



Client Alert April 2023 New Capital City of Nusantara: Involvement of Private Sectors through Public-Private Partnership Scheme

Overview

The President of the Republic of Indonesia, Joko Widodo, has decided to execute a long-awaited plan to move the Indonesian capital city from Jakarta to East Kalimantan, known as the *Ibu Kota Nusantara* or “**IKN**”. The decision has been cemented by the enactment of Law No. 3 of 2022 on State Capital (“**Law 3/2022**”) which mandates IKN as a special region treated equally as a province.

Based on the Appendix of Presidential Regulation No. 63 of 2022 on Details of Master Plan for *Ibu Kota Nusantara*, the IKN development will be carried out in the following five (5) stages: (i) 1st stage in 2022-2024 (development of basic infrastructures and relocation of executive, legislative, judiciary and civil servants); (ii) 2nd stage in 2024-2029 (construction of research and development facilities, construction of international health facilities, and construction of primary and secondary public transport facilities); (iii) 3rd stage in 2030-2034 (development of mass public transportation, waste treatment installation, and drinking water treatment installation); (iv) 4th stage in 2035-2039 (infrastructure in education and health sector has developed rapidly); and (v) 5th stage in 2040-2045 (sustainable industrial development and steady population growth). This development of IKN cost significant government’s budget with a total estimated cost of approximately Rp 466.4 trillion Rupiah. The Government foresees the financing through 3 (three) different sources, among others through, (i) government financing and expenditure through State Budget (*Anggaran Pendapatan dan Belanja Negara* – “**APBN**”); (ii) other legitimate sources which include private sector funding, creative financing and IKN Exclusive Taxes and/or IKN Exclusive Fees; or (iii) a mix of

government financing and other legitimate sources which includes (but not limited to), IKN Public Private Partnership (“**IKN PPP**”). This article will focus on IKN PPP which allows involvement of private sectors in infrastructure provision in IKN.

Private Sectors’ Involvement in IKN Infrastructure Provision through IKN PPP

Under Government Regulation No. 17 of 2022 on Funding and Budget Management for Preparation, Construction, and Transfer of State Capital and Governance of Nusantara Capital Special Region (“**GR 17/2022**”), private sectors may actively contribute to financing IKN infrastructure development through PPP scheme. Under the regulation, only infrastructure sectors stipulated within IKN masterplan¹ and IKN detailed masterplan² are available to be funded under such scheme.

At a glance, IKN PPP implementation is quite similar to conventional PPP. However, as IKN is a special region which governed by Nusantara Authority hence in addition to the usual Government Contracting Agency (“**GCA**”) that comes from national/regional authority, in the new regulation it also includes head of the Nusantara Capital Authority as one of the parties that can be acting as a GCA to form partnership with Implementing Business Entity (“**IBE**”). IKN PPP is conducted through following stages:

- a. Planning Stage, where GCA conducts identification, determination, and budget estimation for the IKN PPP.
- b. Preparation Stage, where GCA prepares pre-feasibility study, plan for government support and guarantee, investment return procedure, and land availability.
- c. Transaction Stage, where GCA will conduct IBE selection process and later enter into PPP agreement with the selected IBE.
- d. Agreement Implementation Stage, where the selected IBE will design, finance, construct, and operate (subject to the selected PPP scheme) the infrastructure and further transfer the constructed infrastructure to the government after the partnership period ends.

In transaction stage, private sectors will be selected by GCA through a procurement process and further enter into PPP agreement with the GCA. In GR 17/2022, the selected IBE is required to reach financial close for IKN PPP within 6 (six) months (comprises of 4 (four) months of initial period and 2 (two) months of extension period) after signing the PPP agreement. One of the key highlights under this GR 17/2022 is that it allows the selected IBE to obtain financing from Indonesia Investment Authority (INA).

IKN PPP Proposed by the Private Sectors

Similar with the general PPP provision, GR 17/2022 opens the opportunity for private sectors (unsolicited) to initiate the IKN PPP. For private sectors to initiate the IKN PPP, the following criteria must be fulfilled:

- a. The proposed IKN PPP is included in IKN master plan and/or IKN detailed master plan;
- b. The proposed IKN PPP is economically and financially feasible; and
- c. Private sector as the initiator has the financial capacity to provide financing for the implementation of infrastructure provision.

There will be benefits that can be given to the private sectors by initiating the IKN PPP. As initiator of the IKN PPP, the respective private sectors may obtain compensation in several forms, including: (i) additional score of 10% in procurement process; (ii) provision of right to match in procurement process; and (iii) purchase of the initiative of IKN PPP, including the intellectual property rights.

¹ Appendix of Law 3/2022

² Appendix of PR 63/2022

Private Sectors' Return on Investment from IKN PPP

As stipulated under GR 17/2022, one of the purposes of IKN PPP implementation is to provide certainty for the private sector with regard to its investment. In line with such purpose, GR 17/2022 provides the private sector's investment can be returned in the form of (i) user charge; (ii) Availability Payment ("AP"); and/or (iii) other forms in accordance with the laws and regulations.

User Charge

In user charge scheme, the IBE will receive their return on investment from compensation of services provided from the user. As stipulated under the regulation, GCA will determine the initial tariff for the services provided in using the constructed infrastructures by considering the following aspects:

- a. Return on capital expenses;
- b. Operation expenses; and
- c. Reasonable profits within a certain period.

In case where the initial tariff set by GCA is unaffordable by the user, GCA may set the tariff based on user's capability to pay for the constructed infrastructure. In such case, applicable to IKN PPP initiated by GCA, benefits may be obtained by the private sectors as the IBE may receive government supports to ensure the investment return of such IBE. In general, several forms of government support from state budget may be provided to the IBE for the use of user charge scheme, including: (i) partial construction support; (ii) Viability Gap Fund ("VGF"); and/or (iii) government guarantee from Indonesia Infrastructure Guarantee Fund ("IIGF").

Availability Payment

Aside from user payment, investment return from IKN PPP can also be obtained by the IBE through AP. In essence, under the AP scheme, investment return will be gradually paid via GCA's budget allocation based on the fulfilment of output specification and service level provided by IBE throughout the cooperation period. Under AP scheme, while also considering GCA's fiscal capacities, the amount of payment obtained by the IBE will be based upon the following:

- a. Capital expenses;
- b. Operation expenses; and/or
- c. Reasonable profits for IBE.

Furthermore, IBE is entitled to receive AP after the fulfilment of certain conditions:

- a. Cooperated infrastructures have been constructed and announced to be ready for operation; and
- b. GCA has declared that the infrastructure has fulfilled the service indicator in accordance with the IKN PPP agreement.

In ensuring the feasibility of the project, AP scheme may be accompanied with Government Support from State Budget, including but not limited to: (i) government guarantee from IIGF; (ii) partial construction support; and/or (ii) VGF.

Government Support for IKN PPP

In addition to the provided investment return scheme, as aforementioned above, the Government also provide supports and incentives to increase financial viability and project efficiency of IKN PPP project. Such government support can be obtained from (i) ministries, institutions, regional government, and/or National Capital Authority; and/or (ii) ministers, while considering the national fiscal facilities. Government Support for IKN PPP shall be implemented in the form of the following:

- a. Facility for preparation and transaction phase of IKN PPP;
- b. VGF;
- c. Tax incentives;
- d. Government guarantee via IIGF; and/or
- e. State-Owned Assets (*Barang Milik Negara* – "BMN") Utilization.

Details on the form of Government Support as aforementioned above is further regulated under Minister of Finance Regulation No. 220 of 2022 on Government Support for Public Private Partnership and Creative Financing in Accelerating Infrastructure Development in Nusantara State Capital (“**MOF Regulation 220/2022**”), in exception to tax incentives and state-owned assets utilization. Nonetheless, compares to the conventional PPP, GR 17/2022 & MOF Regulation 220/2022 introduces a more flexible provision with regards to the government supports as it allows the possibility to combine AP and other investment return scheme. Such mechanism is unknown in conventional PPP practice which prohibits the investor to combine AP with including but not limited to, AP and VGF.

Aside of the above, in order to complete and expedite the implementation of IKN PPP, it is also expected for the government to issue implementing regulations for incentives and government support for IKN PPP in the form of tax incentives and state-owned assets utilization.

Current Implementing Regulation for PPP IKN

On the date this client alert was published, the following implementing regulation with regards to the PPP IKN has been issued:

a. Minister of National Development Planning Regulation Number 6 of 2022 on Procedures for Implementing Public-Private Partnership in Ibu Kota Nusantara

The regulation regulates in detail regarding the implementation of IKN PPP, including the GCA for IKN PPP and the required stages for both solicited and unsolicited IKN PPP. In addition, the regulation also governs the procedure for transition from solicited IKN PPP to unsolicited IKN PPP, and vice versa.

b. National Public Procurement Agency Regulation Number 1 of 2023 on Procedures for Procurement of Business Entities through Cooperation between Government and Business Entities in Ibu Kota Nusantara (“Perka LKPP 1/2023”)

The regulation consists of specific provision on the procedures for procurement to select the IBE for IKN PPP, both solicited IKN PPP and unsolicited IKN PPP. Further, the regulation provides provision on the parties for procurement of IBE for IKN PPP (including GCA for IKN PPP) and the use of guarantee in the procurement of IBE for IKN PPP.

c. MoF Regulation 220/2022

Besides regulating the aforementioned government support for PPP IKN, MoF Regulation 220/2022 also regulates the provision for Project Development Facility (“**PDF**”) for GCA in preparation for PPP IKN. Such PDF’s scope of work may cover Preparation Stage, Transaction Stage, and/or Agreement Implementation Stage for both solicited and/or unsolicited.

Key Takeaways

With reference to previous elaborations, below are several key takeaways which may be taken for considerations:

(i) Validity of Law 3/2022 which Mandates the New Capital City for Indonesia

Following to its enactment, Law 3/2022 has been faced with a constitutional review to the Constitutional Court.³ However, the Constitutional Court is declining the request therefore the long-awaited plan to move the Indonesian capital city from Jakarta to East Kalimantan is still valid.

(ii) IKN PPP as an Opportunity for Private Sectors’ Involvement in IKN Infrastructure Provisions

In year 2023, there will be a plenty of room for private sector involvement in the development of IKN infrastructure as Minister of Public Works and Housing has announced that there will be procurement for 30 (thirty) projects of basic infrastructure development in IKN with a total value of 23.7 trillion Rupiah. Specifically, private sector will have the opportunity to penetrate the IKN transportation infrastructure market as the Ministry of Transportation has announced several transportation infrastructures to be developed in IKN, including land transportation (bus rapid transit,

³ Constitutional Court Verdict Nomor 39/PUU-XX/2022 dated 11 May 2022

autonomous minibus, and autonomous BRT), water transportation (tourist wharves and container ports), air transportation (IKN Airport), and railways (Sepinggan Airport Railway).⁴

Further, by the enactment of GR 17/2022, private sector involvement in the development of IKN infrastructure through IKN PPP scheme. Under such scheme, existing provisions aim to provide security and certainty on investors' investment return.

(iii) Supports from Government to Private Sector in IKN Infrastructure Provision

To increase financial viability and project efficiency, Government may provide its support in several forms for IKN PPP, including PDF, VGF, tax incentives, IIGF, and BMN utilization. Further, it also introduces a more flexible provision compared to the conventional PPP provision as it opens the possibility to combine AP with other investment return scheme.

(iv) More-detailed Provision on IKN PPP Transaction Phase by the Private Sectors

With the enactment of GR 17/2022, specific regulation in place to govern private sectors' involvement on the rapid growth of IKN infrastructure provision through IKN PPP is set. In addition to the GR 17/2022, Government has enacted Perka LKPP 1/2023 as a more-detailed provision on IBE procurement specifically for IKN PPP. This will be important to be noticed by the private sector for taking part in the IKN infrastructure provision through IKN PPP scheme.

⁴ [Menhub Beberkan Rencana Pembangunan Infrastruktur Transportasi di IKN, Apa Saja? \(kompas.com\)](https://www.kompas.com)

For further information and/or inquiries related to this alert, you may contact:

Anthony Pratama Chandra

Partner

Hermawan Juniarto & Partners

Email: anchandra@hjplaw-deloitte.com

Nirmala Adisti Karunia

Managing Associate

Hermawan Juniarto & Partners

Email: nkarunia@hjplaw-deloitte.com

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Legal

Deloitte Legal means the legal practices of DTTL member firms, their affiliates or their related entities that provide legal services. The exact nature of these relationships and provision of legal services differs by jurisdiction, to allow compliance with local laws and professional regulations. Each Deloitte Legal practice is legally separate and independent, and cannot obligate any other Deloitte Legal practice. Each Deloitte Legal practice is liable only for its own acts and omissions, and not those of other Deloitte Legal practices. For legal, regulatory and other reasons, not all member firms, their affiliates or their related entities provide legal services or are associated with Deloitte Legal practices.

About Hermawan Juniarto & Partners

Hermawan Juniarto & Partners is a member of Deloitte Legal network. Hermawan Juniarto & Partners provides only legal services, and it is legally separate and independent from other Deloitte entities.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.