 of 2024.

2. Mediation and Negotiation

Conflicts between the government and the Old BUJT can be resolved through a mediation mechanism involving neutral third parties. Article 34 of Government Regulation Number 23 of 2024 allows mediation as an alternative to dispute resolution in toll road management.

3. Strengthening the Arbitration Mechanism

To avoid lengthy court proceedings, arbitration can be used as a dispute resolution mechanism. The arbitration clause must be included in the concession agreement to provide legal certainty for all parties.

4. Increased Transparency and Accountability

Any process of reducing the scope or switching of business must be carried out transparently and supervised by an independent auditor. This is to ensure that there is no conflict of interest or violation of the principles of good governance.

5. Harmonization of Regulations

The government needs to harmonize Law Number 6 of 2023 with Government Regulation Number 23 of 2024 as well as other regulations related to infrastructure management, such as regulations in the field of investment and public finance.

Balance between Legal Certainty and Flexibility

Law Number 6 of 2023 provides a legal basis for reducing the scope and switching of businesses, but its implementation requires flexibility so that it can be adjusted to field conditions. This creates a challenge for the government in maintaining a balance between the public interest and investor rights. BPJT must play a more active role in supervising BUJT. The function of BPJT as a regulator must be strengthened to prevent violations of concession agreements, as well as ensure the smooth transition of business. Legal uncertainty in toll road management can affect the interest of foreign investors. Therefore, the government needs to ensure that the reduction of scope and business switching is carried out fairly and transparently to maintain the investment climate in the infrastructure sector.

With the measures mentioned above, the reduction of the scope and transition of toll road business can be managed effectively, without sacrificing the public interest or harming investors. This is in line with the goal of Law Number 6 of 2023 to encourage sustainable and inclusive infrastructure development.

Conclusion

Reducing the scope and switching of toll road operations require careful legal handling, particularly under Law Number 2 of 2022, Law Number 6 of 2023, and Government Regulation Number 23 of 2024. These regulations establish a clear framework emphasizing performance evaluation, fulfillment of concession obligations, and fair compensation to the Old BUJT based on unamortized investments. The selection of the New BUJT must follow a transparent process to preserve the integrity of the transition, while regulatory uncertainty remains a concern that can undermine investor confidence, especially in large infrastructure projects. Harmonizing regulations and issuing detailed technical guidelines led by BPJT are critical to addressing these challenges. Future research should focus on evaluating the effectiveness of BPJT’s supervisory role in practice and developing best practices for balancing public interest with investor protection during scope reductions and business transitions.

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