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PRESIDENTIAL REGULATION

NUMBER 38 YEAR 2015

CONCERNING

COOPERATION BETWEEN GOVERNMENT AND BUSINESS ENTITIES IN INFRASTRUCTURE PROVISION

WITH THE GRACE OF THE SUPREME GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

- Considering :
- a. whereas the availability of adequate and sustainable infrastructure is an urgent need, to support the implementation of national development in order to improve the national economy, the welfare of society and the competitiveness of Indonesia in a global context;
 - b. whereas in order to accelerate infrastructure development, it is necessary to take comprehensive steps to create an investment climate that encourages the participation of business entities in the provision of infrastructure based on principles of good corporate governance;
 - c. whereas in order to encourage and improve cooperation between government and business entities in the provision of infrastructure and social services, it is necessary to protect and safeguard the interests of consumers, communities and business entities equitably;
 - d. whereas based on the considerations referred to in letter a, letter b, and letter c, it is necessary to regulate the Cooperation Between Government and Business Entities in the Provision of Infrastructure so that the cooperation can be done in a broad, expeditious, effective, efficient, comprehensive and sustainable way;
 - e. whereas based on the considerations referred to the letter a, letter b, letter c, and letter d, it is necessary to enact the

Presidential Regulation concerning stipulate Cooperation Between Government and Business Entities in the Provision of Infrastructure;

In view of : Article 4 Paragraph (1) of the Constitution of the Republic of Indonesia Year 1945;

HAS DECIDED TO:

Enact :

PRESIDENTIAL REGULATION CONCERNING COOPERATION
BETWEEN GOVERNMENT AND BUSINESS ENTITIES IN
INFRASTRUCTURE PROVISION

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Presidential Regulation what is meant by:

1. Minister/Head of Institution is the head of ministry/head of institution or delegated party to act in representation of the ministry/institution based on the laws and regulations, who has the scope, duty and responsibility in the infrastructure sector regulated in this Presidential Regulation.
2. The Head of the Region is the governor of the province, or regent/mayor of the regency/city or delegated party to represent the relevant head of region based on the laws and regulations.
3. The Government Contracting Agency hereinafter referred to as GCA is the Minister/Head of Institution/Head of Region, or State Owned Enterprise/Regional Owned Enterprise as provider or administrator of the infrastructure based on the laws and regulations.
4. Infrastructure is the technical, physical, hardware, and software system facilities required to provide services to society and to support structural networks that enable the improvement of economic and social development.
5. Infrastructure Provision is the activity that involves construction works aimed at building or improving the infrastructure capacity and/or the infrastructure management and/or infrastructure maintenance activities aimed at improving the usefulness of infrastructure.
6. Public Private Partnership, hereinafter referred to as PPP, is the cooperation between government and Business Entity in infrastructure provision for the public interest in accordance with the specification previously determined by the Minister/Head of Institution/Head of Region/State Owned Enterprise/Regional Owned Enterprise, which partially or fully uses Business Entity's resources, with particular regard to the allocation of risk between the parties.

7. Business Entity is a State Owned Enterprise, Regional Owned Enterprise, private entity in the form of Limited Liability Company, foreign entity, or cooperative.
8. Business Entity that conducts PPP, hereinafter referred to as the Project Company, means a Limited Liability Company established by the winning bidder or directly appointed.
9. Selection means a method to procure a Business Entity for PPP preparation, which involves as many participants as possible through open announcement or invitation.
10. Bidding means a method to procure a Project Company for PPP implementation, which involves as many participants as possible through open announcement or invitation.
11. Direct Appointment means a method to procure a Project Company for PPP implementation, through negotiation with a single participant.
12. Government Support means fiscal and/or other form of support provided by the Minister/Head of Institution/Head of Region and/or minister responsible for administering financial and state asset affairs in accordance with their authority based on the laws and regulations, in order to improve the financial feasibility and effectiveness of a PPP.
13. Viability Support means Government support in the form of financial contribution provided to a PPP Project by the minister responsible for administering financial and state asset affairs.
14. Government Guarantee means financial compensation provided by the minister responsible for administering financial and state asset affairs to the Project Company through a risk allocation scheme for the PPP Project.
15. Infrastructure Guarantee means the granting of a guarantee upon the GCA's financial obligations in accordance with the guarantee agreement.
16. Availability Payment means a periodic payment by the Minister/Head of Institution/Head of Region to the Project Company for the availability of the infrastructure service in accordance with the quality and/or other criteria specified in the PPP agreement.

CHAPTER II

PURPOSES AND PRINCIPLES OF PPP

Article 2

- (1) The Minister/Head of Institution/Head of Region may cooperate with a Business Entity in Infrastructure Provision.
- (2) Public Private Partnership in Infrastructure Provision conducted through PPP scheme is based on the terms and conditions stipulated in this Presidential Regulation.

Article 3

The purpose of conducting PPP is:

- a. to meet the funding needs for Infrastructure Provisions in a sustainable manner through the use of private funding;
- b. to accomplish Infrastructure Provision with quality, effectiveness, efficiency, accuracy, and promptness;
- c. to create an investment environment that promotes the participation of Business Entities in the Infrastructure Provision based on principles of good corporate governance;
- d. to promote the principle that the user pays for the service received, or in certain cases considering the ability of the user to pay; an/or
- e. to provide certainty to the Business Entities about the return on investment in the Infrastructure Provision through periodic payment by government to Business Entity.

Article 4

PPP is conducted based on the following principles:

- a. Partnership, meaning that cooperation between government and Business Entities is conducted based on the laws and stipulations that take into account the needs of both parties;
- b. Benefit, meaning that infrastructure provision is conducted by governments with Business Entities to provide social and economic benefits for society;
- c. Competition, meaning that the procurement of a Business Entity cooperation partner is conducted fairly, openly and transparently, with consideration to the principle of fair business competition;
- d. Control and management or risk, meaning that cooperation in Infrastructure Provision is conducted with an assessment of risk, the development of a management strategy, and mitigation of risk;
- e. Effectiveness, meaning that cooperation in Infrastructure Provisions is able to accelerate the development as well as increase the quality of infrastructure management and maintenance services; and
- f. Efficiency, meaning that cooperation in Infrastructure Provision helps meet the funding needs in a sustainable way through the support from private funding.

CHAPTER III

TYPES OF INFRASTRUCTURE AND FORM OF COOPERATION

Article 5

- (1) The infrastructure that can be cooperated based on this Presidential Regulation is economic infrastructure and social infrastructure.
- (2) The types of economic infrastructure and social infrastructure referred to in paragraph (1) include the following:
 - a. Transportation infrastructure;
 - b. Road infrastructure;
 - c. Water resources and irrigation infrastructure;
 - d. Drinking water infrastructure;
 - e. Centralized waste water management infrastructure systems;
 - f. Local waste water management infrastructure systems;
 - g. Waste management infrastructure systems;
 - h. Telecommunications and informatics infrastructure;
 - i. Electric power infrastructure;
 - j. Oil and gas and renewable energy infrastructure;
 - k. Energy conservation infrastructure;
 - l. Urban facilities infrastructure;
 - m. Education facilities infrastructure;
 - n. Facilities and infrastructure for sports and art;
 - o. Area infrastructure;
 - p. Tourism infrastructure;
 - q. Health infrastructure;
 - r. Penitentiary Infrastructure; and
 - s. Residential infrastructure.

- (3) PPP can be for infrastructure provision that comprises a combination of 2 (two) or more types referred to in paragraph (2).
- (4) For the purpose of increasing the feasibility of a PPP and/or providing additional benefits to society, a PPP may involve activities for the provision of commercial facilities.
- (5) Further provisions regarding other types of economic and social infrastructure may be stipulated by the minister responsible for administering matters in the field of national development planning.

CHAPTER IV

GOVERNMENT CONTRACTING AGENCY (GCA)

Part One

Minister/Head of Institution/Head of Region

as GCA

Article 6

- (1) In the implementation of PPP, the Minister/Head of Institution/Head of Region acts as GCA.
- (2) The determination of the Minister/Head of Institution/Head of Region as GCA is done in accordance with the legislation in the field of sector.

Article 7

- (1) In the case of a PPP that combines two (2) or more types of infrastructure, the Ministers/Heads of Institutions/Heads of Regions that have the authority over the cooperated infrastructure sectors based on the legislation will act together as GCA.
- (2) The Ministers/Heads of Institutions/Heads of Regions that have the authority over the infrastructure sectors which will be in the cooperation as referred to in paragraph (1) will sign a memorandum of understanding regarding the GCA.
- (3) The memorandum of understanding referred to in paragraph (2) shall at least contain:
 - a. agreement about the party that becomes the coordinator of the GCA;
 - b. agreement regarding the allocation of tasks and budgets for the preparation, transaction, and management of the PPP; and

- c. the PPP implementation period.

Part Two

State Owned Enterprise or Regional Owned Enterprise

as GCA

Article 8

State Owned Enterprises and/or Regional Owned Enterprises may act as GCA, as regulated by the sector's legislation.

Article 9

In the case that a State Owned Enterprise and/or a Regional Owned Enterprise acts as GCA, the PPP is implemented through an agreement with the implementing Business Entity.

CHAPTER V

LAND ACQUISITION

Article 10

- (1) Land acquisition for a PPP will be carried out by the Government in accordance to the laws and regulations regarding land acquisition for development in the public interest.
- (2) The source of funding for land acquisition for a PPP is APBN (State Budget) and/or APBD (Local Government Budget).
- (3) In the case the GCA is a State Owned Enterprise and/or a Regional Owned Enterprise, the source of funding for land acquisition is from the budget of the State Owned Enterprise /Regional Owned Enterprise or from the Business Entities through cooperation with the concerned State Owned Enterprise/ Regional Owned Enterprise.
- (4) In the case that the PPP is financially feasible, the implementing Business Entity may repay partly or fully the cost of land acquisition that has been carried out by the Minister/Head of Institution/Head of Region.
- (5) The provisions referred to in paragraph (4) must be included in the tender documents for the procurement of implementing Business Entity.

CHAPTER VI

RETURN ON INVESTMENT OF THE BUSINESS ENTITY

Article 11

- (1) The GCA determines the form of investment return that covers the capital cost, operational cost, and profit of the implementing Business Entity.
- (2) The returns on investment of the implementing Business Entity in the provision of Infrastructure is sourced from:
 - a. payment from the user in the form of tariffs;
 - b. Availability Payment; and/or
 - c. other forms that do not conflict with the legislation.

Article 12

- (1) In terms of the return on investment of the implementing Business Entity from payment by user in the form of tariffs, the GCA will set the initial tariff for infrastructure provision.
- (2) Initial tariffs and their adjustment are determined to ensure a return on investment that covers capital cost, operational cost, and profit within a determined period of time.
- (3) In the case that, based on the considerations from the GCA, the tariff referred to in paragraph (2), cannot be determined to return the entire investment by the implementing Business Entity, the tariff can be determined by the capacity of the user.
- (4) In case that the tariff is determined based on the capacity of the user, the GCA will provide Viability Support so that the implementing Business Entity may get the return on investment referred in paragraph (2).
- (5) Viability Support as referred in paragraph (4) will only be given to PPPs that have social interest and benefit, after the Minister/Head of Institution/Head of Region has completed a thorough study on the social benefits.

Article 13

- (1) In the case that the return on investment of the implementing Business Entity is sourced from Availability Payment, the GCA will budget for Availability Service Payment funds for the Infrastructure Provision conducted by implementing Business Entity during the operation period set in the Cooperation Agreement.
- (2) Budgetary funds for Availability Payment as referred to in paragraph (1), will be calculated considering:
 - a. capital cost;

- b. operational cost; and/or
 - c. profits of the implementing Business Entity
- (3) In the event that the implementing Business Entity operates the cooperated infrastructure in accordance with the conditions specified in the PPP agreement, the Minister/Head of Institution/Head of Region will make the Availability Payment to the implementing Business Entity, through the budget of the Ministry/Institution/Regional Government.
- (4) The GCA will make the Availability Payment to the implementing Business Entity if it fulfills the following conditions:
- a. the cooperated infrastructure has been built and declared ready to operate; and
 - b. the Minister/Head of Institution/ Head of Region has stated that the infrastructure has met the infrastructure service indicators as set forth in the Cooperation Agreement.
- (5) Further provisions regarding Availability Payment will be stipulated in the regulations of the ministry responsible for the field of finance and state's wealth and/or the minister responsible for matters of government domestic affairs.

CHAPTER VII

PPP BASED ON THE INITIATIVE FROM BUSINESS ENTITY

Article 14

- (1) The Minister/Head of Institution/Head of Region initiates the provision of infrastructure to be cooperated with the Business Entity through a PPP scheme.
- (2) Notwithstanding the provision in paragraph (1), a Business Entity may submit initiatives to the Minister/Head of Institution/Head of Region.
- (3) Infrastructure Provision that may be initiated by a Business Entity must meet the following criteria:
- a. technically integrated with the master plan of the sector concerned;
 - b. economically and financially feasible; and
 - c. the Business Entity that proposes the initiative has adequate financial capability to finance the implementation of the Infrastructure Provision.
- (4) The proponent Business Entity shall prepare the feasibility studies for the proposed PPP.

- (5) The Business Entity that initiates a PPP may be given the following alternatives for compensation:
- a. additional value of 10% (ten per cent);
 - b. the right to bid by the initiating Business Entity in relation with the best bidder (right to match), in accordance with the result of the evaluation of the tender process;
or
 - c. the purchase of the PPP initiative, such as the corresponding Intellectual Property Rights by the Minister/Head of Institution/Head of Region or by the winning bidder.
- (6) The form of compensation referred to in paragraph (2), will be included in the approval by the Minister/Head of Institution/Head of Region.
- (7) In the case the initiating Business Entity has obtained compensation as referred to in paragraph (5) letters a,b,c, the entire feasibility study and supporting documents, including the corresponding Intellectual Property Rights will become the property of the Minister/Head of Institution/Head of Region.
- (8) The Minister/Head of Institution/Head of Region may change or make additions to the feasibility study and supporting documents without prior consent from the initiating Business Entity, with regards to the entire feasibility study and supporting documents, including Intellectual Property Rights as referred to in paragraph (7).
- (9) A PPP initiated by a Business Entity may be given Government Guarantee in accordance with the applicable legislation.

CHAPTER VIII

GOVERNMENT SUPPORT AND GOVERNMENT GUARANTEE

Article 15

- (1) The Minister/Head of Institution/Head of Region may give Government Support to a PPP in accordance with the scope of PPP activities.
- (2) Government Support as referred to in paragraph (1) will be included in the tender documents for the procurement of the implementing Business Entity.

Article 16

- (1) The Minister responsible for government affairs in the field of finance and state's wealth may agree on the provision of Government Support in the form of Viability Support and/or tax incentives in accordance with the legislation, based on the proposal by the GCA.

- (2) The form and procedures for Viability Support as referred to in paragraph (1), shall be further regulated by the minister responsible for government affairs in the field of finance and state's wealth.
- (3) The Minister/Head of Institution/Head of Region may give other forms of Government Support in accordance with the legislation.

Article 17

- (1) The government may provide Government Guarantee to a PPP.
- (2) Government Guarantee as referred to in paragraph (1), is given in the form of Infrastructure Guarantee.
- (3) Government Guarantee is given in accordance with principles of management and control of financial risk in the State Budget.
- (4) Control and management of the risk of the Government Guarantee referred to in paragraph (3) is carried out by the minister responsible for government affairs in the field of finance and state's wealth.
- (5) The minister referred to in paragraph (4), in carrying out their duties and functions is authorized to:
 - a. establish the criteria for the provision of Government Guarantee to be given to a PPP;
 - b. ask and obtain any data and information required from the parties associated with the PPP who are requesting Government Guarantee;
 - c. establish forms, procedures and mechanisms for the Government Guarantee to be given to PPPs; and
 - d. stipulate the granting of a Government Guarantee to a Business Entity toward infrastructure provision.
- (6) The Government Guarantee referred to in paragraph (2), shall be included in the tender documents.
- (7) Further provisions about the forms, procedures and mechanism for Government Guarantee shall be further regulated by the minister responsible for government affairs in the field of finance and state's wealth.

Article 18

- (1) The Government Guarantee may be given by the minister responsible for government affairs in the field of finance and state's wealth through the state owned company for infrastructure guarantees.

- (2) Further provisions on Government Guarantee as referred to in paragraph (1) will be regulated by a separate Presidential Regulation.

CHAPTER IX

PARTIAL FUNDING OF PPP BY GOVERNMENT

Article 19

- (1) The GCA may finance the provision of Infrastructure in part.
- (2) The Provision of Infrastructure as referred to in paragraph (1) will be implemented by the implementing Business Entity.
- (3) The selection of an implementing Business Entity as referred to in paragraph (2) will be carried out through procurement of the implementing Business Entity as set forth in this Presidential Regulation.

CHAPTER X

PPP PLANNING

Part One

General

Article 20

- (1) The Minister/Head of Institution/Head of Region plans the Infrastructure activities to be undertaken in cooperation with Business Entities.
- (2) PPP Planning comprises, among others:
 - a. identification and determination of PPPs;
 - b. PPP budgeting; and
 - c. PPP categorization.

Part two

PPP Identification and Determination

Article 21

- (1) The Minister/Head of Institution/Head of Region identifies the Infrastructure Provision that will be carried out in cooperation with Business Entities.
- (2) The identification of the Infrastructure Provision shall consider at least:
 - a. conformity with the National Medium Term Development Plan/Regional Medium Term Development Plan and the infrastructure sector strategic plan;
 - b. conformity with the Spatial Planning
 - c. linkages between infrastructure sectors and between regions;
 - d. analysis of social costs and benefits; and
 - e. analysis of Value for Money.

Article 22

- (1) Infrastructure Provision to be carried out in cooperation with Business Entities must be accompanied by a preliminary study.
- (2) The preliminary study referred to in paragraph (1) will include at least:
 - a. the plan for PPP form
 - b. the plan for project financing scheme and funding sources; and
 - c. the plan for the cooperation proposal, to cover schedule, processes, and evaluation method.

Article 23

In the identification of a PPP, the Minister/Head of Institution/Head of Region shall conduct public consultation.

Article 24

1. Based on the result of the preliminary study referred to in Article 22 and the public consultation referred to in Article 23, the Minister/Head of Institution/Head of Region will establish a proposed planning list of PPPs .

2. The proposed planning list of PPPs referred to in paragraph (1) will be submitted by the Ministers/Heads of Institutions/Heads of Regions to the minister in charge of government affairs in the field of national development planning.

Article 25

1. The preparation of the planning list of PPPs shall be based on the proposed lists submitted by the Ministers/Heads of Institutions/Heads of Regions.
2. The determination of the planning list of PPPs will be based on the level of readiness, by the minister responsible for government affairs in the field of national development planning.
3. The planning list of PPPs referred to in paragraph (2) will be published and disseminated to the public.

Part Three

PPP Budgeting

Article 26

The Minister/Head of Institution/Head of Region/State Owned Enterprise/Regional Owned Enterprise will budget funds for planning, preparation, transaction, and management of PPPs in accordance with the legislation.

CHAPTER XI

PPP PREPARATION

Part One

General

Article 27

The Minister/Head of Institution/Head of Region will conduct PPP preparation, comprising at least:

- a. Pre-feasibility study;
- b. Government Support and Government Guarantee plan;
- c. Determination of a mechanism for investment return for the implementing Business Entity; and

- d. land acquisition for the PPP.

Article 28

1. PPP preparation can be done together with a Business Entity or organizations/institutions/international organizations in agreement with the Minister/Head of Institution/Head of Region.
2. In the case there are more than one Business Entity or organizations/institutions/international institutions in relation with in paragraph(1), the Minister/Head of Institution/Head of Region will conduct a selection.
3. Further provisions about procedures for selection in PPP preparation will be determined by the regulations of the institution responsible for government affairs in the field of procurement of goods/services of the government.

Article 29

1. The cost of preparing a PPP with the assistance of a Business Entity or organizations/institutions/international organizations may be paid by means of periodic payment (retainer fee), lump sum, a combination of periodic and lump sum payments, and/or other forms agreed by the Minister/Head of Institution/Head of Region with Business Entity/organizations/institutions/international organizations.
2. The cost of preparation of a PPP and procurement of a PPP Business Entity partner conducted by the Minister/Head of Institution/Head of Region with Business Entity/organizations/institutions/international organization, may be charged to the Business Entity winning the bid, either in part or totally.
3. PPP preparation costs that may be charged to the Business Entity winning the bid include:
 - a. Pre-feasibility study preparation costs;
 - b. Transaction costs;
 - c. The incentive of Business Entity and organization/institution/international organization who perform the PPP preparation, which is paid based on the success of the PPP transaction; and
 - d. Other legitimate costs.

Part Two

Pre-feasibility Study

Article 30

1. The Minister/Head of Institution/Head of Region will prepare pre-feasibility study for the infrastructure that will be cooperated.
2. The Pre –feasibility study referred to in paragraph (1), will provide conclusions to, among others, the following issues:
 - a. PPP financing source;
 - b. identification of the contractual, regulatory and institutional framework;
 - c. a draft of the PPP in technical aspects;
 - d. a proposal for Government Support and Government Guarantee required;
 - e. risk identification and mitigation recommendations, corresponding risk allocation; and
 - f. form of return on investment for the implementing Business Entity.

Article 31

1. During the preparation stage of the pre-feasibility study, the Minister/Head of Institution/Head of Region will prepare the following documents:
 - a. environmental study documents; and
 - b. land acquisition planning documents.

Part Three

Preparation of the PPP Agreement

Article 32

1. The GCA prepares the PPP agreement.
2. The PPP agreement contains, as a minimum, determinations about:
 - a. scope of work;
 - b. period of time of cooperation;
 - c. performance security;
 - d. tariff and adjustment mechanism;
 - e. rights and obligations including risk allocation;

- f. standards of service performance;
 - g. transfer of shares before the PPP operates commercially;
 - h. sanctions in the event the parties fail to meet the terms of the agreement;
 - i. termination of agreement;
 - j. ownership status of the assets;
 - k. dispute resolution mechanism arranged in stages, namely deliberation and consensus, mediation, and arbitration/court;
 - l. mechanism to monitor performance of the implementing Business Entity in procurement implementation;
 - m. mechanism for variations in the works and/or services;
 - n. 'step-in' right mechanism by the government and lenders;
 - o. use and ownership of the infrastructure assets and/or its management to the GCA;
 - p. return of the infrastructure assets and/or its management to the GCA;
 - q. force majeure;
 - r. claims and warranties of the parties that the PPP agreement is valid and binding in accordance with the laws and regulations;
 - s. use of language in agreement, namely Indonesian Language or if required can be made in Indonesian and English (as official translation), as well as using Indonesian language in dispute settlement in Indonesian Jurisdiction ; and
 - t. applicable law, this is, Indonesian law.
3. The amount of performance security referred to in paragraph (2) letter c will be maximum 5% (five per cent) of the investment value of the PPP.
4. The transfer of shares of the implementing Business Entity before Infrastructure Provision operates commercially referred to in paragraph (2) letter g, can be done only after approval and in accordance with the criteria established by the Minister/Head of Institution/Head of Region/ State Owned Enterprise/Regional Owned Enterprise.
5. The Transfer of shares referred to in paragraph (4), must not cause delay to the commencement of operation of the PPP.

Article 33

1. In the event of the handover of the management of assets owned or controlled by Minister/Head of Institution/Head of Region to the implementing Business Entity for the implementation of the PPP, the PPP agreement shall stipulate:
 - a. the purpose of the utilization of the assets and prohibition to utilize the assets for other purposes than those agreed;
 - b. responsibility for operation and maintenance, including tax payment and other liabilities arising from the utilization of the assets;
 - c. the rights and obligations of the party that controls the asset to control and monitor performance of the assets during their utilization;
 - d. prohibition for the implementing Business Entity to pledge the assets as a collateral to a third party;
 - e. procedures for the transfer and/or return of the assets;
 - f. other matters in accordance with the legislation.

2. In the event that the PPP agreement regulates the transfer of the management of assets by the implementing Business Entity during the period of agreement, the PPP agreement shall regulate:
 - a. condition of the assets to be transferred;
 - b. procedures for the transfer of the assets;
 - c. status of the assets, which must be free from any collateral or encumbrance when handed over to the Minister/Head of Institution/Head of Region;
 - d. status of the assets, which must be free from third party's claims; and
 - e. exemption to the Minister/Head of Institution/Head of Region from any claim arising after the transfer of assets.

Article 34

In relation to the use of Intellectual Property Rights, the PPP agreement shall contain a guarantee from the implementing Business Entity that:

- a. The Intellectual Property Rights being used are fully free from any form of violation of the law;
- b. The Minister/Head of Institution/Head of Region is waived from any claim or lawsuits from any third party relating to the use of Intellectual Property Rights in the Infrastructure Provision;

- c. In the event of a claim on Intellectual Property Rights as referred to in letter b, then:
 1. the continuity of Infrastructure Provision may still be carried out; and
 2. the use of Intellectual Property Rights may still continue.

CHAPTER XII

PPP TRANSACTION

Part One

Procurement of Implementing Business Entity

Article 35

PPP transaction consists of the following activities:

- a. Procurement of the implementing Business Entity;
- b. signing of the PPP agreement; and
- c. fulfillment of financing of the Infrastructure Provision by the implementing Business Entity.

Article 36

Procurement of the implementing Business Entity for a PPP will be carried out after obtaining the determination of the location of the land required to execute the PPP, except otherwise regulated by the legislation.

Article 37

The Minister/Head of Institution/Head of Region will create the committee to procure the implementing Business Entity.

Article 38

1. The procurement of the implementing Business Entity will be conducted through Bidding or Direct Appointment.

2. Bidding or Direct Appointment as referred to in paragraph (1) will be conducted through prequalification.

Article 39

1. Procurement of the implementing Business Entity through Direct Appointment may be conducted if:
 - a. the PPP meets certain conditions; or
 - b. the prequalification of the implementing Business Entity results in one participant.
2. The certain conditions referred to in paragraph (1) letter a are:
 - a. development of infrastructure that has been built and/or operated previously by the same implementing Business Entity;
 - b. the work can only be carried with new technologies and there is a single service provider able to apply them; or
 - c. the implementing Business Entity controls most or all the land required to implement the PPP.

Article 40

Further provisions on the procedures for procurement of the implementing Business Entity through Bidding or Direct Appointment as referred to in Article 38, shall be stipulated by the regulations of the institution responsible for government affairs in the field of procurement of government goods/services.

Part Two

Signing of the PPP Agreement

Article 41

The PPP agreement is signed by the GCA with the implementing Business Entity.

Part Three

Financing

Article 42

Maximum within 12 (twelve) months after the implementing Business Entity has signed the PPP agreement, the implementing Business Entity must have obtained financing for the PPP.

Article 43

1. The financing sourced from loans is deemed executed if:
 - a. a loan agreement has been signed to finance the entire PPP; and
 - b. part of the loan referred in letter a has been made available to start the construction works.
2. In the event that a PPP is divided into several stages, financing as referred to in paragraph (1) is deemed executed if:
 - a. a loan agreement to finance one of the stages of the PPP has been signed; and
 - b. part of the loan referred in letter a, has been made available to start the construction works.
3. The time period referred to in Article 42 may be extended over time by the Minister/Head of Institution/Head of Region if failure to obtain financing is not caused by negligence of the implementing Business Entity, in accordance with the criteria determined by the Minister/Head of Institution/Head of Region.
4. Any extension of time by the Minister/Head of Institution/Head of Region as referred to in paragraph (3), will be for a maximum of 6 (six) months.
5. In the event that the time period referred in paragraph (3) or an extension referred to in paragraph (4) could not be met by the implementing Business Entity, then the PPP agreement is deemed terminated and the performance security can be enforced by the Minister/Head of Institution/Head of Region..

CHAPTER XIII

PPP NODE

Article 44

1. The Minister/Head of Institution/Head of Region will appoint a working unit in the Ministry/Institution/Region as PPP Node.
2. The PPP Node referred to in paragraph (1) has the task to prepare the formulation of policies, synchronization, coordination, monitoring and evaluation of PPP development.

CHAPTER XIV

TRANSITIONAL PROVISIONS

Article 45

1. With the enactment of this Presidential Regulation:
 - a. PPP agreements signed before the enactment of this Presidential Regulation remain in force;
 - b. Procurement processes of implementing Business Entities that are ongoing and for which a winner has not been established, the subsequent procurement process of implementing Business Entity will be performed in accordance with this Presidential Regulation;
 - c. Procurement Processes of implementing Business Entity that have been completed with a winner established, but the PPP agreement has not yet been signed, the PPP agreement shall be made in accordance with this Presidential Regulation;
 - d. PPP agreements that have been signed, but have not achieved financial close according to the time period stipulated in the PPP agreement, the obligation to get financial close will be carried out in accordance with this Presidential Regulation after the Minister/Head of Institution/Head of Region conducts an evaluation of the implementing Business Entity and the PPP based on the criteria determined by the Minister/Head of Institution/Head of Region;
 - e. PPP agreements that have been signed, but for which land acquisition has not been completed, the process of land acquisition will be adjusted in accordance with this Presidential Regulation, and the Minister/Head of Institution/Head of Region may have modifications to the PPP agreement after conducting an evaluation of the implementing Business Entity and the PPP based on the criteria determined by the Minister/Head of Institution/Head of Region; and
 - f. Transfer of shares before the PPP operates commercially that have been done before the enactment of this Presidential Regulation are declared valid and remain in force.
2. With the enactment of this Presidential Regulation, the implementing regulations of Presidential Regulation Number 67 Year 2015 on Public Private Partnership in Infrastructure

Provision as amended several times, recently by Presidential Regulation Number 66 Year 2013 concerning the Third Amendment of Presidential Regulation Number 67 Year 2005 concerning Cooperation between Government and Business Entities in Infrastructure Provision, shall remain in force as long as are not contrary or have not been replaced by a new ones based on the provisions of this Presidential Regulation.

CHAPTER XV

CLOSING PROVISIONS

Article 46

1. Further Provisions on the procedures for implementation of the cooperation between Government and implementing Business Entities in Infrastructure Provision will be governed by regulations of the ministry responsible for government affairs in the field of national development planning.
2. The Minister/Head of Institution/Head of Region may regulate procedures on the implementation of cooperation between government and implementing Business Entity in accordance with their authority.

Article 47

1. Further Provisions on the procedures of implementation of the cooperation between Government and implementing Business Entities in Infrastructure Provision will be determined by the minister responsible for government affairs in the field of national development planning, no later than 30 (thirty) days from the promulgation of this Presidential Regulation.
2. Further provisions on Availability Payment will be determined by the minister responsible for government affairs in the field of finance and state's wealth and minister responsible for government affairs in the field of domestic affairs in accordance with their duties and authority, no later than 30 (thirty) days from the promulgation of this Presidential Regulation.
3. Further provisions on the procurement procedures of implementing Business Entity will be determined by the institution responsible for government affairs in the field of procurement of government goods/ services, no later than 30 (thirty) days from the promulgation of this Presidential Regulation.

Article 48

By the time of enactment of this Presidential Regulation, Presidential Regulation Number 67 Year 2005 concerning the Cooperation between Government and Business Entities in Infrastructure Provision as amended several times, recently by Presidential Regulation Number 66 Year 2013 concerning Third Amendment of Presidential Regulation Number 67 Year 2005 concerning Cooperation between Government and Business Entities in Infrastructure Provision, is revoked and declared invalid.

Article 49

This Presidential Regulation comes into force from the date of promulgation.

For public cognizance, it is hereby ordered that this Presidential Regulation be announced in the State Gazette of the Republic of Indonesia.

Enacted in Jakarta

on 20 March 2015

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

sgd.

JOKO WIDODO

Promulgated in Jakarta

on 20 March 2015

MINISTER OF LAW AND HUMAN RIGHTS

REPUBLIC OF INDONESIA

sgd.

YASONNA H. LAOLY

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2015 NUMBER 62

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CABINET SECRETARIAT OF THE REPUBLIC OF INDONEISA

Deputy of Economic

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Ratih Nurdianti