

Government Guarantees in The Implementation of Nusantara Capital City Public-Private Partnership

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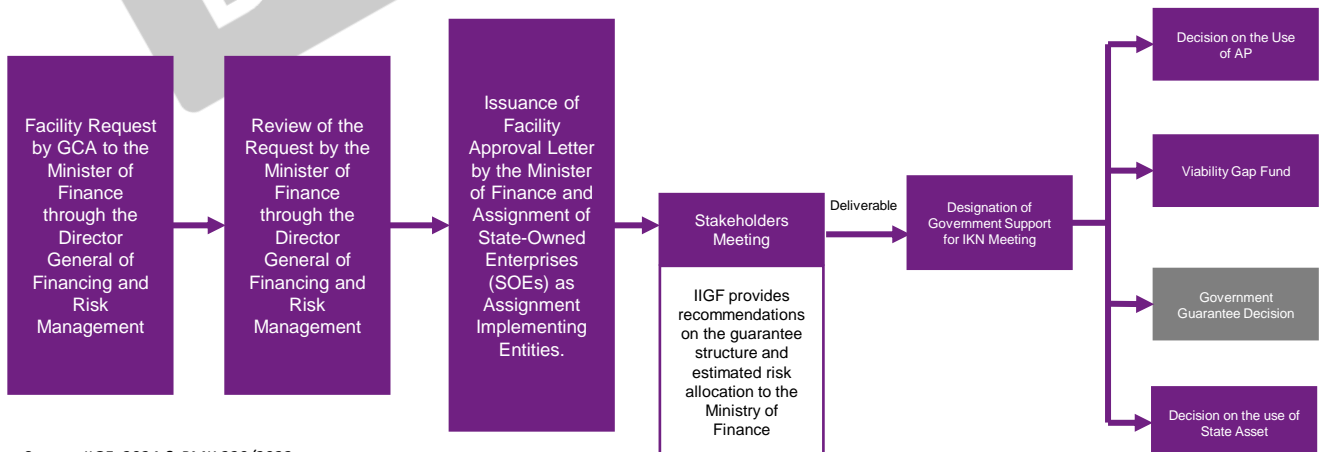
To foster the development of the National Capital City and offer assurance to potential investors, the Ministry of Finance has issued Minister of Finance Regulation Number 220/PMK.08/2022. This regulation pertains to Government Support for Public-Private Partnership and Creative Financing In Order To Expediting Infrastructure Provision in the National Capital City (referred to as "PMK 220/2022").

Funding for the preparation, development, and relocation of the National Capital, as well as for the administration of the Special Regional Government of the Nusantara Capital City, is derived from the State Revenue and Expenditure Budget ("Anggaran Pendapatan dan Belanja Negara/APBN") and/or other legitimate sources, in accordance with statutory provisions. One such potential source could take the form of Nusantara Capital City Public-Private Partnership ("IKN PPP").

To bolster funding initiatives from various legitimate sources, the government offers support for projects that align with laws and regulations governing the Nusantara Capital City Master Plan and the details of said Master Plan. The Minister of Finance may provide government support to bolster the IKN PPP scheme, which includes:

- a. Preparation and Transaction Implementation Facilities consist of: (i) Supporting Facilities for Implementing Funding Schemes; and (ii) Project Development Facilities;
- b. Government Guarantee;
- c. State Asset Utilization; and/or
- d. Viability Gap Fund.

Government support, as referred to in letters b to d above, may be provided for projects that receive Project Development Facilities as outlined in letter a(ii) above. The mechanism for applying for government support unfolds through the following stages:



Source: IIGF, 2024 & PMK 220/2022

In connection with the IKN infrastructure development plan under the IKN PPP scheme, a pivotal factor enticing business entities to invest is the government guarantee extended by the Minister of Finance, in collaboration with Indonesia Infrastructure Guarantee Fund ("IIGF") as the designated Guarantee Business Entity for infrastructure. Several essential provisions related to Government Guarantees in the IKN PPP scheme are detailed as follows:

1. Form and Mechanism of Infrastructure Guarantee for Providing Infrastructure through the IKN PPP

Article 29 of PMK 220/2022 stipulates that Infrastructure Guarantee through the IKN PPP scheme is a Government Guarantee implemented by the Minister of Finance in collaboration with IIGF. The Government Guarantee as mentioned above is carried out with the following provisions:

- a. Government guarantee for different infrastructure risks within a single IKN Infrastructure Provision between the Government through the Minister of Finance and IIGF is carried out through the division of Infrastructure Risks; and/or
- b. Government guarantee for the same infrastructure risks within a single IKN Infrastructure Provision between the Government through the Minister of Finance and IIGF is carried out through the division of the guaranteed amount of the guaranteed Infrastructure Risks.

To optimize and enhance IIGF's ability as a government guarantor in collaboration with the Minister of Finance, PMK 220/2022 allows IIGF to: (i) partner with multilateral financial institutions or similar entities, as per laws; and (ii) enhance IIGF's capacity through planned initiatives and additional state capital injections, following APBN mechanisms.

Furthermore, the Minister of Finance may provide liquidity support in the form of a backstop loss limit, which is a replacement for the excess portion of IIGF's guarantee by the Minister of Finance concerning claims that have been paid by IIGF.

2. Single Window Policy Mechanism for Government Guarantee in IKN PPP

To adhere to the principles of controlling and managing the financial risks of the state, the process of Government Guarantee for Infrastructure Provision is conducted through a single window policy mechanism. This approach prioritizes the cohesive determination of other government supports. IIGF implements the single window policy mechanism through the IKN Government Support Determination.

The single window policy mechanism by IIGF in Government Guarantee encompasses: (i) the guarantee issuance process; and/or (ii) the monitoring and management process of risks, claims, and payments. Article 31 of PMK 220/2022 outlines the guarantee issuance process in the single window policy, specifying at least:

- a. Implementation of analysis regarding the needs of Government Guarantee;
- b. Submission of proposals for risk sharing and exposure portion on risks.
- c. Development, deliberation, and execution of recourse agreements.
- d. Preparation and submission of approval statements; and/or
- e. Development, deliberation, and execution of the Government Guarantee agreement conducted by the Minister of Finance in collaboration with IIGF.

The signing of the Government Guarantee Agreement is carried out by the Minister of Finance, represented by the Directorate General of Financing and Risk Management, IIGF, and the Implementing Business Entity ("IBE") as the guarantee recipient.

3. Criteria for Government Guarantee and Infrastructure Risks

The Government Guarantee document is issued for the IKN infrastructure provision through the IKN PPP, which has met the eligibility criteria in terms of technical, economic, and financial aspects. The determination of eligibility as mentioned above is carried out in the IKN Government Support Determination.

In relation to the aspects that can be guaranteed, Article 35 of PMK 220/2022 stipulates that Government Guarantee for the IKN Infrastructure Provision through the IKN PPP is provided for infrastructure risks caused by:

- a. Actions or inaction by the Government Contracting Agency ("GCA"), or the government other than the GCA in situations where legal or regulatory provisions grant authority to the GCA or the government other than the GCA to undertake such actions.
- b. Policies of the GCA or the government other than the GCA;
- c. Unilateral decisions by the GCA or the government other than the GCA;
- d. Inability of the GCA to fulfill an obligation assigned to them by the IBE based on the IKN PPP Agreement (breach of contract).

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The Infrastructure Risks as mentioned above are determined through the IKN Government Support Determination.

The Infrastructure Risk categories refer to documents issued by IIGF or regulatory provisions. The reference to Infrastructure Risk categories is used for guidance: (i) by the GCA in developing the IKN PPP Agreement; (ii) by the Guarantor in conducting the analysis of the needs for IKN Infrastructure Guarantee through IKN PPP in the IKN Government Support Determination; and (iii) by the IBE to participate in capital injection for IKN infrastructure provision through IKN PPP.

4. Guarantee Fee

For the Government Guarantee provided, the government, represented by the Minister of Finance and IIGF, may impose a guarantee fee. The imposition of the guarantee fee as mentioned above can be conducted separately by the government, represented by the Minister of Finance, and IIGF. The guarantee fee is imposed on the party with the most significant interest and/or the party that most needs the Government Guarantee.

In determining the amount of the guarantee fee to be imposed, the government, represented by the Minister of Finance and IIGF, may take into account:

- a. The financial compensation value for the type of Infrastructure Risk to be guaranteed
- b. Costs incurred to provide Government Guarantee; and/or
- c. Fair profit margin.

5. Recourse Mechanism

If the Minister of Finance and/or IIGF, serving as the guarantor in the Government Guarantee, have fulfilled their obligations to the guarantee recipient according to the Government Guarantee Agreement, GCA is obliged to fulfill recourse. The recourse fulfillment mechanism is implemented by taking into account:

- a. If GCA is a ministry, institution, or IKN Authority, the recourse fulfillment is carried out through the APBN mechanism and is exempted from central government recourse imposition; or
- b. If GCA is a state-owned enterprise, recourse fulfillment is conducted through corporate mechanisms based on the provisions of laws and regulations.

6. Key Takeaways

- a. One notable distinction between Government Guarantees in IKN PPPs and those in conventional PPPs lies in how they are administered. In IKN PPPs, the Government Guarantee is jointly provided by the Minister of Finance and IIGF, entailing risk distribution and/or allocation of guarantee amounts. This arrangement offers potential investors greater assurance, given the direct involvement of the APBN in fulfilling Government Guarantee obligations.
- b. Furthermore, in the IKN PPP scheme, the application for Government Guarantee is also carried out jointly with the approval of the use of AP and other government support. This streamlined approach can shorten and simplify the implementation process of IKN PPPs compared to the process involved in conventional PPPs, where the requests for government support, approval of the use of AP, and other government supports are submitted separately.
- c. PMK 220/2022 has outlined general provisions regarding Government Guarantees and Government Support. However, it also requires more detailed regulations regarding the provision of Government Guarantees to be addressed in the Regulation issued by the Directorate General of Financing and Risk Management. These technical guidelines are essential as they may serve as reference points for prospective project initiators in drafting Feasibility Studies and engaging in discussions with potential Lenders.

The article above was prepared by Dentons HPRP's lawyers

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