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Research Article

The Validity of Direct Appointment Construction Contracts by State-Owned Enterprises to Their Subsidiaries After the Implementation of the Job Creation Law

(A Study on Conflicts of Interest in the Procurement of Construction Consultancy Services Within PT PLN (Persero))

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Abstract: This study examines the legal validity of direct appointment construction consultancy contracts between state-owned enterprises and their subsidiaries following the implementation of Indonesia's Job Creation Law. The research addresses critical questions regarding the formal legal mechanisms governing long-term unit-price framework agreements and their continued enforceability under amended procurement regulations. Employing a normative-jurisprudential methodology, the study systematically analyzes primary legal sources, including statutory provisions, government regulations, and corporate governance frameworks, alongside secondary legal materials and doctrinal commentaries. The analysis reveals that pre-Omnibus Law direct appointments complied with civil law contract validity requirements and sector-specific procurement regulations under Law No. 2/2017. Transitional provisions and the non-retroactivity principle preserved the enforceability of framework agreements executed prior to the Job Creation Law's enactment, while administrative amendments extending contract terms remained lawful under existing civil code provisions. The study demonstrates that direct appointment mechanisms achieve legal justification through constitutional mandates and legislative hierarchy, while providing utilitarian benefits through enhanced procurement efficiency and deployment of specialized technical expertise. The findings contribute to scholarly discourse on state-owned enterprise governance by elucidating how omnibus legislative reforms interact with contract doctrine and corporate governance norms, emphasizing the critical importance of robust conflict-of-interest safeguards in preventing procedural formalism from overshadowing substantive public interest outcomes.

Keywords: Construction Consultancy; Direct Appointment; Job Creation Law; Procurement Contracts; State-Owned Enterprises.

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1. Introduction

State-Owned Enterprises (Badan Usaha Milik Negara, BUMN) in Indonesia play a pivotal role in national economic development, with most or all of their capital deriving from the state through direct participation of separated state assets. Subsidiaries of BUMN (Anak Perusahaan, AP) are limited liability companies in which a majority of shares are held directly or indirectly by BUMN, establishing a parent-subsidiary relationship that enables control and coordination to achieve the group's collective objectives. When BUMN assume the form of a Perseroan (limited liability company), their Articles of Association must stipulate clear purposes and business activities that comply with prevailing legislation, public order, and ethical norms .

The principal aim of BUMN establishment is to provide high-quality, competitive goods and services while pursuing profit to enhance economic value, though under special government assignment BUMN may engage in non-commercial tasks for public interest. In the electricity sector, PT Perusahaan Listrik Negara (Persero) (PLN) exemplifies this dual mandate. Under Government Regulation No. 23/1994, PLN's purposes include ensuring adequate electricity supply for public welfare, achieving profitability to finance infrastructure development, and undertaking ancillary electricity-related businesses. The legal framework governing PLN's long-term planning comprising the twenty-year Rencana Umum Ketenagalistrikan Nasional (RUKN) and the ten-year Rencana Usaha Penyediaan Tenaga Listrik (RUPTL) mandates alignment with ministerial decisions and stakeholder needs .

Provision of infrastructure for electricity entails extensive construction and engineering services, which PLN often assigns to its engineering subsidiary, PT Prima Layanan Nasional Enjiniring (PLN E). As an AP BUMN, PLN E conducts engineering, procurement, construction (EPC), operation, and maintenance services for both electrical and non-electrical sectors, reflecting a strategic use of internal capabilities under Presidential Regulation No. 14/2017 and related regulations. The contractual mechanism for these services typically involves direct appointment via Framework Agreement for Unit Price (Kontrak Kesepakatan Harga Satuan, KHS), a form of standing umbrella contract for recurrent services with predetermined unit prices . These appointments draw on exceptions in Law No. 2/2017 on Construction Services and Government Regulation No. 22/2020 on its implementing rules, notably for repeat orders, failed re-tendering, and government assignments to BUMN affiliates.

However, the enactment of the Omnibus Law on Job Creation (Law No. 11/2020) and its subsequent ratification as Law No. 6/2023 eliminated provisions permitting direct appointment of affiliated providers under Article 42 of the Construction Services Law, replacing them with stricter tender or electronic procurement requirements. This legal shift raises critical questions about the validity of existing direct appointment contracts between BUMN and their subsidiaries, potentially exposing corporate officers to allegations of conflict of interest and state loss under anti-corruption statutes . The tension between the original rationale for creating subsidiaries to consolidate end-to-end engineering services and the new procurement regime underscores a fundamental gap between the "das sollen" (normative expectations) and "das sein" (practical reality) of BUMN subsidiary governance.

This study examines the formal legal mechanisms and validity of long-term KHS contracts for engineering consultancy services granted by BUMN to their subsidiaries, before and after the implementation of the Omnibus Law. It addresses (1) the legal formality of issuing direct appointment KHS construction contracts pre- and post-Job Creation Law, and (2) the contractual validity of long-term direct appointment consultancy contracts between BUMN and their subsidiaries in the post-Job Creation Law era. By analyzing statutory provisions, presidential and ministerial regulations, and corporate governance principles, this research aims to identify appropriate business mechanisms that reconcile government procurement policy with the original objectives of BUMN subsidiary creation..

2. Literature Review

2.1. Utilitarianism

Jeremy Bentham's principle of utility holds that "the right action is that which produces the greatest happiness for the greatest number" by maximizing pleasure and minimizing pain through positive law and policy. Bentham rejected natural-law metaphysics and insisted that all legal rules should be adopted by a legislature to serve social utility. In the context of PT PLN's direct appointment of its subsidiary for construction consultancy, utilitarian analysis evaluates whether the efficiency gains (faster procurement, lower transaction costs, synergy) outweigh potential harms (reduced competition, perception of favoritism), thus guiding reform toward maximizing collective welfare while safeguarding minority interests.

2.2. Theory of Contract Validity

Indonesian contract law (KUHPerdata) requires four elements for validity: (1) agreement (consensus ad idem), (2) capacity (legal competence), (3) object that is definite and lawful, and (4) cause that is not illicit or against public order (Pasal 1320). A contract lacking any element is void or voidable. The long-term Framework Agreement (KHS) between PLN and PLN E must satisfy these requirements free consent, duly authorized signatories, clearly specified consultancy services, and lawful purpose both before and after the Job Creation Law amendments to remain legally effective and resistant to challenge.

2.3. Principles of Contract Law

Contract law is underpinned by foundational principles that ensure agreements function as reliable tools for economic exchange :

- Autonomy (Freedom to Contract): Individuals may freely bind themselves by promises, reflecting respect for personal choice and private ordering.
- Security (Reliance Protection): Each party must respect the other's reasonable reliance, sustaining confidence in contractual undertakings.
- Justification (Legal Enforceability): Courts enforce promises when there is a sufficient normative basis consideration indicating a genuine exchange.
- Justice (Equitable Restraint): Even prima facie enforceable agreements may be set aside if upholding them would conflict with higher-order legal or moral norms, such as unconscionability.
- Compensation (Remedial Balance): Breach remedies aim at efficiently compensating non-breaching parties for foreseeable losses, aligning contractual obligations with economic welfare maximization.

These theories collectively furnish a coherent analytical lens: utilitarianism offers a consequentialist metric for evaluating legal rules; contract validity theory establishes the baseline conditions for enforceability; and the principles of contract law articulate the normative infrastructure ensuring contracts serve as effective, fair, and welfare-enhancing instruments in a market economy.

3. Method

The research employs a normative–jurisprudential approach, systematically analyzing primary legal sources (statutes, government regulations, presidential decrees, and corporate bylaws) alongside secondary materials (scholarly monographs, peer-reviewed articles, and legal commentaries) and tertiary references (legal encyclopedias, doctrinal treatises, and jurisprudential digests). Data collection involves exhaustive literature review and document analysis to map statutory frameworks governing state-owned enterprises' direct appointment practices, supplemented by comparative legal analysis to assess procedural and substantive validity. Analytical rigor is ensured through hermeneutic interpretation of legislative texts, teleological evaluation of statutory objectives, and doctrinal synthesis to identify normative gaps. Findings are critically examined in light of prevailing academic discourse, with conclusions drawn on the legality and policy implications of long-term unit-price agreements between PT PLN (Persero) and its subsidiary under the post-Omnibus Law regime.

4. Results and Discussion

4.1. Legal Formalities for the Issuance of Long-Term Construction Consultancy Framework Contract through Direct Appointment by PT PLN (Persero) to Its Subsidiaries Before and After the Enactment of the Job Creation Law.

Contracts, defined in Article 1313 of the Indonesian Civil Code (KUHPerdata), are bilateral or multilateral acts by which one or more parties bind themselves to one or more other parties. A contract comprises parties, prestations, lawful cause, form (oral or written), specific terms, and an objective. A framework agreement, or *kontrak payung*, is an umbrella contract establishing unit-price terms with selected suppliers when quantity or timing of orders is undetermined. This study examines the unit-price framework agreement between PLN (Persero) and its subsidiary PT PLN Enjiniring under the 2020 Presidential Regulation No. 16 (as amended) on Government Procurement.

Under Article 1313 KUHPerdata, PLN (Persero) as the first party procures consultancy engineering services from PT PLN Enjiniring as the second party. The second party's prestation includes preliminary surveys, feasibility studies, engineering design (FEED), tender document preparation, cost estimation (HPE), bid support, bidder short-listing (DPT), engineering studies for power and infrastructure, design and construction supervision, and gas infrastructure consultancy. Before performance, a detailed contract specifying volume, schedule, and price must be executed, consistent with Article 1234 of the Civil Code, which defines an obligation as a duty to give, to do, or not to do.

Pursuant to Article 1335 KUHPerdata, a contract without lawful cause, or based on illicit or false causes, is void ab initio. Three aspects ensure lawful cause in the unit-price agreement:

- **Purpose and Intent**
  – The 2020 KHS Agreement (No. 0217.PJ/DAN.01.02/B0104000/2020) aims for procurement process efficiency, standardized unit prices across PLN units, and guaranteed quality of power and gas infrastructure projects while optimizing time and cost (Article 2) .
  – Aligns with Law No. 30 of 2009 on Electricity, which mandates PLN to ensure sufficient, quality, and reasonably priced electricity for social welfare.
- **Legality and Public Order**
  – Freedom of contract is bounded by higher interests; parties act voluntarily based on mutual need, represented by authorized directors.
  – Subject matter (consultancy services) must be lawful, tradeable, feasible, and monetizable under Civil Code and Law No. 7 of 2014 on Trade.
- **Compatibility with Public Procurement Law**
  – Article 27(7), Presidential Regulation No. 16/2018, authorizes unit-price framework agreements for goods/services with undetermined volume/delivery.
  – Law No. 2 of 2017 on Construction Services and Government Procurement of BUMN (Ministerial Regulation PER-08/MBU/12/2019) permit direct appointment of state-owned enterprise subsidiaries under specified conditions.
  – Competition Law (Law No. 5/1999) prohibits monopolistic practices, but Article 51 allows state enterprises to control strategic sectors, validating PLN's internal appointment.

Article 1320 KUHPerdata requires valid consent, legal capacity, lawful object and cause, and prescribed form. The unit-price framework is in writing and signed by both parties. Implementation of each specific work order requires issuance of a detailed contract specifying volume, schedule, location, and payment terms. The overarching objective is lawful improving procurement efficiency, cost-effectiveness, and infrastructure quality thus satisfying statutory and jurisprudential requirements for contract validity.

The unit-price framework agreement (KHS) between PLN (Persero) and PT PLN Enjiniring meets the statutory elements of a valid contract under Indonesian civil and procurement law. It is properly formed, has lawful cause in line with Articles 1335 and 1320 KUHPerdata, and complies with government procurement regulations authorizing framework agreements. No illegality, public-order violation, or competition law breach is evident. Therefore, the framework agreement is legally sound and serves its intended public purpose.

4.1. Legal Formalities Prior to the Omnibus Law on Job Creation

Prior to the 2020 Job Creation Law, long-term Unit Price Framework Agreements for construction consultancy services were awarded by PT PLN (Persero) to its subsidiary PT PLN Enjiniring via direct appointment. Such agreements, binding for three years, required strict adherence to civil-law formalities, construction-service legislation, and internal BUMN procurement rules to ensure validity and enforceability.

Under Article 1320 KUHPerdata, a valid contract must satisfy four conditions: (i) mutual consent; (ii) legal capacity; (iii) a lawful object; and (iv) lawful consideration.Consent is expressed through (a) the procurement phase direct appointment ("penunjukan langsung") involving invitation, bidding document submission, negotiation, and appointment letter issuance and (b) agreement drafting, where both parties finalize detailed terms, including scope, unit prices, duration, and performance procedures. The signature by authorized directors evidences mutual consent.

Article 1330 KUHPerdata requires parties to have legal capacity being of majority age and not under legal interdiction. The appointment of the Director of Mega Projects by BUMN shareholders and the acting President Director of PT PLN Enjiniring ensures that signatories are duly authorized under Ministerial Regulation PER-7/MBU/09/2022.

The object engineering consultancy services for power-generation, transmission, distribution, and gas infrastructure constitutes a lawful prestation under Articles 1234 and 1420(3) KUHPerdata, as it obliges PT PLN Enjiniring to perform defined services upon ordering via individual work orders (Surat Perintah Kerja) within the KHS framework.

The unit price mechanism stipulates remuneration for each scope of work; lawful consideration is ensured through competitive price negotiation in the procurement phase, notwithstanding the direct-appointment method.

Law No. 2 of 2017 and Government Regulation No. 22 of 2020

- Definition (Article 1(1) & (2)): Construction services encompass consultancy and/or construction works. PT PLN Enjiniring's services align with consultancy scopes in Article 13(4) UU 2/2017.
- Procurement via Contractual Engagement (Articles 38–40): Direct appointment is permissible under Article 42(1) UU 2/2017 and further restricted in Article 42(4) to specified conditions, including repeat orders and BUMN assignments. Government Regulation 22/2020 (Articles 60–72) reiterates these conditions in Articles 62–65, particularly permitting direct appointment for repeat orders to the same consultancy provider and for BUMN-affiliated entities .
- Article 55(2) UU 2/2017 allows consultancy financing from state-owned entities' own funds; PT PLN utilizes APLN (company budget) rather than APBN, satisfying statutory funding requirements.

Minister of State-Owned Enterprises Regulation PER-08/MBU/12/2019. Defines direct appointment criteria (Article 13(2)(j)) for BUMN subsidiaries, provided quality, price, and purpose are accountable. Establishes detailed direct appointment criteria (Clause 2.7.3.2), including alignment with subsidiary business scope engineering consultancy for power-sector assets and strategic goals such as optimizing investment and operation .

Before the enactment of the Job Creation Law, KHS contracts between PT PLN (Persero) and PT PLN Enjiniring complied with stringent formalities under civil law, construction-services legislation, and internal BUMN procurement rules. Mutual consent, capacity, lawful object, and consideration were satisfied through detailed procurement and contractual phases. Sector-specific regulations within UU 2/2017, PP 22/2020, and internal directives ensured that direct appointment to a BUMN subsidiary remained lawful and transparent.

4.2. Legal Formalities After the Enactment of the Job Creation Law

The Job Creation Law (JCL) and its successive amendments re-engineer the formal requirements of Construction Services Law (CSL) by abolishing direct-appointment grounds (Art. 42), tightening conflict-of-interest rules (Art. 44), and replacing broad e-procurement with the more rule-bound electronic catalogue. These moves reduce discretionary space but simultaneously entrench a *proceduralist* model that risks over-formalisation unless accompanied by capacity-building in procurement governance and legal education.

Key Clause	CSL 2017 Text	Post-JCL Text	Formal Consequence
Art. 42	Direct appointment of construction consultancy to SOE subsidiaries permitted	Deleted	Removes blanket statutory basis for direct award, requiring competitive mechanisms .
Art. 44	Ban on using affiliated providers "without tender or selection, or electronic procurement"	Ban on using affiliated providers "without tender, selection or electronic catalogue"	Substitutes an open-ended e-procurement channel with LKPP-controlled e-catalogue

The textual shift narrows legal gateways for non-competitive awards and places procurement squarely under LKPP's centralised catalogue, reflecting the JCL's goal of "streamlining business licensing while standardising public procurement" . Every state-owned enterprise, including PLN, is explicitly bound by Art. 44's competitive-procurement mandate. This clarifies that SOEs cannot shield themselves behind corporate autonomy a doctrinal stance echoed in comparative studies on SOE accountability.

The revised explanatory note broadens "affiliation" to cover family ties to the second degree and any *business/work relationship* capable of influencing corporate governance. Comparative corporate-governance research confirms that such expansive definitions are essential to curb relational contracting in public works.

Multisector statutes uniformly classify electricity generation, transmission and distribution as *public-interest* works. The CSL-JCL tandem therefore subjects PLN's EPC projects to heightened competitive-procurement duties, aligning with international sustainability assessments of the JCL . Replacing the broad phrase "electronic procurement" with "electronic catalogue" imports LKPP Regulation 11/2018's granular eligibility and negotiation rules. Empirical studies in South Sulawesi show that catalogue use increases transparency but can induce *check-list compliance* without substantive evaluation if procurement officers lack skills.

Art. 94 CSL retains only *written warning* and *temporary suspension* for violations sanctions the JCL left untouched. Given documented IDR 1 trillion losses from procurement corruption in 2017 alone , scholars argue this penalty ceiling is normatively inadequate and fosters a ritualistic obedience to forms without deterrence.

Indonesia's judiciary and regulators have long displayed a "procedural-correctness" bias that privileges form over substance . The JCL's catalogue-centric model, while transparent, may deepen this bias:

- Advantages – explicit digital trails, standardised pricing, lower collusion indexes .
- Risks – catalogue cartels, passive evaluation, and over-reliance on LKPP algorithms, echoing warnings from algorithmic-pricing literature under Indonesian Competition Law.

The resulting tension exemplifies what comparative scholarship labels "excessive formalism" : legality is measured by document compliance rather than the social purpose of procurement.

Legal education must prepare graduates to navigate the new *proceduralism* without losing sight of public-interest outcomes:

- Curricular Integration – Embed *Public Procurement Law* modules that combine CSL doctrine with socio-legal critiques of formalism .
- Simulation Clinics – Use e-catalogue tender simulations to teach risk-based licensing and conflict-of-interest diagnostics.
- Interdisciplinary Assessment – Pair legal drafting with sustainability metrics highlighted in recent Scopus research on JCL's environmental impact .

Such pedagogical reforms answer calls for a shift from positivist to progressive, problem-based legal training in Indonesia. The JCL re-designs procurement formalities in the construction sector by removing discretionary direct appointments and codifying LKPP e-catalogue use. While these changes are normatively aligned with transparency goals, the persistence of light sanctions and Indonesia's historic proceduralism risk converting substantive accountability into *ritual compliance*. Legal education is pivotal for cultivating a new generation of lawyers and procurement officers capable of transcending formalism and realising the socio-economic aims underlying the Job Creation Law.

4.3. Analysis of the Validity of Long-Term Construction Consultancy Procurement Contracts by Direct Appointment from State-Owned Enterprises to Subsidiaries after the Job Creation Law

4.3.1. Chronology of the Implementation of Construction Consultancy Service Contracts through Direct Appointment

The direct appointment of the Framework Agreement for Engineering Consultancy Services (KHS) between PLN and its subsidiary, PLN Engineering, exemplifies how state-owned enterprises navigate Indonesia's public procurement and construction laws. Although the Perjanjian KHS No. 0217.PJ/DAN.01.02/B01040000/2020 was executed on 10 September 2020 shortly before the enactment of Law No. 11/2020 on Job Creation it remains legally valid under several foundational principles of Indonesian contract and administrative law.

First, direct appointment ("penunjukan langsung") is expressly permitted for consultancy services under Government Regulation No. 12/2021, which defines direct appointment as selecting a single provider that meets predetermined criteria. The KHS procurement followed this method because PLN deemed only its subsidiary capable of performing highly specialized engineering tasks (e.g., feasibility studies, FEED, tender documentation, HPE, and supervisory services), satisfying the criteria for "Consultancy Services that can only be performed by one capable economic operator".

Second, the framework agreement or "contract payung" mechanism is appropriate where unit prices are fixed but volume and ordering schedules are uncertain. The Perjanjian KHS established standardized unit rates for engineering services over a three-year term, later extended and amended twice (July 2022 and September 2023) to adjust unit prices in line with INKINDO's 2021 Guidance and to extend performance until 10 September 2026.

Third, the non-retroactivity principle ensures that laws do not apply to acts committed before their enactment. Although Law No. 11/2020 entered into force on 2 November 2020, its Transitional Provisions do not invalidate agreements made beforehand. Article 186 of Law No. 11/2020 confirms that the Act applies only from the date of promulgation, preserving the validity of preexisting contracts and upholding legal certainty.

Fourth, the principle of legality ("asas legalitas") mandates that no one may be prosecuted or deprived of rights except under preexisting laws (Pasal 6(1) UU Mahkamah Agung). This general principle in administrative and criminal law likewise underpins contract law, ensuring that acts carried out under valid legal authority cannot be rendered unlawful retroactively.

Fifth, under the Civil Code (KUHPerdata) Article 1335, contracts made for an unlawful cause or with a false motive are void ab initio. Here, the KHS agreement was based on lawful budgetary allocations (APLN funds, Government Capital Participation, and non-subsidiary loans) and preceded any restriction arising from the amended Construction Services Law, so no illicit cause exists.

Finally, judicial guidance supports that amendments to governing law do not disturb contracts formed in good faith under prior statutes. Dissenting opinions in MK 91/PUU-XVIII/2020 by Justices Hidayat and Usman reinforce that a contract's validity, once established, should not be undermined by subsequent legislation without the parties' consent. Thus, the KHS Perjanjian remains binding and enforceable throughout its extended term, illustrating how Indonesian procurement and contract law balance statutory compliance, administrative discretion, and doctrinal principles to secure both efficiency and legal certainty in state-owned enterprise operations.

4.3.2 Legal Consequences for Ongoing Construction Consultancy Service Contracts (KHS) Following the Enactment of the Job Creation Law

On 10 September 2023, PLN and its wholly-owned engineering subsidiary extended their umbrella KHS until 10 September 2026 via Amandemen II. This amendment occurred after the Omnibus Law's promulgation (2 November 2020) but before the original KHS's expiry (10 September 2023). Given the Law's transitional provisions, it is crucial to ascertain whether extending and administratively amending the KHS remains binding and enforceable.

Under Article 1338 of the Civil Code, agreements validly concluded bind the parties "as law." Amandemen II merely prolongs the KHS's duration without altering parties' identities, scope, or core obligations. This continuing-contract measure is expressly permitted by:

- Law No. 11/2020, Chapter XIV, Art. 182(e), preserving existing legal acts by state and state-owned entities so long as they comply with good governance principles.
- PLN's internal procurement rules (Perdir 0018.P/DIR/2023), allowing amendments by mutual consent to ensure alignment with ongoing requirements.

Thus, Amandemen II constitutes lawful implementation of continuity (continuing contract), not a novation.

The Grandfathering doctrine shields pre-existing contracts from new statutory requirements unless the new law expressly applies retroactively. Here:

- KHS was signed in 2020, predating the Omnibus Law.
- Transitional provisions in Law No. 11/2020 and its implementing Government Regulation No. 6/2023 preserve the validity of existing agreements.

As no retroactive mandate was introduced concerning framework agreements' term extensions, parties lawfully continue under the original contractual regime.

The second amendment updates the Terms of Reference (TOR) to require consultants hold valid competency certifications (SKK/SKA) per:

- PP No. 14/2021 (amending PP 22/2020) on Construction Services implementation.
- Permen PUPR 19/PRT/M/2017 on minimum remuneration standards for experts.
- Kepmen PUPR 524/KPST/M/2022 on minimal expert remuneration.

These adjustments are administrative they impose updated qualification requirements without affecting fundamental deliverables or altering risk allocation. Indonesian procurement regulations expressly permit administratively necessary amendments by mutual consent to satisfy evolving statutory obligations.

Amandemen II also revises unit rates using INKINDO's 2023 billing rates (vs. 2020/2021 previously). Under:

- Pasal 5(2)–(5) of KHS No. 0217.PJ/DAN.01.02/B01040000/2020, unit rates are subject to periodic review and amendment by agreement.
- LKPP Regulation No. 12/2021, Art. 2.3.2.6, permits price-adjustment mechanisms for multi-year unit-price contracts.

Thus, updating rates per publicly issued indices constitutes a valid price-adjustment amendment rather than a substantive contract alteration.

Both *pacta sunt servanda* and the Grandfathering doctrine uphold the KHS's continuity:

- Validity: Amandemen II is legally binding extending term, amending TOR, and adjusting prices remain consistent with statutory and internal procurement rules.
- Non-substantive: All changes are administrative or implementing acts, not fundamental novations.
- Governance Alignment: Amendments comply with good-governance and public-procurement principles, ensuring uninterrupted consultancy support for PLN's infrastructure targets.

Consequently, continuing the KHS via Amandemen II post-Omnibus Law is legally sound and preserves contractual stability, efficiency in infrastructure delivery, and compliance with evolving statutory requirements.

4.3.3. Analysis of Conflict of Interest in the Procurement of Construction Consultancy Services through Direct Appointment to a Subsidiary Company

The procurement of construction consulting services by state-owned enterprises (SOEs) presents complex legal challenges that intersect competition law, corporate governance, and public policy considerations. This analysis examines the jurisprudential foundations underlying direct appointment mechanisms employed by Indonesian state-owned enterprises, particularly PT PLN (Persero), in engaging subsidiary companies for construction consulting services. Drawing upon legal positivist theory and utilitarian philosophy, this discussion explores how legal frameworks can accommodate public interest objectives while maintaining competitive market principles.

The intersection of multiple legal instruments creates a sophisticated regulatory environment for state-owned enterprise procurement practices. Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition establishes fundamental competition principles while simultaneously providing specific exemptions under Article 50 . The most relevant exemption, found in Article 50(a), permits conduct and agreements "aimed at implementing applicable laws and regulations". This provision serves as a critical legal mechanism that enables state-owned enterprises to operate within mandated public service obligations without automatically violating competition law principles.

The Indonesian Competition Commission (KPPU) Guidelines No. 253/KPPU/Kep/VII/2008 provide interpretative clarity regarding Article 50(a) exemptions, emphasizing that such exemptions must align with the legislative hierarchy established under Law No. 12 of 2011 concerning the Formation of Legislation . This hierarchical approach ensures that exemptions derive from legitimate legislative authority rather than subordinate regulatory instruments, thereby maintaining constitutional consistency and legal certainty.

Law No. 19 of 2003 concerning State-Owned Enterprises, as amended by Law No. 1 of 2025, establishes dual objectives for state-owned enterprises: profit maximization and public service provision . For Persero entities like PLN, these objectives specifically include "providing and ensuring the availability of quality and competitive goods and/or services". This legal mandate creates a framework within which direct appointment of subsidiary companies can be justified as fulfilling statutory obligations rather than circumventing competitive processes.

The electricity sector receives additional legal specificity through Law No. 30 of 2009 concerning Electricity, which explicitly assigns electricity provision responsibilities to state-owned enterprises under Article 4(1). This legislative mandate establishes PLN's role as the government's operational arm in electricity infrastructure development, creating legal authority for streamlined procurement processes that serve public interest objectives.

The theoretical justification for direct appointment mechanisms draws substantially from Hans Kelsen's legal positivist framework and Jeremy Bentham's utilitarian philosophy. Kelsen's Pure Theory of Law emphasizes that legal validity derives from normative hierarchy rather than moral content, suggesting that lawful conduct gains legitimacy through compliance with higher-order legal norms. In this context, PLN's direct appointment practices achieve legal validity through their grounding in constitutional mandates and legislative authorization, independent of their impact on market competition.

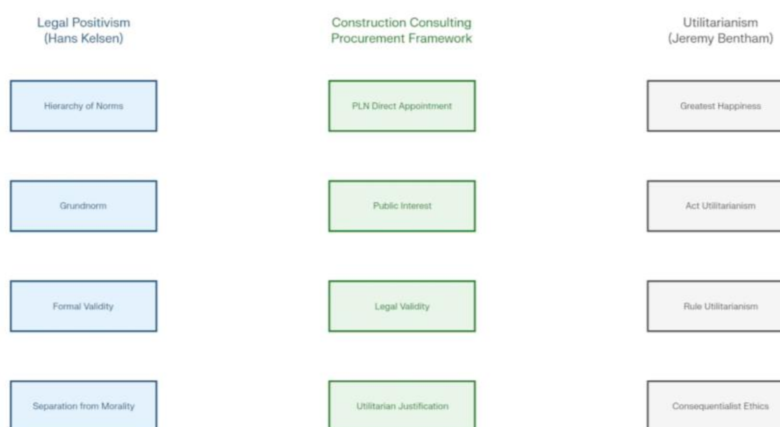

Figure 1. Theoretical Framework.

Bentham's utilitarian theory provides complementary justification by evaluating actions based on their consequences for societal welfare. The "greatest happiness principle" supports direct appointment mechanisms when they demonstrably enhance public utility through improved service delivery, reduced costs, or enhanced infrastructure reliability. This philosophical approach aligns with constitutional mandates under Article 33 of the 1945 Constitution, which prioritizes public welfare in natural resource management and essential service provision.

Contemporary procurement research emphasizes the importance of managing conflicts of interest through transparent processes and clear stakeholder benefit identification. In the Indonesian context, direct appointment of subsidiary companies for construction consulting services creates potential conflicts between commercial competition and public service mandates. However, structural arrangements can mitigate these conflicts while preserving legitimate public interest objectives.

The exclusion of subsidiary companies from subsequent construction procurement processes represents one such mitigation strategy. By limiting subsidiary involvement to consulting phases, parent companies can avoid conflicts that would arise from subsidiaries competing for implementation contracts. This approach maintains competitive processes for primary construction activities while enabling specialized technical expertise deployment during planning and design phases.

Empirical assessment of direct appointment mechanisms reveals differentiated benefits across stakeholder categories, supporting utilitarian justifications for such practices. Public stakeholders benefit from accelerated infrastructure delivery and reduced project delays, as consulting services can commence without extended procurement timelines . Construction industry participants benefit from clearer competitive environments, as subsidiary consulting arrangements eliminate potential conflicts in subsequent tender processes.

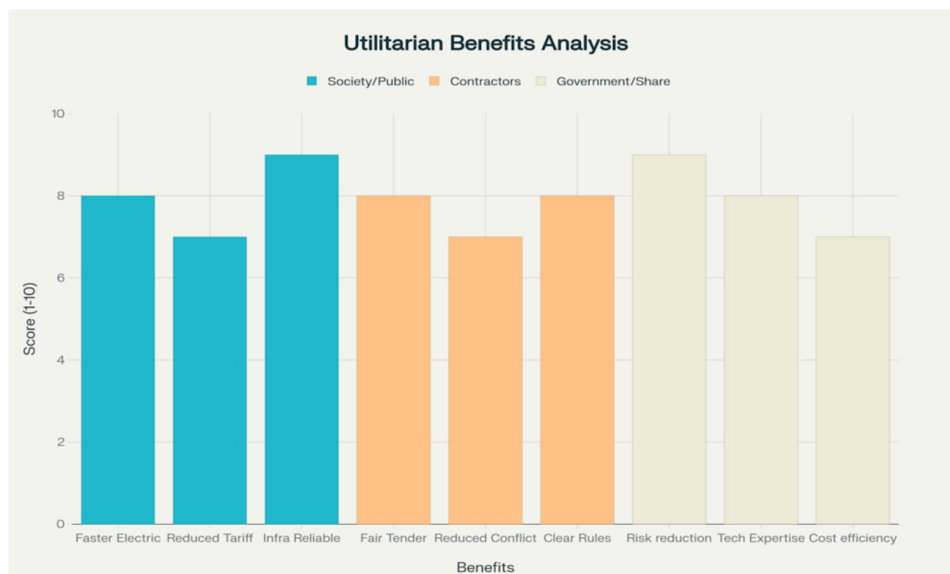

Figure 2. Utilitarian Benefits Analysis.

Government shareholders realize benefits through risk reduction and enhanced technical expertise deployment. Subsidiary companies specializing in electricity engineering possess institutional knowledge regarding PLN standards and Indonesian electrical systems, potentially reducing technical risks and improving project outcomes . These benefits align with utilitarian principles by maximizing aggregate welfare across affected stakeholder groups .

From a legal certainty perspective, direct appointment mechanisms operate within established constitutional and legislative frameworks rather than circumventing competitive requirements. PLN's Infrastructure Development Program (RUPTL) represents government mandate implementation, positioning related procurement activities as statutory obligation fulfillment rather than discretionary commercial conduct. This characterization enables Article 50(a) exemption application under competition law while maintaining compliance with state-owned enterprise governance requirements.

The integration of multiple legal frameworks competition law, state-owned enterprise regulation, and sector-specific electricity legislation creates coherent regulatory environment that accommodates both competitive markets and public service mandates . This integration reflects sophisticated legal architecture that recognizes the unique position of state-owned enterprises in strategic sector management while preserving competitive principles in appropriate contexts.

The analysis demonstrates that direct appointment of subsidiary companies for construction consulting services can achieve legal validity and utilitarian justification within Indonesia's regulatory framework. Legal positivist analysis confirms that such practices derive legitimacy from constitutional mandates and legislative authorization, while utilitarian evaluation reveals net positive benefits across stakeholder groups. The key to successful implementation lies in structural arrangements that mitigate conflicts of interest while preserving competitive processes for primary construction activities.

This jurisprudential approach provides a framework for legal education that integrates theoretical foundations with practical regulatory applications. By examining the intersection of competition law, corporate governance, and public policy, legal scholars can better understand how complex regulatory environments accommodate multiple objectives while maintaining legal coherence and constitutional compliance. Future research should explore comparative approaches across jurisdictions and sectors to further develop this analytical framework.

5. Conclusions

This study has critically examined the formal legal mechanisms and validity of long-term unit-price framework agreements (KHS) for engineering consultancy services directly appointed by PT PLN (Persero) to its subsidiary, PT PLN Enjiniring, before and after the enactment of the Job Creation Law (Law No. 11/2020). First, it has demonstrated that pre-Omnibus Law direct appointments complied with the four essential elements of Indonesian contract validity consensus, capacity, lawful object, and lawful cause as well as sector-specific procurement regulations under Law No. 2/2017, Government Regulation No. 22/2020, and Ministerial Regulation PER-08/MBU/12/2019. Second, the study has shown that transitional provisions and the non-retroactivity principle preserved the enforceability of KHS executed prior to 2 November 2020, while administrative amendments (Amandemen II) extending the contract term, updating qualification requirements, and adjusting unit rates remained lawful under continuing-contract and price-adjustment provisions in the Civil Code and LKPP regulations. Third, applying legal-positivist and utilitarian frameworks has confirmed that direct appointment to a subsidiary is legally justified grounded in legislative hierarchy and constitutional mandates and socially beneficial by enhancing procurement efficiency, reducing transaction costs, and deploying specialized technical expertise for public-interest infrastructure.

These findings support the research objectives by bridging the normative expectations of BUMN subsidiary governance with the practical realities of Indonesia's evolving public procurement regime. They underscore the need for BUMN to balance procedural compliance with substantive accountability, ensuring that administrative amendments preserve legal certainty without eroding competitive principles.

The study contributes to scholarly discourse on SOE governance and procurement law by elucidating how omnibus legislative reforms interact with contract doctrine and corporate-governance norms. It highlights the critical role of robust conflict-of-interest safeguards and doctrinal clarity in preventing procedural formalism from overshadowing public-interest outcomes.

Nevertheless, this research is limited by its focus on a single case study within the electricity sector and reliance on statutory and doctrinal analysis. Future empirical studies should assess the operational impacts of e-catalogue procurement on project performance and investigate comparative frameworks in other SOE-dominated industries. Moreover, interdisciplinary inquiry combining legal analysis with public-policy and economic metrics would further elucidate the broader welfare effects of direct-appointment mechanisms under Indonesia's post-Omnibus Law landscape.

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