JURNAL AKTA
Volume 13 No. 1, March 2026
SINTA 2,
Decree No. 164/E/KPT/2021

Limits of Government Authority in Business Dealings with Business Entities: A Comparative Study of the Public Contract Regimes of Indonesia and the Netherlands

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Abstract. *Government involvement in business agreements with business entities is expanding along with increasing development needs, but the limits of government authority in public contracts remain undivided. This ambiguity creates normative problems because government contractual actions are often treated as private, even though their substance still carries a public character that must comply with the principles of legality and good governance. The fragmentation of regulations between the Civil Code, the State Administration Law, and the procurement regime increases legal uncertainty, while the Dutch model demonstrates a more stable structure through the integration of administrative principles across all contractual actions. The approach used is a juridical-normative approach, examining laws and regulations, court decisions, legal doctrine, and classical and modern theories of authority. The main objectives of the analysis are to identify the limits of government authority in public contracts, compare the Indonesian and Dutch frameworks, and formulate a more consistent direction for normative reform. The results of the study indicate that Indonesia still positions government contracts as civil agreements, making administrative actions within contracts unamenable to legality testing. The lack of integration between civil and administrative norms opens up room for excessive discretion, creates an imbalance in bargaining power, and increases the risk of ultra vires. In contrast, the Netherlands positions government contracts as public acts, so that every official's actions are subject to the principles of proportionality, prudence, equality, and protection of legitimate expectations, and are subject to judicial review. This integration results in significantly stronger legal certainty and predictability. As a follow-up, a codification of the public contract regime is needed, combining the principles of legality, limits on discretion, objection mechanisms, and public interest parameters within a single, solid normative framework.*

Keywords: *Authority; Business; Entities; Government; Obligations.*

1. INTRODUCTION

Changes in the relationship between the state and the market have placed the government in a position that is no longer entirely in the regulatory sphere. Increasingly complex development needs force the state not only to produce norms but also to act as a contractual actor, establishing legal relationships with business entities.(Shannia

Angelia Rahardjo & Muhamad Farudin, 2025)This phenomenon is in line with the global trend referred to by Sabino Cassese as the expansion of the regulatory state, namely the state expanding its role through contractual instruments to fulfill public services.(Skinner & Murphy, 2025)Indonesia and the Netherlands have both experienced this transformation, although their regulatory structures differ. As governments transition into market players, the limits of their inherent public authority must be more carefully defined to avoid exceeding the fundamental principles of the rule of law.

Government involvement in contractual relationships presents a classic debate regarding the government's status as a subject of the contract. Article 1338 of the Civil Code, which states that "all agreements made legally apply as law for those who make them," cannot be applied absolutely when one of the parties is the government, because the principle of freedom of contract cannot stand alone in the face of the nature of public authority that binds the government. Hans Kelsen emphasized that government actions cannot be separated from the basic norms that regulate its authority.(Djauzie, 2025)This means that every contractual government action is evaluated not only based on the will of the parties, but also on the extent to which it has normative legitimacy. The ambiguity of this framework easily creates space for government domination over businesses already in an unbalanced position.

The increasingly diverse public contract models, ranging from public-private partnerships, provision of basic services, to long-term investment contracts, add to the complexity of the legal relationships that must be regulated.(Marsalina Susana & Urbanization Urbanization, 2025). The more discretionary clauses, the higher the risk of abuse of authority. Modern administrators like Jerry Mashaw warn that administrative discretion can turn into an instrument of arbitrariness if not constrained by clear norms.(Arvind et al., 2024)The complexity of public contracts in Indonesia opens up the possibility of unilateral interpretations by government officials of technical and administrative clauses, especially when regulations do not specifically outline the limits of government action as a contracting party. At this point, the contractual relationship easily transforms into a power relationship.

LKPP data, which recorded more than 11,000 objections in 2023, is an indicator of structural problems that cannot be explained solely as technical administrative errors.(Indonesian Procurement LSP, 2025)The surge in disputes indicates that business entities have not yet received certainty regarding the procedures, authorities, and responsibilities of officials in the procurement process. This situation also indicates that the oversight mechanism for government authority is not yet fully effective. A normative perspective views this situation as a symptom that Indonesia's public contracting regime still relies on an ad hoc approach and has not been built on a consistent legal framework. When the government does not manage its authority clearly, legal certainty stagnates and business confidence declines.(Anis Retno Triana et al., 2024).

The absence of a standard regime regarding public contracts demonstrates that Indonesia still views government contracts as a normal civil activity. However, public contract theory asserts that contracts entered into by the government serve a public function and cannot be subject solely to general civil law.(Purwaningtyas & Sulistiyantoro, 2024)The fragmentation of norms spread across the Civil Code, Law Number 30 of 2014 concerning Government Administration, and the Presidential Decree on the procurement of goods/services, creates normative imbalances because each instrument has its own philosophy that does not always support each other. JBJM ten

Berge's view states that government actions that are not based on clear boundaries of authority have the potential to weaken administrative legality.(Hilda et al., 2025)If the normative structure is not uniform, there is no adequate reference for determining which government actions are legitimate and which are beyond its authority.

The Netherlands offers a more stable example of limiting government authority in contracts. The principle of special powers grounds government authority strictly within the norms that provide the basis for action, so that the government cannot act based on analogy of authority or general principles alone.(Azhari Sellomitha Fodhi et al., 2024)This principle is complemented by public interest justification, which requires the government to put forward reasons based on public interest whenever it uses administrative authority in a contract.(Toloh, 2024)The Dutch model is in line with the teachings of Rechtsstaat which minimize government action without explicit legal legitimacy.(Aini Septi Farida, 2025)This pattern provides a valuable lesson that the limits of authority are not merely a technical administrative issue, but a determining factor in the character of a state governed by the rule of law.

An analysis of the limits of government authority requires a strong theoretical foundation to explain how public authority interacts with contractual mechanisms. Administrative Discretion Theory positions government authority as a space for action that arises from regulatory imperfections, but must be supervised by the principle of legality.(Arifin, 2025). Lon Fuller asserts that law demands a predictable structure(Prabantarikso, 2024)When government officials exercise discretion without clear standards, the contractual freedom of business entities is threatened. On the other hand, public contract theory outlines that contractual relationships involving the government must be subject to the principles of good governance, including accountability, transparency, and protection of the public interest.(Japar, 2024)The relationship between these two theories emphasizes that government authority is not absolute, but rather authority that is limited by measurable public goals.

The conflict between the principle of freedom of contract and the principle of legality emerges as the core of the issue. The government cannot act solely on the basis of agreement because its presence in a contract carries public consequences that cannot be left to market mechanisms. The theory of dualism in government action, which distinguishes between private actions (privaatrechtelijke handelingen) and public actions (publiekrechtelijke handelingen), is crucial for ensuring the legitimacy of the authority exercised in a contract.(Maharani & Maulani, 2024)If this distinction is not made, actions that should be subject to administrative law can be interpreted as civil actions, resulting in the blurring of legal control mechanisms. This lack of clear boundaries is a major source of legal uncertainty in government contracting practices.

The urgency of research increases as the impact of unclear authority boundaries on the investment climate and the efficiency of public contracts grows. Uncertainty regarding official authority has the potential to create high regulatory risk for businesses. The greater the uncertainty, the greater the risk premium that businesses must bear. Frederick Schauer described uncertainty as a structural burden that hinders the achievement of legal stability (Sargeant, 2025). In public contracts, this situation not only impacts economic interests but can also disrupt the quality of public services because the contracts are not based on a predictable legal framework.

A comparative study with the Netherlands is necessary not only to examine technical regulatory differences but also to understand the conceptual aspects of how the state regulates public authority in business engagements. Both the Indonesian and Dutch legal systems are rooted in the civil law tradition, so the Dutch model can serve as a compatible normative reference. This research is expected to provide a strong conceptual foundation for formulating a more robust, coherent, and operational model for limiting government authority. The study's findings are expected to serve as a basis for reforming the public contract framework, strengthening legal certainty, increasing business trust, and improving governance in contractual practices.

2. RESEARCH METHODS

This research uses a normative legal approach, namely research based on library research of primary, secondary, and tertiary legal materials. This approach is based on Soerjono Soekanto's view that normative legal research is the process of examining written law as a set of norms that regulate societal behavior (Soekanto & Mamudji, 2001; Soerjono Soekanto, 1986; Soerjono Soekanto & Mamudji, 2004). Peter Mahmud Marzuki also emphasized that normative research seeks to find law in the books by interpreting relevant legal principles, doctrines, and theories (Marzuki & Peter Mahmud, 2019; Peter Mahmud Marzuki, 2011). Internationally, this method aligns with Hans Kelsen's thinking, which positions law as a hierarchical system of norms, so legal analysis must focus on the validity of norms within a normative structure. In this context, this research examines legislation, court decisions, and authoritative literature to identify legal constructions consistent with the issues under study. This study also uses prescriptive analysis, which draws legal arguments aimed at providing normative recommendations. The prescriptive approach refers to Lon L. Fuller's opinion that ideal law must fulfill the principles of internal coherence and morality, so that evaluation of norms is not only descriptive but also assesses whether the rules are in line with the principles of justice (Schneiderman, 2024). In addition, HLA Hart's thinking regarding the rule of recognition is used to assess the validity of a norm based on institutional practices and official authority (Patel, 2024). In the tradition of international legal thought, the normative analysis method is also in line with Ronald Dworkin's approach, which views that legal interpretation must take into account moral principles and legal integrity (Bustamante, 2024). Therefore, this research combines grammatical, systematic, historical, and teleological interpretations to find the most appropriate legal meaning and comprehensively address the problems of legal implementation.

3. RESULTS AND DISCUSSION

3.1. Structure of Government Authority in Business Contracts

Understanding the structure of government authority in business relationships requires a normative analysis that positions the government as an entity that never stands solely as a private subject, because every action is always held hostage to the principle of legality. The Constitution provides the initial foundation that government actions must be based on legitimate authority, as implied in the formulation "every government action must be based on law," which binds the power structure to not move beyond the legitimacy of the source of authority.(Febra Anjar Kusuma et al., 2024). In Indonesian positive law, this provision is embodied in Article 1, numbers 22–24 of Law Number 30 of 2014 concerning Government Administration, which explicitly distinguishes between attribution, delegation, and mandate as sources of authority that must underpin every government action, including contractual actions. The problem arises when the government enters the realm of business agreements, because the legality of contractual actions is never as clear as the legality of public actions. The weak connection between the source of constitutional authority and government contractual practices, which have so far relied solely on the general provisions of the Civil Code, particularly Articles 1320 and 1338, without first confirming whether the acting official or agency has a legitimate attribution or delegation of authority. This condition creates a gray area regarding whether a contractual action requires an explicit attribution, delegation, or mandate. This ambiguity gives rise to various forms of administrative actions that are disguised in private instruments, but still have a public impact.

The confusion between public and private government actions is one of the most intense points of controversy. In the Dutch legal tradition, the distinction between bestuursdaden and privaatrechtelijke rechtshandelingen has been established through decisions of the Raad van State, such as the Amsterdamse Waterleidingduinen and Rasti BV cases, which emphasized that government actions related to contracts cannot be separated from their public status if they relate to the exercise of state authority.(Syndy Widya, 2024)Classical administrative literature such as Van Wijk's work states that private government actions are in principle "still overshadowed by public norms if their substance touches on the public interest." In Indonesia, this boundary has never been explicitly defined, allowing the government to shift the character of its actions into the private sphere to avoid the constraints of administrative law, while still utilizing its position as the holder of public authority to control the process.(Tandori & Supriyanto, 2025)This situation undermines the principle of freedom of contract, as business entities are never dealing with purely private entities, but rather with entities that simultaneously carry the coercive instruments of the state. This tension results in a distortion of contractual fairness, particularly in determining contractual terms, bargaining power, and risk distribution.

When the government acts as a party to a contract, it exercises a dual capacity that raises both theoretical and practical problems. On the one hand, it acts as a market actor subject to the principles of consensualism and equality of the parties; on the other, it retains the power to regulate, supervise, and enforce. This dual relationship is difficult to balance without a clear legal framework for public contracts, as in the current model, administrative actions can be inserted into the procurement process, partner selection, and even contract implementation. Arguments developed by modern administrative experts such as Bruijn and Schraling emphasize that the government should not mix these two capabilities without clear normative barriers. Macneil's relational theory also emphasizes that contracts involving public entities are never purely private relationships because they are always framed by institutional authority.(Campbell, 2025)In Indonesia, the absence of such a fence creates the potential for intervention throughout the contract's implementation, so that business entities never truly obtain a guarantee of stable contractual relations.

The unclear distinction between public and private actions exacerbates the problem of overlapping authority between government units. Practically, Indonesia's legal structure recognizes PA/KPA, PPK, BUMN/BUMD, and sectoral technical institutions, each of which holds a portion of the decision-making function. This fragmentation is acknowledged in Presidential Regulation 16 of 2018, which distributes contractual authority to various bureaucratic positions, but does not provide a normative design to ensure that work unit authorities do not conflict with each other.(Priambudi et al., 2024). Conditions like this create space for the emergence of administrative decisions that directly impact contractual relationships, for example changes to the budget ceiling based on Article 17 of the State Finance Law, unilateral cancellation of tenders by PA/KPA, or adjustments to technical standards set by sectoral authorities. When the limits of each actor's authority are not systematically formulated, contract disputes easily arise because the private sector never has certainty regarding which authority has the authority to provide approval or final decisions.(Marito & Kanthika, 2024)Several Supreme Court decisions regarding procurement disputes demonstrate this pattern, with judges viewing administrative decisions affecting contracts as private acts and therefore not subject to legal review.

This tension over authority stems from the weak application of the principle of legality to government contractual actions. This principle requires more than just written regulations, but also a direct link between authority and action. In the Dutch public contract regime, the legality test for contractual actions is conducted through ex ante toetsing to ensure that government actions have a clear basis for attribution or delegation, as stipulated in Awb Books 3 and 4.(Doppen et al., 2024). After the contract is in effect, ex post toetsing allows the administrative court to assess whether the act of implementing the contract remains within the predetermined limits of legality.(Zhang et al., 2024)In Indonesia, this mechanism has not yet taken root because the government often treats contracts as a private domain, not subject to administrative review. Consequently, violations of authority are difficult to systematically test through judicial mechanisms. The State Administrative Court Law does not provide for contract jurisdiction, thus severely limiting the scope for legal correction of administrative actions in public contracts.

The implementation of public contracts is heavily influenced by how administrative discretion is used. Discretion should serve as a policy space to respond to circumstances not fully regulated by law, but it should not be transformed into an instrument for circumventing legal procedures. Experts like Davis emphasize that discretion must be limited by standards of rationality, reasonableness, and the principle of measurable public interest.(Hafendi & Silalahi, 2024). In Indonesian positive law, Articles 22–30 of Law Number 30 of 2014 concerning Government Administration actually provide a framework for limiting discretion, but in many government business agreements, discretion is often interpreted as free space that can exceed the authority granted.(Ilham et al., 2025)This situation raises the risk of arbitrary action, especially when decisions such as changing specifications, revising schedules, or terminating contracts are made solely based on the subjective judgment of officials without a measurable legal basis.

The vague scope of discretion provides a loophole for inconsistent administrative behavior, where officials can change the substance or direction of contract implementation without legality evaluation procedures.(Arifin & Ramdhani, 2024)The impact is even more pronounced when business contracts involve public services or strategic infrastructure that have fiscal and social implications. The absence of discretionary standards undermines the credibility of the government as a contractual partner because business entities cannot calculate risks outside of clear normative parameters. In countries like the Netherlands, the use of discretion in public contracts is strictly regulated by the principles of behoorlijk bestuur, including the principles of zorgvuldigheid, evenredigheid, and fair play, which require that every government action be objectively accountable.(Hoekman & Onur Taş, 2024)Indonesia has not yet reached this point and still allows discretion to be too broad an interpretative space.

One important instrument for controlling government action is the ultra vires doctrine, which invalidates actions taken beyond their authority. In the Dutch legal system, decisions of the Court of State established the standard that contracts signed without valid attribution of authority are voidable and considered never to have existed legally.(de Boer & Jonker, 2024)This doctrine prevents the government from using contractual instruments to take actions that should be taken through public procedures. In Indonesia, a similar doctrine has not developed strongly because the public contract regime is not codified, so the courts tend to place contractual relations in a purely private domain and are reluctant to test the legality of the authority underlying them. This weak normative protection increases uncertainty for business partners, because the absence of an ultra vires test weakens the certainty of private parties' rights to covert administrative actions included in contractual relationships.

The variation of the ultra vires doctrine in Indonesia is also influenced by the position of the judiciary which has not fully recognized the duality of government actions.(Setyowati, 2023)When the government violates its authority, civil judges often declare the matter to be a matter of ordinary contractual relations, not administrative legality. Conversely, state administrative courts cannot examine contractual matters because they are considered outside their jurisdiction. This normative deficit widens the scope for violations of authority, as there is no clear legal forum that can examine the government's contractual actions. The Netherlands has a more structured mechanism, as administrative courts have the authority to assess contractual actions if they relate to the exercise of public authority.

Unequal bargaining power is inevitable when the government acts as a contracting party. The government's position cannot be equated with that of the private sector because it possesses regulatory authority, budgetary authority, and public legitimacy. In many contracts, the government inserts dominant clauses such as termination for convenience, unilateral change orders, or corrective authority that are not reciprocally provided to the private sector.(Marteli Fais Feriato, 2024). Research shows that clauses like this undermine the principle of equality of the parties and shift the contract into a unilateral instrument.(Putri et al., 2025)Academic arguments regarding equality of arms emphasize that governments should avoid practices that place businesses in situations where legal certainty rests entirely with officials.

This imbalance impacts the legitimacy of the contract as a whole. If the government can terminate a contractual relationship without proportionate terms, then businesses cannot plan for long-term investment certainty.(Rembet, 2025)When risk is fully transferred to the private party, the contract loses its reciprocal character. Criticism from public contract experts in Europe asserts that contracts with absolute control by one party no longer reflect the principle of fair dealing. Indonesia still faces this problem because most of its contract models are derived from administrative practices, not from the principles of civil justice that should serve as the underlying reference.

The influence of the government authority structure is very strong in determining the design of public contracts.(Safitri et al., 2025)When authority is dispersed across multiple units, contracts must adapt to internal approval schemes, fiscal accountability pathways, and governance procedures that are not always uniform. This creates complex and lengthy contractual relationships, in which entities must navigate not only the substance of the contract but also the bureaucratic structures that influence decisions. When authority structures are not clearly defined, contracts become instruments that are never final because each stage can be influenced by administrative decisions originating from outside the contractual relationship.(Rahman Maulana S et al., 2025).

Internal and external oversight play a crucial role in maintaining the boundaries of government authority. However, without a clear public contracting framework, oversight often focuses on procedural rather than substantive aspects. Audit agencies, inspectorates, and government internal oversight bodies often examine budget compliance, while rarely examining the legality of contractual actions (Kopong et al., 2025). When oversight fails to address the core issue of authority, violations can persist without normative correction. This contrasts with the Netherlands, where administrative oversight serves as an integral part of the public contract law system. Uncertainty about the authority structure also increases legal risks for private parties. When an official's authority is unclear, signed contracts always carry the potential for cancellation. Any change in official or budgetary policy can lead to new interpretations of the contract, thus disrupting the stability of legal relations (Fikri et al., 2024). If the authority structure is not consistently established, business entities cannot accurately assess legal risks. Consequently, transaction costs increase and investment interest in government projects declines.

The complexity of unorganized authority undermines project effectiveness and the long-term investment climate. When the government fails to define the boundaries between public and private actions, public contracts lose the normative certainty that underpins legal relations. Indonesia needs comprehensive reform to establish a public contracting regime that integrates the principles of legality, limits on discretion, and protections against ultra vires acts. Without such reform, the government's authority structure will continue to be a source of disputes, hinder public-private partnerships, and undermine the development goals that contract instruments are designed to support.

3.2. Comparison of Public Contract Regimes in Indonesia and the Netherlands

The paradigmatic difference between Indonesia and the Netherlands in positioning government contracts lies at the foundational level, namely how the state interprets contractual actions as a form of expression of public authority. Indonesia still places government contractual actions under the private law regime, so that public contracts are treated as civil agreements subject to Book III of the Civil Code, especially Articles 1313, 1320, and 1338, which regulate the valid conditions of agreements and the principle of pacta sunt servanda.(Petrus CKL Bello, 2025)This structure creates a framework that separates administrative law from contract law, although the government as a subject still carries the attributes of public authority based on Article 1 numbers 22–24 of Law 30/2014 which regulates attribution, delegation, and mandate. In contrast, the Netherlands built a different paradigm through Algemene wet bestuursrecht (Awb), specifically Book 3 and Book 4, which consider government contracts as bestuursrechtelijke overeenkomst, namely government actions that must be subject to the principles of administrative law, including the principles of zorgvuldigheidsbeginsel, evenredigheidsbeginsel, and gelijkheidsbeginsel.(Schramm, 2024)This paradigmatic split has direct implications for the design of contract governance, the limits of official discretion, objection mechanisms, and even court review patterns, which are conceptually far more structured than those in Indonesia.

The consequence of the Indonesian model of privatizing government contracts is the loss of normative recognition that every government action, including signing contracts, remains bound by the principle of legality as implied in the principle that every government action must have a basis in authority. Hans Kelsen's classical theory of authority, which asserts that the actions of state organs are only legitimate if they are based on authority that can be traced to higher norms, is not implemented consistently when the government enters the contractual realm because the government is considered to have abandoned its public character.(Zamroni, 2024)In the Netherlands, government contracts are still considered public acts, so that every contract clause must not set aside the principles of zorgvuldigheid, fair play, and belangenafweging, a standard that continues to be strengthened by the Raad van State through the Rasti BV decision (1995) which stipulates that government contractual actions remain subject to administrative principles.(Verbeke, 2024)The systemic influence of this paradigm is reflected in the stability, predictability, and consistency of the public contract legal regime, which provides greater legal certainty for business entities.

The government's position as a party to the contract demonstrates an imbalance of varying intensity between the two countries. Indonesia positions the government as a private party, but its public character remains inherent, resulting in an asymmetrical contractual relationship. The private sector lacks a comparable bargaining position when contracts can be influenced by instruments of public power, such as budget changes under Articles 17–18 of the State Finance Law, unilateral cancellation of tenders, or internal instructions. The Netherlands limits the scope for such intervention because the government, despite its contractual role, remains a subject of public law, and its behavior must comply with public norms.(Koivisto et al., 2024). This balancing of positions provides greater certainty to business entities, because officials cannot use public authority to obtain contractual advantages that are substantively contrary to the principle of gelijkheidsbeginsel.

From the perspective of modern contract theory, Indonesia's structure still reflects inequality of arms as criticized by Ian Macneil in his relational contract theory.(Makaarim et al., 2025)The Indonesian government often uses dominant clauses, such as termination for convenience, unilateral change orders, or administrative corrective clauses without clear proportionality parameters. In the Netherlands, these clauses can only be enforced if they meet public interest justification, which can be tested through an administrative court.(van Dongen & Visser, 2025)This clarity eliminates the government's ability to hide behind abstract administrative reasons when unilaterally amending or terminating a contract. This construction is legitimized by the doctrine of public law supremacy, which asserts that public law perpetually permeates government contractual actions and cannot be ignored simply because the contract is private.

The application of administrative law principles is the most distinguishing factor between the two regimes. The Netherlands applies the principles of prudence, proportionality, protection of legitimate expectations, and equality not only to government decrees but also to contractual government actions.(Brown Coverdale, 2025)Indonesia lacks a similar mechanism; the administrative principle is only implied through the AUPB in Article 10 of Law 30/2014, but is not systematically integrated into government contract law. This lack of integration leaves too much room for interpretation and allows for uncontrolled discretionary action. The provisions of Law 30/2014 on discretion (Articles 22–30) also do not regulate how discretion can affect the government's contractual obligations, creating a gray area that is detrimental to business actors.

The lack of explicit implementation of administrative principles in Indonesia means that government contracts often do not reflect proportional protection of private and public interests. Contracts are treated as technical instruments, not as administrative acts requiring public scrutiny. The Netherlands requires the government to conduct due diligence before signing a contract, including assessing the economic impact, the risk burden on business actors, legal certainty, and legitimate expectations arising from the negotiations.(Gross & Sampat, 2025)This model is reinforced by the Court of State's ruling in Amsterdamse Waterleidingduinen (1962), which asserted that government contractual actions cannot be separated from considerations of the public interest. Indonesia lacks such a formal obligation, allowing the government to sign contracts without an adequate proportionality assessment process.

Differences in judicial oversight patterns also create fundamental disparities. The Indonesian system places government contracts as the subject of civil disputes, which are tested through a default mechanism under Article 1239 of the Civil Code.(Syafriadi, 2024)General courts do not test the authority of officials or the administrative legality of government actions in contracts. State administrative courts cannot also examine contracts because the object of the dispute in Article 1 number 9 and Article 2 of the PTUN Law does not cover contractual actions. Instead, the Netherlands directs public contract disputes to administrative courts so that the review can address the validity of officials' authority, the principle of proportionality, and the rationality of policies, as stipulated in the evenredigheidsbeginsel (the legal principle of the law), which was strengthened by the 2022 Awb update.

The Dutch oversight model reflects Van Wijk's view that judicial review should ensure that government actions are objective, rational, and measurable. Indonesia has yet to develop an awareness that government contracts are part of government action, resulting in abuses of authority in the contractual realm often escaping judicial correction and only being uncovered through audits by the Supreme Audit Agency (BPK) or the inspectorate, not court decisions. The absence of such a corridor creates greater scope for abuse of authority, particularly in the management of large-value contracts or those with long-term impacts.

The Netherlands provides a clearer scope for limiting government authority in contracts through the Awb, which condenses all principles of administrative action into a single normative framework. Indonesia still relies on a combination of the Civil Code, the State Administration Law, Presidential Regulation 16/2018, and unintegrated sectoral regulations. This fragmentation creates uncertainty regarding the limits of official action, including the question of whether officials may unilaterally amend contracts or terminate projects for internal fiscal reasons. This ambiguity creates room for private law escape, the practice where the government uses the civil regime to circumvent public law restrictions.

The lack of codified public contracting regimes in Indonesia also creates inconsistencies across ministries and institutions. Public Works and Housing (PUPR) practices do not always align with those of the Ministry of Transportation or the Ministry of Health. The Netherlands avoided this problem by establishing the Awb as a normative umbrella, ensuring that every government agency adheres to identical structures, principles, and mechanisms. This consistency provides greater predictability for businesses and reduces contractual risk.

The position of business entities within the legal protection architecture also differs significantly. The Netherlands provides access to the bezwaar, beroep, and hoger beroep mechanisms, allowing businesses to challenge government actions both before and after the contract is executed. Indonesia only provides a rebuttal mechanism at the procurement stage, while after the contract is executed, disputes are directed to civil lawsuits without any means to test the legality of officials' authority. As a result, businesses have no legal guarantee against administrative actions that affect the contract, such as payment delays, budget revisions, or changes to the scope of work.

Rule of law analysis shows that legal protection for business actors in Indonesia remains partial. Reliance on breach of contract lawsuits precludes the possibility of challenging administrative actions that harm them. The Netherlands allows actions such as payment delays to be tested for legality based on even redigheidsbeginsel and zorgvuldigheid, preventing the government from hiding administrative irregularities behind contractual narratives. The tradition of public interest justification is another fundamental difference; the Netherlands has clear parameters for when the government may amend contracts in the public interest. Indonesia lacks a similar formula, so the public interest argument is often used in an elastic and immeasurable manner.

Without objective measures of public interest, the legitimacy of government action is fragile. Indonesia relies solely on officials' internal interpretations, without the obligation to document public need. The Netherlands requires a proportional impact assessment before making contract changes, ensuring that public need is not limited to administrative claims but must be demonstrated through impact analysis. The degree of coherence between regulation and administrative practice in the Netherlands makes public contracts a predictable instrument. Indonesia faces regulatory fragmentation, which has rendered public contracts a tug-of-war between civil, administrative, and state financial norms, creating widespread normative tensions.

The following table shows a more structured comparison of the main points between Indonesia and the Netherlands to emphasize systemic disparities:

Aspect	**Indonesia**	**Dutch**
Contract status	Civil contract	Public contract (bestuursrechtelijke overeenkomst)
Administrative principles	Not systematic	Integrated via Awb
Supervision mechanism	General courts	Administrative justice
Limits of authority	Spread across many regulations	Codified and consistent
Position of the business entity	Objection + civil suit	*Bezwaar*, beroep, hoger beroep
Public interest parameters	Unclear	Clear and testable

The theoretical and empirical constructions formed from this comparison indicate that Indonesia requires a redesign of its public contract regime to increase legal certainty. The principles of legality, administrative principles, oversight mechanisms, and limits of authority need to be placed within a solid normative framework. The Netherlands demonstrates that the integration of administrative law and contract law allows for a rational balance between public and private interests. Without such a reformulation, the risk of abuse of authority, contractual uncertainty, and imbalanced positions between the government and business entities will continue to grow.

4. CONCLUSION

The unclear boundaries of government authority in business engagements continue to create a gray area between public and private actions, leaving contractual relationships with business entities uncertain. The government often enters into contracts with public authority, but without a clear legal framework, administrative actions can be inserted into the contractual process and shift the balance between the parties. The fragmentation of regulations between the Civil Code, the Administrative Law, the procurement regime, and various sectoral regulations exacerbates this uncertainty, making it difficult for businesses to assess risks and predict government behavior. A comparison with the Netherlands demonstrates that a regime that integrates administrative law principles such as prudence, proportionality, fair play, and the protection of legitimate expectations can prevent abuse of authority and ensure that every contractual action can be objectively tested. Indonesia needs a more coherent and codified public contract framework that places the principle of legality at the heart of official actions, limits discretion from becoming an arbitrary instrument, and provides effective oversight and complaint mechanisms. Without such reforms, contractual uncertainty, imbalanced positions, and the risk of administrative intervention will continue to burden the investment climate and diminish the role of contracts as a reliable development instrument.

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