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The Implications of Ex-Post Audits for Legal Certainty and the Business Sustainability of Construction Service Providers

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Abstract

Government construction projects operate under a public financial oversight regime that allows legal and financial consequences to arise after project completion and contractual payment. This study examines the legal implications of ex post audits conducted by the Audit Board of the Republic of Indonesia on legal certainty for construction service providers in government projects and analyzes their effects on business certainty during project implementation. This research is using socio-legal analysis with legal and economic perspectives. The findings indicate that ex post audits consistently generate financial recommendations with values that fluctuate widely across semesters, ranging from tens of billions to tens of trillions of rupiah. These recommendations emerge after construction completion and contractual payment, placing financial and administrative consequences in a retrospective position. Dominant audit indicators include weaknesses in internal control systems, statutory non-compliance, and uneconomical, inefficient, and ineffective use of public funds. This pattern shows that contractual finality in government construction projects depends on audit outcomes and follow-up implementation rather than contractual performance alone. The study indicates that legal and business certainty for construction service providers in government projects develop in a delayed manner under post-execution public financial oversight.

INTRODUCTION

Government construction projects constitute a high-value and high-risk component of state expenditure.[1] Therefore, their management and accountability are governed within the legal framework of state financial administration. Within this framework, the Audit Board of the Republic of Indonesia (Badan Pemeriksa Keuangan/BPK) is mandated to examine the management and accountability of state finances, including matters related to the implementation of government construction projects. BPK's authority to audit the management and accountability of state finances is affirmed in Article 23E of the 1945 Constitution of the Republic of Indonesia and further regulated in Law No. 15 of 2006 on BPK as well as Law No. 15 of 2004 on the Audit of State Financial Management and Accountability. Based on this legal foundation, BPK not only has the right but also the institutional mandate to audit all uses of state finances, including expenditures in the infrastructure and construction sectors.

BPK conducts audits of construction projects through financial audits, performance audits, and audits with specific purposes in accordance with the State Financial Audit Standards (Standar Pemeriksaan Keuangan Negara/SPKN). These audits cover all stages of a project, from planning to financial accountability. Audit results in the construction sector commonly include findings related to contract implementation, such as overpayments, deficiencies in work volume, non-compliance with technical specifications, and weaknesses in internal control over infrastructure spending. These findings are documented in audit reports and accompanied by recommendations that may result in administrative and financial consequences for the parties involved. The characteristics of construction projects—namely their reliance on physical volume, technical specifications, and progressive payment mechanisms—make this sector particularly vulnerable to ex post audit corrections that directly affect service providers.

The scope of BPK's audit is not limited to administrative evaluations of contract documentation but also includes on-site physical inspections to verify work volume, quality, and compliance with technical specifications. Through this attributive authority, BPK is entitled to issue recommendations that must be followed up by relevant officials or parties.[2] Figure 1 illustrates the total value of financial recommendations issued by BPK over a five-year period, from 2020 to 2024.

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[1] Tian Rifaldi, "Analisis Risiko Usaha Jasa Konsultan Pengawas Proyek Konstruksi di Surabaya," *Jurnal Teknik Sipil* 3, no. 1 (2022): 11–18, https://doi.org/10.31284/j.jts.2022.v3i1.2964.

[2] Mery Mei Lestari dan Tina Lestari, *Analisis Pengaruh Penyelesaian Tindak Lanjut Rekomendasi Hasil Pemeriksaan BPK pada Pemerintah Kabupaten dan Kota di Pulau Kalimantan*, 6 (2022): 3553–65.

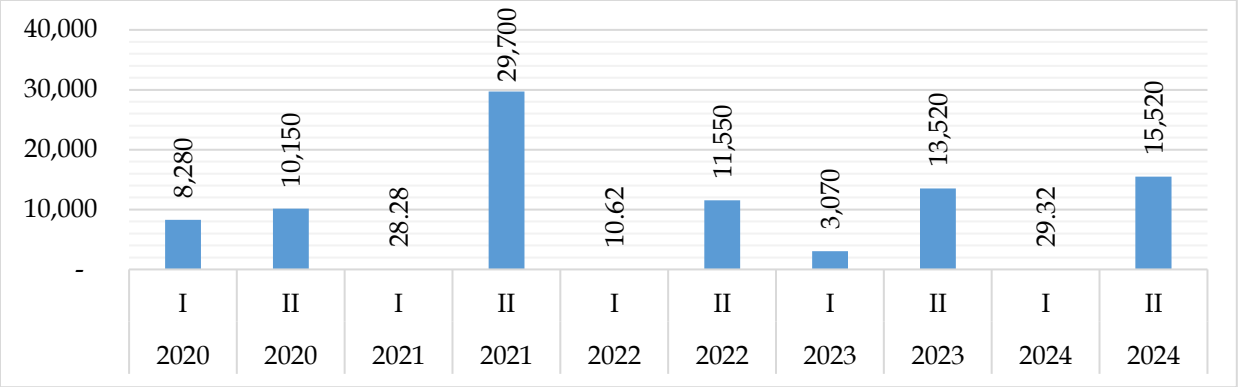


Figure 1. Recapitulation of BPK's Financial Recommendation Values, 2020–2024 (in Billion Rupiah)[3]

Based on the table of BPK's financial recommendation values per semester for the period 2020–2024, the recommendation amounts fluctuate significantly across semesters, ranging from tens of billions to tens of trillions of rupiah. In 2020, the recommendation value increased from IDR 8.28 trillion (Semester I) to IDR 10.15 trillion (Semester II). A sharper contrast appeared in 2021, when Semester I recorded only IDR 0.03 trillion, while Semester II surged to IDR 29.70 trillion. A similar pattern also occurred in subsequent years, in which Semester II recommendation values were consistently higher than those of Semester I, as seen in 2022 (IDR 0.01 trillion vs. IDR 11.55 trillion), 2023 (IDR 3.07 trillion vs. IDR 13.52 trillion), and 2024 (IDR 0.03 trillion vs. IDR 15.52 trillion).

The inter-semester variation in financial recommendation values reflects empirically striking differences in the magnitude of financial corrections resulting from audits conducted by the Audit Board of the Republic of Indonesia (BPK). Data from the IHPS indicate that the financial consequences of audit findings are only known after all contractual stages have been completed, through an ex post audit mechanism. The magnitude of such ex post audit corrections varies extremely across audit periods, meaning that the final determination of the parties' financial obligations cannot be ensured either at the time the contract is signed or when the work is completed. This condition delays the achievement of contractual finality until the audit process and the follow-up on audit recommendations are fully completed.

This study focuses on the construction services sector because government development expenditure largely takes the form of capital expenditure, which involves

[3] Sumber data berasal dari data Ikhtisar Hasil Pemeriksaan Semester (IHPS) BPK Semester I dan Semester II Tahun 2020–2024. Setiap nilai rekomendasi keuangan dianalisis berdasarkan periode semesteran (enam bulan), sesuai dengan struktur resmi pelaporan BPK, sehingga tidak dilakukan penggabungan data tahunan.

large budget allocations, high technical complexity, and progress-based payment mechanisms that increase exposure to audit correction risks. These characteristics generate recurring ex post audit findings and result in financial consequences as well as contractual liabilities for construction service providers after the contract has formally been declared completed.

The first research question adopts a legal perspective: what are the legal implications of BPK's ex post audit results for legal certainty for construction service providers in government projects? This study examines the alignment of BPK's audit results with the legal framework governing government contracts, BPK's statutory authority, and the principle of legal certainty, while also assessing the extent to which these audit outcomes strengthen or weaken the function of contracts as instruments of legal certainty after the work has been declared completed.

The second research question adopts an economic perspective: how do the practices and consequences of BPK's ex post audit results affect business certainty for construction service providers in the implementation of government projects? From the perspective of business theory and risk management, uncertainty arising from potential audit corrections after project completion creates residual risk and additional compliance costs, which affect risk calculations and business decisions made by construction service providers when participating in government procurement projects.

Previous studies have examined BPK audits from the perspective of institutional authority and legitimacy, with legal certainty understood as the clarity of the audit institution's mandate and constitutional position.[4] Normative studies indicate that BPK's audit recommendations have significant legal implications, yet they continue to face ambiguity due to tensions between audit standards and the framework of state administrative law. Empirical studies at the local government level position BPK audits as instruments for evaluating accountability through audit opinions,[5] weaknesses in internal control systems, and levels of compliance with regulations, with a focus on institutional financial performance.[6] Studies in the construction sector have linked BPK

[4] Hidayatulloh dan Éva Erdős, "Restrengthening The Role Of Supreme Audit Agency In Supervising State Owned Enterprises?," *International Comparative Jurisprudence* 8, no. 2 (2022).
[5] A. P. E. Atmaja dkk., "Supreme Audit Institution Recommendations and the Legal System: The Case of Indonesia," *Accounting, Economics, and Law: A Convivium*, advance online publication, 2022, https://doi.org/10.1515/ael-2022-0067.
[6] Ria Dwi Putri dan Raden Budi Hendaris, "Influence of Local Government Size, Legislative Size, and BPK Audit Opinion on Local Government Financial Performance," *E-Jurnal Akuntansi* 35, no. 6 (2025), https://doi.org/10.24843/EJA.2025.v35.i06.p17; Tiffany Natalia Petronela Gah dkk., "Analysis of Factors Affecting Audit Opinion of Supreme Audit Agency (BPK) on the Fairness of Local Government Financial Reports in NTT," dalam *Proceedings of the International Conference on Applied Science and Technology on Social*

audits to the technical aspects of inspection, the authority of auditors, and general business risks, without specifically analyzing the consequences of audits that arise after contracts have been executed.[7] However, studies that specifically examine the implications of ex post audits for the finality of contractual relations and the business certainty of construction service providers remain limited.

This study offers novelty by developing an analysis of the position of BPK's ex post audits in determining the finality of contractual relationships and their impact on legal certainty and business certainty for construction service providers. Existing studies have generally placed audits within the normative framework of state financial oversight and their implications for the management of government projects, while the consequences of audits for the legal position and business sustainability of private actors as construction service providers have not been adequately examined. This study addresses this gap by employing both legal and economic perspectives to explain the relationship between audit outcomes, contractual finality, and the risk calculations of construction service providers.

RESEARCH METHOD

This study is a socio-legal legal research based on official state documents, aimed at analyzing the legal implications of audit results issued by the Audit Board of the Republic of Indonesia (Badan Pemeriksa Keuangan/BPK) for the legal certainty of construction service providers in government projects. A socio-legal approach is employed because the issue examined is not only related to legal norms concerning BPK's authority and oversight functions, but also concerns how audit results operate in practice and influence contractual relationships in the implementation of government construction projects. This approach enables contextual legal analysis by positioning ex post audit practices as an empirical phenomenon reflected in official state documents.

Within the framework of legal research, this study applies a statute approach to examine the legal basis of BPK's authority and audit practices within the state financial management system. This approach focuses on analyzing constitutional provisions and

Science 2022 (iCAST-SS 2022), vol. 719, ed. oleh Amiril Azizah dan Emma Dwi Ariyani, Advances in Social Science, Education and Humanities Research (Atlantis Press SARL, 2022), https://doi.org/10.2991/978-2-494069-83-1_75.

[7] Nur Azani, "Peran Pemeriksa BPK RI dalam Pemeriksaan Infrastruktur dan Kaitannya dengan Profesi Insinyur," *Jurnal Teknik Sipil*, 2021; Muhammad Ramadhani dkk., "Model Pelimpahan Kewenangan Badan Pemeriksa Keuangan dalam Pelaksanaan Tugas Pemeriksaan Pengelolaan dan Tanggung Jawab Keuangan Negara," *Akselerasi: Jurnal Ilmiah Nasional* 3, no. 1 (2021); Tian Rifaldi dan Feri Harianto, "Analisis Risiko Usaha Jasa Konsultan Pengawas Proyek Konstruksi di Surabaya," *Jurnal Teknik Sipil dan Perencanaan*, 2021.

statutory regulations governing BPK's functions, powers, and the legal consequences of its audit findings. In addition, a conceptual approach is used to develop a theoretical understanding of legal certainty and business certainty. This conceptual approach is necessary to interpret the implications of ex post audits, which are not explicitly regulated in contractual norms but emerge through state financial oversight practices.

This study also applies an indirect case-based approach through the analysis of audit result documents, using the Semester Audit Summary (Ikhtisar Hasil Pemeriksaan Semester/IHPS) as a representation of BPK's audit practices across various projects and audited entities. Although this study does not examine specific disputes or court decisions, the approach is used to observe patterns of findings, categories of audit indicators, and the magnitude of financial recommendations that recurrently arise in ex post audit practice.

The data sources consist of primary legal materials, secondary legal materials, and relevant non-legal materials. Primary legal materials include Article 23E of the 1945 Constitution of the Republic of Indonesia, Law No. 15 of 2006 on the Audit Board of the Republic of Indonesia, Law No. 15 of 2004 on the Audit of State Financial Management and Accountability, and the State Financial Audit Standards. In addition, official BPK documents in the form of the IHPS for Semester I and Semester II of 2020–2024 are used as the main data source to describe oversight practices and the magnitude of financial recommendations resulting from audits of state expenditure, including the infrastructure and construction sectors.

Secondary legal materials consist of textbooks and scholarly journal articles in the fields of state finance law, procurement law and government contract law, as well as institutional economics literature discussing business certainty as a prerequisite for the rationality of economic activity. The theory of business certainty is used in a limited manner as an analytical framework to assess the implications of BPK audit results for the predictability of rights, obligations, and economic risks faced by construction service providers, without conducting quantitative economic measurement.

Data were collected through library research and document study by systematically examining statutory regulations and BPK IHPS documents. IHPS data were analyzed periodically on a semester basis to identify patterns of audit findings and fluctuations in the value of financial recommendations. The analysis focuses on the ex post nature of audits and the variation in financial consequences that emerge after contracts have been executed, as well as their implications for legal certainty and business certainty for construction service providers.

Data analysis was conducted qualitatively using a descriptive-analytical method. Normative data were analyzed to assess the conformity of BPK audit practices with the legal framework of state financial management, while IHPS data were analyzed to evaluate the implications of audit results for legal certainty and business certainty based on the conceptual approach applied. Conclusions were drawn deductively by linking legal norms and the patterns identified in secondary data to their implications for the finality of contractual relationships in government construction projects.

The scope of this study is limited to the analysis of BPK audit results as reflected in the IHPS for 2020–2024 and does not include technical assessments of construction work quality or allegations of criminal offenses. The validity of the study is maintained through the use of official data sources, consistent application of research approaches, and coherence between normative analysis and document-based findings.

RESULT AND DISCUSSION

Result

1. The Implications of Ex Post Audits for Legal Certainty and Business Certainty among Construction Service Providers

In this study, an ex post audit is understood as an audit of government projects in the construction services sector conducted by the Audit Board of the Republic of Indonesia (Badan Pemeriksa Keuangan/BPK) after the work has been executed and payments have been realized under the contract.[8] This audit is oriented toward assessing the actual outcomes of project implementation by comparing physical conditions, work volume, technical specifications, and payment values against contractual documents and applicable statutory regulations.[9] This approach positions ex post auditing as a corrective mechanism and an external control over the use of state finances, because comprehensive assessments of compliance, reasonableness, and efficiency can only be carried out after implementation facts and financial transactions have occurred.[10]

The ex post nature of BPK audits causes the financial consequences of audit findings to often emerge after the contractual relationship has progressed or even ended, in the

[8] INTOSAI, *ISSAI 3000: Performance Audit Standard* (International Organization of Supreme Audit Institutions, 2019).
[9] Bent Flyvbjerg, *Survival of the Unfittest: Why the Worst Infrastructure Gets Built – and What We Can Do About It* (Oxford University Press, 2021).
[10] Giulia Mattei dkk., "Performance Auditing in the Public Sector: Trends and Implications," *Public Money & Management* 41, no. 1 (2021): 1–9.

form of payment corrections or obligations to return state funds.[11] This audit does not reassess the contract as a private civil agreement; rather, it evaluates the impact of contract execution on state finances and the accountability of public resource management.[12] Because the object of examination is the completed work and the realization of contractual payments, ex post audits in practice intersect with the economic position and business risks of construction service providers, thereby affecting business outcome certainty even when the contract has been implemented in accordance with formal procedures.[13]

The Semester Audit Summary (Ikhtisar Hasil Pemeriksaan Semester/IHPS) for Semester II of 2024 reported losses, potential losses, and revenue shortfalls reaching IDR 43.43 trillion. This figure was derived from 511 audit reports (LHP) consisting of various types of audits, including performance and thematic audits involving the management of revenue, costs, investments, and the implementation of activities within enterprises and other entities.

The ex post audit for Semester I of 2025 shows BPK findings disclosing losses, potential losses, and revenue shortfalls amounting to IDR 25.86 trillion, as well as inefficiency issues in budget utilization amounting to IDR 43.35 trillion, based on 741 audit reports (Laporan Hasil Pemeriksaan/LHP) completed during Semester I of 2025. This figure includes 701 financial audit reports, 4 performance audit reports, and 36 reports on audits with specific purposes (Dengan Tujuan Tertentu/DTT). In addition, BPK also reported state loss calculations reaching IDR 71.57 trillion, indicating the substantial value of findings related to non-compliance in the implementation of ongoing activities (ex post) with statutory requirements or the standards of reasonable budget management.

BPK's findings fluctuate from one period to another, with the number of findings, the magnitude of values, and the categories of issues varying significantly. This variation demonstrates that the number of findings and the value of recommendations generated are not constant across periods, but are highly dependent on the audited objects, the type of audit (financial, performance, or DTT), and the characteristics of problems identified in the audited entities.

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[11] INTOSAI, *ISSAI 100: Fundamental Principles of Public-Sector Auditing* (International Organization of Supreme Audit Institutions, 2022).
[12] P. S. Sendjaja dkk., "Supreme Audit Institutions and Public Accountability in Infrastructure Projects," *Journal of Public Procurement* 23, no. 3 (2023): 201–20.
[13] OECD, *Policy Framework on Sound Public Governance*, dalam *OECD Publishing* (Paris, 2020), https://doi.org/10.1787/c03e01b3-en; James Guthrie dkk., "Accountability and Public Sector Auditing: Contemporary Challenges," *Accounting, Auditing & Accountability Journal* 35, no. 4 (2022): 789–812.

The indicators of ex post audit findings used by BPK are consistently reflected in the IHPS through the classification of findings into several dominant categories. Across various IHPS periods, BPK presents the number of findings and their monetary values associated with weaknesses in the Internal Control System (Sistem Pengendalian Intern/SPI), non-compliance with statutory regulations, and issues of uneconomical, inefficient, and ineffective spending (3E). For example, in the IHPS for Semester I of 2023, BPK recorded 15,689 issues, consisting of thousands of findings on internal control weaknesses and non-compliance, as well as 3E findings, with the total value of findings reaching IDR 18.19 trillion. These data indicate that such indicators are repeatedly used in reporting ex post audit outcomes across audited entities and sectors.

Quantitatively, internal control weakness indicators frequently appear in large numbers of findings in each audit semester. In the IHPS, SPI findings are reported as case counts, which in several semesters reach thousands of findings nationwide. The nature of these findings generally relates to control processes, supervision, and administrative practices, including in the management of construction service projects. Although this category is not always associated with direct financial losses, its high frequency indicates the dominant role of SPI as an initial indicator in ex post audits.

Indicators of non-compliance with statutory regulations are presented in the IHPS with a direct linkage to financial values. In the IHPS for Semester I of 2025, BPK reported values categorized as losses, potential losses, and revenue shortfalls amounting to IDR 25.86 trillion, derived from findings of non-compliance with legal and contractual provisions. This figure demonstrates a high range of finding values and reflects variations across projects and audited entities, including large-budget projects in the infrastructure and construction sectors.

Indicators of uneconomical, inefficient, and ineffective spending (3E) are presented in the IHPS as a category of findings related to the optimality of budget utilization. In Semester I of 2025, the value of 3E issues was reported to reach IDR 43.35 trillion, covering budget utilization whose outcomes were not proportional to the intended objectives or planned benefits. This figure indicates that 3E indicators are used significantly in ex post audits, particularly to evaluate the outcomes of activity implementation after projects have been underway or completed.

In addition to finding categories, BPK also presents indicators of follow-up actions on recommendations, in the form of monetary deposits and the transfer of assets to the state or regional treasury. In cumulative monitoring up to Semester I of 2024, BPK reported hundreds of thousands of recommendations with values reaching hundreds of trillions of rupiah, with follow-up rates indicating the realization of substantial state financial

recovery. This indicator illustrates the financial consequences that materialize after ex post audits have been conducted.

Legal certainty is understood as a condition in which legal norms, procedures, and juridical consequences can be rationally predicted by legal subjects from the outset of an action. This principle forms part of the legality principle and the principle of legal certainty in public administration, requiring that the actions and decisions of state institutions have a clear legal basis and be applied consistently.[14] Within the framework of state financial management, legal certainty functions to ensure that legal relations between the government and third parties, including in construction contracts, have a point of finality that can be recognized by the parties.

2. The Dynamics of Construction Service Providers in Ex Post Audits from Legal and Economic Perspectives

BPK's oversight of government construction projects consistently generates findings and financial recommendations with monetary impacts, with values fluctuating significantly between semesters during the 2020–2024 period. The fluctuation of financial recommendation values—ranging from tens of billions to tens of trillions of rupiah per semester—indicates that the magnitude of financial consequences arising from audits varies greatly and can only be determined after the work has been executed and the audit has been conducted. In the practice of government construction contracts, this condition suggests that even when contracts have been planned, agreed upon, and implemented in accordance with applicable provisions, there remains the possibility of subsequent financial corrections whose magnitude cannot be determined from the outset. This pattern aligns with the law-and-economics perspective, which emphasizes that uncertainty regarding the final outcomes of rule enforcement and public oversight expands business risk and affects the rationality of contractual decision-making.[15]

Indicators of weaknesses in the Internal Control System (Sistem Pengendalian Intern/SPI) relate to business certainty through their influence on the predictability of project performance assessment processes. Inconsistent internal control systems produce variation in oversight mechanisms, work verification procedures, and administrative documentation, meaning that project implementation outcomes cannot be fully assured to be assessed uniformly at the ex post audit stage. Public procurement literature suggests

[14] Sue Arrowsmith, *Public Procurement Regulation: An Introduction* (Cambridge University Press, 2021); OECD, *Policy Framework on Sound Public Governance*.
[15] Richard A. Posner, *Economic Analysis of Law* (A Division of Aspen Publishers, Inc, 1998); Douglas C. North, "A Transaction Cost Theory of Politics," *Journal of Theoretical Politics* 2, no. 4 (1990): 355–67.

that ambiguity and inconsistency in contract oversight reduce the function of contracts as instruments of certainty and increase post-contract risks for business actors.[16]

Indicators of non-compliance with statutory regulations have a direct relationship with business certainty because they trigger financial corrections to contract values that have already been paid. The reassessment of work volume, technical specifications, and the basis of payment after project execution indicates that the economic outcomes of the contract are not entirely final at the time payment is made. This condition is consistent with contract economics theory, which argues that uncertainty regarding post-contract legal and financial consequences weakens the ability of business actors to internalize risk efficiently during the bidding and planning stages.[17]

Indicators of uneconomical, inefficient, and ineffective spending (3E) expand the dimension of business uncertainty into the realm of evaluating project outcomes and benefits. The assessment of effectiveness and efficiency conducted after project completion indicates that performance already accepted contractually remains open to further outcome-based evaluation. Studies on infrastructure governance and public procurement show that outcome-based ex post evaluation, if not explicitly formulated in contract design, may blur the boundaries of the provider's economic responsibility and reduce business outcome certainty.[18]

Discussion

Ex post audits conducted by the Audit Board of the Republic of Indonesia (Badan Pemeriksa Keuangan/BPK) operate as a corrective mechanism after activities and financial transactions have been carried out. Audits performed after project completion place legal certainty in a retrospective position, because assessments of compliance and the formation of juridical consequences only occur after the entire sequence of activities has taken place. Studies in administrative law and public procurement show that oversight mechanisms producing post-implementation legal implications prolong the period of uncertainty regarding the parties' compliance status and legal responsibility, even when contractual obligations have been administratively fulfilled.[19]

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[16] OECD, *Policy Framework on Sound Public Governance*; Arrowsmith, *Public Procurement Regulation: An Introduction*.
[17] Ronald J. Gilson dkk., "Contracting for Innovation: Vertical Disintegration and Interfirm Collaboration," *Columbia Law Review* 120, no. 2 (2020): 357–402.
[18] Flyvbjerg, *Survival of the Unfittest: Why the Worst Infrastructure Gets Built – and What We Can Do About It*; World Bank, *Improving Public Investment Management: Managing Risks and Uncertainty* (World Bank, 2022).
[19] Arrowsmith, *Public Procurement Regulation: An Introduction*; World Bank, *Improving Public Investment Management: Managing Risks and Uncertainty*.

The use of indicators such as weaknesses in the Internal Control System, non-compliance with statutory regulations, and uneconomical, inefficient, and ineffective spending (3E) in ex post audits expands the scope of legal assessment beyond formal compliance with contractual clauses. Assessments of control quality, the rationality of budget utilization, and the achievement of program objectives generate legal consequences that are only confirmed after the audit is conducted. This approach is consistent with modern public-sector auditing practices that emphasize substantive accountability; however, it simultaneously affects legal certainty because the parties' rights and obligations are not fully closed at the time the contract is declared completed.[20]

The legal consequences of ex post audits materialize through financial recommendations, repayment obligations, or administrative corrections that have binding force within the state financial accountability system. When legal and financial consequences only emerge after the implementation stage, legal certainty regarding the final outcome of the contractual relationship becomes dependent on subsequent oversight processes, rather than solely on contract performance itself.[21] This results in delayed legal certainty, whereby final clarity concerning compliance and legal responsibility is achieved only after the audit cycle and the follow-up process have been completed.

The legal consequences of ex post audits—manifested in financial recommendations, repayment obligations, or administrative corrections—mean that the finality of contractual relations is not fully determined by the completion of work and payment, but rather by the completion of the state financial oversight cycle. Accordingly, ex post audits produce delayed legal certainty, namely a condition in which final clarity regarding compliance and legal responsibility is only attained after the audit process and its follow-up have been concluded.

From the perspective of public contract law theory, the temporal openness of legal relations produced by ex post audits reflects a shift in the meaning of contractual finality—from the point of performance completion to the point at which state oversight ends. Normatively, government construction contracts are designed to close legal relations after the parties' obligations are fulfilled through handover of work and payment. However, ex post audit practice shows that contractual performance does not automatically terminate the provider's exposure to legal responsibility, because assessments of compliance and the reasonableness of project implementation remain

[20] OECD, *Government at a Glance 2021* (OECD Publishing, 2021); World Bank, *Infrastructure Governance and Public Financial Management* (World Bank, 2023).
[21] Flyvbjerg, *Survival of the Unfittest: Why the Worst Infrastructure Gets Built – and What We Can Do About It*.

open at the audit stage. This condition shifts the function of contracts from instruments determining the final rights and obligations of the parties into components of a legal process that only reaches certainty after the audit and follow-up are completed.

A state financial oversight approach that evaluates contract implementation from the perspective of public interest expands the space for legal intervention beyond the boundaries of private contractual obligations. Financial recommendations and administrative corrections that are institutionally binding create legal consequences that operate alongside contractual relations, yet directly affect the legal position of service providers. Public procurement studies show that when post-contract oversight generates new financial obligations, the principle of legal certainty confronts the principle of state financial accountability, meaning that legal relations are no longer fully determined by the parties' agreement but by the state's evaluation of public resource use.[22]

The juridical implication of this condition is the weakening of contractual closure, because contracts no longer function as instruments that extinguish all potential claims and obligations once performance has been completed. Construction service providers are placed in a position where legal responsibility becomes layered, encompassing completed contractual obligations as well as potential administrative obligations that only arise after the audit. Administrative law and public procurement literature emphasize that such oversight models create structural uncertainty regarding the duration and boundaries of legal responsibility, because no clearly defined point in time explicitly marks the end of legal risk for business actors.[23]

Ex post audits conducted by BPK therefore form a conditional legal certainty regime, in which certainty is not determined solely by the completion of contractual performance, but by the final outcome of the state financial oversight process. This analysis demonstrates that the legal implications of ex post audits for construction service providers are not merely technical-administrative, but extend to the foundational function of government contracts as instruments of certainty and finality in legal relations.

From an economic perspective, ex post audits expand the structure of business risk faced by construction service providers by adding a post-implementation risk that cannot be fully measured at the planning stage. The high fluctuation in the value of findings and financial recommendations, as reflected in the IHPS, affects business actors' ability to rationally estimate costs, profit margins, and residual risks. Institutional economics

[22] Arrowsmith, *Public Procurement Regulation: An Introduction*; OECD, *Government at a Glance 2021.*
[23] OECD, *Government at a Glance 2021*; World Bank, *Improving Public Investment Management: Managing Risks and Uncertainty*.

theory explains that uncertainty regarding the final outcomes of rule enforcement and public oversight increases transaction costs, because business actors must allocate additional resources for legal and audit risk mitigation beyond the project's production costs.[24] In this context, ex post audits contribute to higher compliance costs and risk-protection costs, which ultimately affect bidding structures and pricing behavior in government tenders.

The further implications of this combination of legal and economic uncertainty are clearly reflected in the adaptive behavior of construction service providers as a rational response to a contractual environment characterized by post-implementation risk. When financial and legal consequences can only be confirmed after the ex post audit is completed, service providers face residual uncertainty attached to each government project. From the perspective of behavioral economics, this condition encourages business actors to form experience-based expectations, in which business decisions are determined not only by formal contractual provisions but also by perceptions of the probability of audit corrections and the magnitude of their potential consequences.[25]

Increased bid prices and conservatism in project selection can be understood as a form of risk premium behavior, namely business efforts to compensate for uncertainty that cannot be fully contracted or insured. Public procurement literature indicates that when post-contract risks are difficult to predict, business actors tend to incorporate cost buffers into bids as a protective strategy against potential future financial corrections.[26] The findings of this study indicate that ex post audits contribute to the formation of such behavior, because fluctuations in BPK's financial recommendation values increase uncertainty regarding the project's final economic outcome.

Beyond price adjustments, preferences for projects with more predictable payment and oversight schemes reflect a mechanism of risk-perception-based project selection. Loss aversion theory explains that business actors tend to assign greater weight to potential losses than to equivalent potential gains, meaning that projects with high post-implementation audit risk become less attractive even when nominally high in value.[27]

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[24] Oliver E. Williamson, *Transaction Cost Economics: The Natural Progression* (University of Chicago Press, 2020).
[25] Daniel Kahneman dan Amos Tversky, *Prospect Theory: An Analysis of Decision under Risk*, vol. 47, no. 2 (1979); Richard H. Thaler, *Misbehaving: The Making of Behavioral Economics* (W. W. Norton & Company, 2018).
[26] Flyvbjerg, *Survival of the Unfittest: Why the Worst Infrastructure Gets Built – and What We Can Do About It*; World Bank, *Infrastructure Governance and Public Financial Management*.
[27] Kahneman dan Tversky, *Prospect Theory: An Analysis of Decision under Risk*, vol. 47; Thaler, *Misbehaving: The Making of Behavioral Economics*.

In this context, ex post audits function as both a psychological and institutional factor shaping business preferences, rather than merely a technical oversight mechanism.

The impact of such behavior does not stop at the level of individual projects, but accumulates within the dynamics of the government construction services market. When business actors collectively adjust bidding strategies and project selection, the structure of competition, pricing, and market participation also changes. Several studies on infrastructure governance suggest that procurement environments with high post-contract uncertainty may reduce the number of bidders, increase project costs, and encourage market concentration among firms with strong financial capacity to absorb audit risks.[28] Thus, ex post audits not only affect the individual behavior of construction service providers, but also contribute to shaping collective expectations and market behavior patterns in the medium and long term.

CONCLUSION

This study concludes that ex post audits conducted by the Audit Board of the Republic of Indonesia (BPK) in government construction service projects function effectively as an instrument of state financial accountability. However, they simultaneously generate significant legal and economic implications for the legal certainty and business certainty of construction service providers. Due to the ex post character of the audits, legal and financial consequences are often confirmed only after project implementation and contractual payments have been realized, meaning that contractual finality is not fully achieved at the stage of project completion.

From the perspective of legal certainty, ex post audit outcomes place construction service providers in a condition of post-contract liability openness, where formal contractual performance does not fully eliminate the possibility of subsequent administrative corrections and financial repayment obligations. This demonstrates that legal certainty in government construction projects is delayed and depends on the completion of the audit cycle and the follow-up process, rather than solely on contract execution. Accordingly, this study introduces the concept of **delayed legal certainty**, defined as a condition in which clarity over contractual rights and obligations is only attained after the state financial oversight process has been completed.

From the perspective of business certainty, the high fluctuation of BPK findings and financial recommendations across audit periods creates residual risk that is difficult to

[28] Flyvbjerg, *Survival of the Unfittest: Why the Worst Infrastructure Gets Built – and What We Can Do About It*; World Bank, *Infrastructure Governance and Public Financial Management*.

predict during the planning and bidding stages. This post-implementation risk increases transaction costs, affects contract economic calculations, and encourages adaptive behavior among service providers, including business conservatism and bid-strategy adjustments. The findings also indicate a shift in contractual finality, where the endpoint of contractual relations in government projects no longer rests on handover and payment, but extends to the completion of the audit and follow-up process. This article's conceptual contribution lies in formulating the relationship between state financial oversight mechanisms, delayed legal certainty, and shifting contractual finality as an analytical framework for understanding the implications of ex post audits in the government construction services sector.

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