

# Job Creation Act

## Legal Insight

### Investing and Land Procurement in Indonesian National Strategic Projects Made Easier

In early 2021, the Government of the Republic of Indonesia issued Government Regulation No. 42 of 2021 concerning Making National Strategic Projects Easier (“**GR 42/2021**”) and Government Regulation No. 19 of 2021 concerning the Implementation of Land Procurement for the Public Interest (“**GR 19/2021**”). “National strategic project” is defined as a project and/or program carried out by the central government/regional governments/business entities and having strategic properties for the increase of growth and equitable development in efforts towards job creation and improvement of public welfare (“**National Strategic Projects**”). Both GR 42/2021 and GR 19/2021 are implementing regulations for Law No. 11 of 2020 on Job Creation (“**Job Creation Act**”), which amends a number of laws, in particular Law No. 2 of 2012 on Land Procurement for Development in the Public Interest (“**Law 2/2012**”). Our article on Law 2/2012 as amended by the Job Creation Act can be found [here](#).

GR 42/2021 contains further provisions on making procedures easier for the implementation of National Strategic Projects, which include provisions on planning, preparation, transactions, asset management, procurement, construction, operation and maintenance, and social conflict management. Meanwhile, general guidance on land procurement for National Strategic Projects can be found in GR 19/2021. These implementing regulations aim to accelerate and make easier the development of infrastructure as part of the National Strategic Projects.

A list of projects classified as National Strategic Projects is set out in a Presidential Regulation regarding the Acceleration of the National Strategic Project Implementation. Currently, the list can be found in Presidential Regulation No. 3 of 2016 as lastly amended by Presidential Regulation No. 109 of 2020 and encompasses such strategic sectors as road, bridge, port, airport, train, industrial zone, special economic zone, housing, dam, irrigation, clean water, sanitation, energy, coastal embankment (*tanggul pantai*), technology, and education.

The following are the highlights of the easier processes on the implementation of National Strategic Project and land procurement as provided in GR 42/2021 and GR 19/2021:

#### A. Making National Strategic Projects Easier

##### 1. Planning

GR 42/2021 offers a number of conveniences in relation to the planning of National Strategic Projects, including: (i) easier and accelerated licensing and non-licensing matters; (ii) spatial adjustments; (iii) land procurements; (iv) environmental studies; (v) utilization of forestry; (vi) adjustments to sectoral master plans (*Rencana Induk Sektoral*); and (vi) financial support.

##### 2. Preparation

In the preparation of National Strategic Projects, the appointed central or regional government(s) must deliver at least the following:

- a) feasibility studies;
- b) the suitability of the spatial and zonation plan;

- c) the determination of the location of the land to be procured for the National Strategic Project;
- d) environment related documents; and
- e) financing sources.

Apart from the above, the government may also provide a fiscal facility in the form of a Project Development Facility, i.e., a facility granted by the Minister of Finance to improve the effectiveness of: (i) the preparation implementation; and (ii) the implementation of the transaction itself. The Minister of Finance will set a priority list chosen from the National Strategic Projects eligible for the facility.

If an asset owned by a State Owned Enterprise (*Badan Usaha Milik Negara – “BUMN”*) overlaps with the development of a National Strategic Project, the relevant authority will provide financial support for the National Strategic Project concerned. However, the financial support will be limited to payments for the lease, demolition (*pembongkaran*), or transfer of part of the BUMN asset facility, and also for the rehabilitation of the BUMN asset(s).

### 3. Transaction

With regard to the transaction process, there are few noteworthy provisions that must be highlighted under GR 42/2021, regarding (i) the procurement of Business Entities who will carry out the National Strategic Project through a Public-Private Partnership (*Kerja Sama Pemerintah dan Badan Usaha/KPBU*) scheme (“**PPP Business Entity**”), (ii) the signing of agreements, (iii) the realisation of the financing.

During the preparation of the transaction, the Government of the Republic of Indonesia may grant a government guarantee (*Jaminan Pemerintah*) for the implementation of the National Strategic Projects. Such guarantees are given by reference to: (i) credit or Syariah financing; (ii) business feasibility; (iii) PPP and (iv) political risks.

For certainty, the procurement of the PPP Business Entity in the framework of National Strategic Projects will be carried out after the location of land to be acquired has been determined and the preparation referred to above has been completed.

The financing for the project must be secured and at least part of the fund disbursed in a maximum of 9 (nine) months after the PPP Business Entity signs the PPP agreement, with a maximum extension of 3 (three) months possible if the non-fulfilment is not caused by the PPP Business Entity’s failure. The extension will be subject to certain criteria, including force majeure, a change in government policy, design changes, obstruction of land acquisition, and/or other considerations that are considered crucial.

### 4. Construction

To make the construction phase easier, the relevant ministry/authority is obliged to issue a certificate of fitness for function (*sertifikat laik fungsi – “SLF”*) in accordance with the norms, standards, procedures and criteria of its competence. Such SLF will be used as a basis of the operation and maintenance of the construction phase.

### 5. Right to Match

The procurement for a PPP Business Entity for a project initiated by the business entity is carried out by providing the initiating business entity with the right to match. The right to match is given by giving the initiating business entity the opportunity to improve or update the original proposal on a project. In the event that another bidder submits an offer which is less than 80% (eighty percent) of the value of the bid proposal submitted by the initiating business entity, the other bidder must submit bid guarantees of 3% (three percent) up to 5% (five percent) of the value of the proposal submitted by the initiating business entity.

## B. Implementation of Land Procurement for the Public Interest

### 1. Additional Scope of Objectives for Development for the Public Interest

In order to accommodate more land areas for the public interest in Indonesia, both the Job Creation Act and GR 19/2021 have widened the scope of the public interest:

Scope of Public Interest	
Existing	New Addition based on Job Creation Act and GR 19/2021
<ul style="list-style-type: none"> <li>• national defense and security;</li> <li>• public roads, toll roads, tunnels, railways, train stations and railway operating facilities;</li> <li>• reservoirs, dams, weirs, irrigation, waterways and sanitation and other irrigation structures;</li> <li>• ports, airports and terminals;</li> <li>• oil, gas and geothermal infrastructures;</li> <li>• electricity generators, transmissions, substations, networks, and/or distribution;</li> <li>• government telecommunications and informatics networks;</li> <li>• waste disposal and processing sites;</li> <li>• Central Government or Regional Government hospitals;</li> <li>• public safety facilities;</li> <li>• Central Government or Regional Government public cemeteries;</li> <li>• social facilities, public facilities, and public green open spaces;</li> <li>• nature reserves and cultural reserves;</li> <li>• Central, Regional, or Village Government offices;</li> </ul>	<ul style="list-style-type: none"> <li>• upstream and downstream oil and gas industrial estates;</li> <li>• special economic zones;</li> <li>• industrial estates;</li> <li>• tourism areas.</li> <li>• food security areas;</li> <li>• the technology development zone;</li> </ul> <p>that initiated and controlled by the Central Government, Regional government, state owned enterprises or regional government owned enterprises.</p>

Scope of Public Interest	
Existing	New Addition based on Job Creation Act and GR 19/2021
<ul style="list-style-type: none"> <li>• arrangement of urban slum settlements and/or land consolidation as well as rental housing for low income community including for the construction of general housing and housing for special circumstances;</li> <li>• educational infrastructure or Central Government or Regional Government schools;</li> <li>• Central Government or Regional Government sports infrastructure;</li> <li>• public markets and public parking lots.</li> </ul>	<p>.</p>

### 2. Location of Construction

Mirroring the previous regulation, land procurement for development for the public interest is carried out through the following stages:

- a) planning;
- b) preparation;
- c) implementation; and
- d) delivery.

One of the obstacles that is often encountered in the process of land procurement for the public interest during the preparation stage is the determination by the Government of the location for the project to be implemented, i.e., the determination of the location of the development for the Public Interest as stipulated by a decree of the governor/regent/mayor that is used as a permit for land acquisition, change of land use, and transfer of land rights in the procurement of land for development in the Public Interest.

As a response to this issue, GR 19/2021 provides a clarity on the timeline for the Government's determination of the location. Subject to conditions being fulfilled, the determination must be issued by the Governor within 14 days from the application or if delegated to a Regent/Mayor, it must be issued within 7 days from the application. In the case of urgent National Strategic Projects and/or those where construction cannot be relocated, then, if the Government is unable to issue a Location Determination within the above mentioned time period, the applicant may request the Minister who organizes government affairs in the field of agrarian and land and governance ("**Minister of Agrarian and Land Affairs**") to make a determination and the Minister of Agrarian and Land must then issue the Location Determination within 7 days from the request.

3. Land Procurement for the Public Interest for areas which cover less than 5 (five) hectares

GR 19/2021 regulates in more detail small scale land procurement (areas of not more than 5 hectares) which had been briefly mentioned in Law 2/2012 as amended by the Job Creation Act. Under GR 19/2021, for efficiency and effectiveness, this small scale procurement may be carried out directly by the agencies requiring land and the parties entitled to the land (through, e.g., sale and purchase, swaps, other methods as agreed by the parties) or by land procurement by carrying out the 4 stages referred in Section B.2, in which case the location is determined by the Regent/Mayor.

4. Land Procurement for National Strategic Projects

Land procurement plan must be based on:

- a) the spatial plan; and
- b) the development priorities listed in the medium term development plan, strategic plan, and/or work plan of the Government/agency requiring the land.

Specifically for National Strategic Projects, in the event that a National Strategic Project has not been included in the current spatial plans, the Minister of Agrarian and Land Affairs will provide a recommendation regarding the suitability of the spatial utilization. In this matter, the settlement of land procurement (including the provision of land) for development for the public interest will be carried out by the Central Government.

In addition to the above, it is worth noting that GR 19/2021 has also added Regional Government Owned Enterprises (*Badan Usaha Milik Daerah* – "**BUMD**") to the definition of agencies/institutions requiring the land. Therefore, a BUMD will be able to procure land independently under GR 19/2021

Under GR 19/2021, in the event that a BUMN or BUMD in accordance with its authority has been able to procure land for a National Strategic Project, then the relevant business entity may procure the land.

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*This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions or matters. For more information, please contact us at [dentons.hprp@dentons.com](mailto:dentons.hprp@dentons.com) or Partners listed above.*

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