REGULATION OF THE PRESIDENT OF THE REPUBLIC OF INDONESIA
NUMBER 78 YEAR 2010
CONCERNING
GUARANTEE OF INFRASTRUCTURE IN
GOVERNMENT COOPERATION PROJECT WITH BUSINESS ENTITY
WHICH IS DONE THROUGH INFRASTRUCTURE GUARANTEE AGENCY

BY THE GRACE OF GOD ALMIGHTY
PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

a. that in order to enhance the credit worthiness in infrastructure project as an effort to encourage private sector participation in infrastructure development, infrastructure projects provided under the scheme of cooperation between the Government and business entities in the infrastructure as stipulated in Presidential Regulation Number 67 Year 2005 on Government Cooperation with Business Entity in the Provision of Infrastructure as amended by Presidential Decree No. 13 of 2010, Government Guarantee can be given to;
b. that the Government Guarantee referred to in letter a, should pay attention to the principles of financial risk control and management in the State Budget (APBN);
c. that the Government Guarantee referred to in letter a, may be granted by the Minister of Finance through the State-Owned Enterprises which was established by the Government and given specific tasks to carry out the underwriting infrastructure that is part of the implementation of the principles of risk control and management of state finances;
d. that pursuant to Article 17C Section(2) of Presidential Decree Number 67 Year 2005 on Government Cooperation with the Business Entity in the Provision of Infrastructure as amended by Presidential Decree No. 13 of 2010, the provisions regarding the Provision of Government Guarantee as referred to in letter c, stipulated in separate presidential ;
e. Based on the considerations as meant in letter a, b, c, and d, need to stipulate Presidential Regulation on Guarantee on Infrastructure Project in the Government Cooperation with Business Entity conducted by Infrastructure Guarantee Agency;

Given:

1. Article 4 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945;
2. Law Number 17 Year 2003 regarding State Finance (State Gazette of the Republic of Indonesia Year 2003 Number 47, Suplement to State Gazette of the Republic of Indonesia Number 4286);
3. Law Number 19 Year 2003 on State-Owned Enterprises (State Gazette of the Republic of Indonesia Year 2003 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 4297);
4. Law Number 1 Year 2004 on Treasury (State Gazette of the Republic of Indonesia Number 5 of 2004, Supplement to State Gazette of the Republic of Indonesia Number 4355);

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5. Law Number 40 Year 2007 regarding Limited Liability Companies (State Gazette of the Republic of Indonesia Year 2007 Number 106, Supplement to State Gazette of the Republic of Indonesia Number 4756);
6. Government Regulation Number 35 Year 2009 concerning Capital Investment of the Republic of Indonesia for the Establishment of Limited Liability Company (Persero) in Sector of Infrastructure Guarantee (State Gazette of the Republic of Indonesia Year 2009 Number 72);
7. Presidential Regulation Number 67 Year 2005 on Government Cooperation with the Business Entity in the Provision of Infrastructure as amended by Presidential Decree No. 13 of 2010;

DECIDED:

to Stipulate: REGULATION OF THE PRESIDENT ON THE GUARANTEE OF INFRASTRUCTURE IN GOVERNMENT COOPERATION PROJECTS WITH BUSINESS ENTITY WHICH IS DONE THROUGH INFRASTRUCTURE GUARANTEE AGENCY

CHAPTER I
GENERAL PROVISIONS
Article 1

In this Presidential Regulation what is meant by:

1. Infrastructure guarantee is the provision of collateral for Financial Obligations of the Cooperation Project Responsible Holder which is implemented under the Guarantee Agreement.
2. Financial Obligations of Project Cooperation Responsible Holder is the obligation to pay financial compensation to the Business Entity for the occurrence of Infrastructure Risk which is the responsibility of the Cooperation Project Responsible Holder in accordance with the Allocation of Risks as agreed in the Cooperation Agreement.
3. Infrastructure risks are events that may occur in the Cooperation Project for the duration of Cooperation Agreement which can negatively affect investment business entities, which include equity and loans from third parties.
4. Risk allocation is the distribution of Infrastructure Risks to the best able party to manage, control or prevent the risk of Infrastructure, or absorb the risk of Infrastructure.
5. Cooperation Project Responsible Holder is the Minister / Head of Institution / Regional Head, or State Owned Enterprises (SOEs) / Regional Owned Enterprises (enterprises) in the case under the legislation, the provision of infrastructure organized or conducted by state / local enterprise.
6. Business Entity is a business entity as defined in legislation on Government Cooperation with the Business Entity in the Provision of Infrastructure.
7. Infrastructure Guarantee Agency is an entity established by the Government and given specific tasks to execute Infrastructure Guarantee and capital have been given based on Government Regulation Number 35 Year 2009 concerning Capital Investment of the Republic of Indonesia for the Establishment of Limited Liability Company (Persero) in Infrastructure Guarantee Sector.
8. Guarantor is Infrastructure Guarantee Agency whose task is to guarantee Infrastructure.
9. Guarantee Recipients is a Business Entity that is a party to the Cooperation Agreement.
10. Guarantee Proposal is a written proposal of Cooperation Projects Responsible Holder to the Infrastructure Guarantee Agency to cover Infrastructure Guarantee.
11. Willingness Statement is a written statement of the Infrastructure Guarantee Agency to Cooperation Project Responsible Holder that Infrastructure Guarantee can be done on the Cooperation Project which will further set forth in the Guarantee Agreement.
12. Guarantee Agreement is a written agreement that contains the rights and obligations between the Guarantor and the Beneficiary in order to guarantee the Infrastructure.
13. Cooperation Agreement is a written agreement that contains the rights and obligations between the Cooperation Project Responsible Holder and the Business Entity in order to execute the Cooperation Project.
14. Cooperation project is the provision of infrastructure in accordance with legislation on Government Cooperation with the Business Entity in the Provision of Infrastructure.
15. Government support is the support of the Government as referred to in the legislation on Government Cooperation with the Business Entity in the Provision of Infrastructure.
16. Preparation of Project Implementation Period of Cooperation Project is the period since the signing of the Cooperation Agreement to the achievement of the financing acquisition as referred to in the legislation on the Government Cooperation with Business Entity in the Provision of Infrastructure.
17. Cooperation Project Construction Period is the period since the achievement of financing acquisition as set forth in legislation on the Government Cooperation with Business Entity in the Provision of Infrastructure until the date of commencement of commercial operation as specified in the Agreement of Cooperation.
18. Cooperation Projects Operational Period is the period from the date of commencement of commercial operation until the expiration date of the Cooperation Agreement as specified in the Agreement of Cooperation.
20. Regres is the right of Guarantor to collect Cooperation Projects Responsible Holder for what has been paid to the Beneficiary in order to meet the Financial Obligation of Cooperation Projects Responsible Holder taking into account the time value of money paid.

CHAPTER II
PRINCIPLES, THE SCOPE AND GENERAL REQUIREMENTS
Part One
Principle
Article 2

Infrastructure Guarantee is based on the following principles:
a. Infrastructure Guarantee carried out in accordance with the principles of risk control and management of state finances in order to maintain the continuity of the state budget (fiscal sustainability).

b. Infrastructure Guarantee held by the Government that implemented by the Ministry of Finance through the Infrastructure Guarantee Agency.

Part Two
Scope
Article 3

The scope of this Presidential Regulation is Infrastructure Guarantee within the framework of the Cooperation Project corresponding legislation in the field of Government Cooperation with the Business Entity in the Provision of Infrastructure.

Article 4,

Infrastructure Guarantee is given to the Infrastructure Risk which is:

a. better able to be controlled, managed or prevented the occurrence, or absorbed by the Cooperation Project Responsible Holder instead of Business Entity;

b. sourced (risk factor) of the Cooperation Project Responsible Holder and / or

c. sourced (risk factor) of the Government other than the Cooperation Project Responsible Holder.

Part Three
General Requirements
Article 5

(1) Infrastructure Guarantee is given throughout the Cooperation Agreement in order to execute the Project Cooperation at least contain provisions on:

a. Infrastructure Risk sharing between the two sides in accordance with the Allocation of Risk;

b. relevant mitigation efforts from both sides to prevent risk and reduce its impact if it occurs;

c. Financial Obligations amount of Cooperation Project Responsible Holder in terms of Infrastructure Risk which is the responsibility of the Cooperation Project responsible Holder occurs, or how the calculation to determine the amount of Financial Obligations of Cooperation Project Responsible Holder in terms of the amount are yet to be determined at the time of the Cooperation Agreement was signed;

d. period of time sufficient to implement the Financial Obligations of Cooperation Projects Responsible Holder including a grace period;

e. reasonable procedures to determine when the Cooperation Project Responsible Holder has been in a state can not afford to implement the Financial Obligations of Cooperation Project Responsible Holder;
f. dispute resolution procedures that may arise between the Cooperation Project Responsible Holder and the Business Entity regarding Financial Obligations implementation of the Cooperation Projects Responsible Holder are prioritized through alternative dispute resolution mechanisms and / or arbitration institution;
g. applicable law is the law of Indonesia.

(2) Infrastructure Guarantee is given as long as the Cooperation Projects Responsible Holder can:

a. issue a statement regarding the validity of the Cooperation Agreement; and
b. provide a written commitment to the Guarantor for:

1. implement best efforts to control, manage or prevent, and mitigate the risk of Infrastructure of responsibility appropriate allocation of risks as agreed in the Cooperation Agreement for the duration of Guarantee Agreement;
2. Regres meet, as outlined in the form of agreement with the Infrastructure Guarantee.

(3) Infrastructure Guarantee given in accordance with capital adequacy of the Infrastructure Guarantee Agency.

CHAPTER III
GUARANTEE OF INFRASTRUCTURE
Part One
Proposed Guarantee
Article 6

(1) Infrastructure Guarantee is done based on the proposal submitted by the Cooperation Projects Responsible Holder to the Infrastructure Guarantee Agency prior to commencement of the implementation of the business entities procurement.

(2) Proposed Guarantee contain at least:

a. a full description of risk-sharing plan based on the allocation of risk between the Cooperation Projects Responsible Holder and Business Entity that will be poured in the Cooperation Agreement;
b. a full description of Government Support to be provided on the Cooperation Project, if any;
c. The proposed guarantee coverage include:

1. Infrastructure Risk type proposed to be guaranteed;
2. Financial Obligations percentage of Cooperation Projects Responsible Holder proposed to be guaranteed; and
3. guarantee period proposed, namely:
   a) all or part of the Project Implementation Period of Preparation;
   b) all or part of the Project Construction Period; and / or
   c) all or part of the Project Operational Period.
(3) Guarantee Proposal shall be accompanied at least:

a. Risk matrix on the Cooperation Project;
b. draft Cooperation Agreement;
c. financial projections of Cooperation Project.

Part Two
Evaluation of Proposed Guarantee
Article 7

(1) To accept or reject the Guarantee Proposal, Infrastructure Guarantee Agency shall conduct an evaluation of the Guarantee Proposal.

(2) In order to perform the evaluation as referred to in section (1), Infrastructure Guarantee Agency may request the Project Cooperation Responsible Holder to:

a. complete the documents, data and other information relating to the Guarantee Proposal;

b. revise Guarantee Proposal and / or specific provisions in the draft Cooperation Agreement to conform with the guarantee coverage proposed by the Cooperation Project Responsible Holder as referred to in Article 6 section (2) letter c or is capable of given by the Guarantor; or

c. improve the technical and financial feasibility of Cooperation Project.

(3) Infrastructure Guarantee Agency received Guarantee Proposal after the evaluation results at least indicate that:

a. Guarantee Proposal has been submitted in accordance with the procedures set forth in this Presidential Regulation;

b. Cooperation projects have met the feasibility both technically and financially;

c. draft Cooperation Agreement attached to the Guarantee Proposal have included provisions referred to in Article 5 paragraph (1);

d. value of guarantee coverage that is proposed does not result in the Infrastructure Guarantee exceeded its capital adequacy.

(4) If the evaluation results as referred to in section (3) shows the letters a, b, and c are not met, the Infrastructure Guarantee Agency rejected the Guarantee Proposal.

(5) If the evaluation results as referred to in section (3) shows the letters a, b, and c above are met but the letter d is not met, the Minister of Finance may participate to carry out the guarantee based on risk sharing.

(6) In order for the Minister of Finance may participate to implement the guarantee as referred to in section (5), the Infrastructure Guarantee must first:
a. pass on the Guarantee Proposal;
b. submit the results of evaluations of Infrastructure Guarantee Agency as referred to in section (3); and

c. submit proposals for risk sharing.

(7) The Minister of Finance conduct a review of the documents submitted by the Infrastructure Guarantee Agency as referred to in section (6).

(8) Based on the results of a review as referred to in section (7), the Minister of Finance decides to accept or reject the Guarantee Proposal.

(9) Infrastructure Guarantee Agency Decision on Guarantee Proposal, following the decision of the Minister of Finance referred to in section (8).

(10) The provision of guarantees by the Infrastructure Guarantee Agency with the participation of Minister of Finance shall be further stipulated in the Minister of Finance Regulation.

Part Three
Issuance of Statement of Availability

Article 8


(2) Willingness Statement contains information about guarantee coverage as referred to in Article 6 section (2) letter c.

Article 9

Willingness statement noted by Cooperation Projects Responsible Holder in Business Entity procurement documents and does not pose any legal effect to the Infrastructure Guarantee Agency before signing Guarantee Agreement.

Part Four
Signing of Guarantee Agreement

Article 10

(1) Guarantee Agreement is signed by Infrastructure Guarantee Agency as the Guarantor with the Business Entity as Guarantee Beneficiary, at the same time with or after the signing of the Cooperation Agreement.

(2) Guarantee Agreement at least contain provisions on:

a. guarantee coverage as referred to in Article 6 section (2) letter c which is approved by the Guarantor and Guarantee Beneficiary;

b. procedures for implementation of the obligations of the Guarantor to the Guarantee Beneficiary;
c. procedures for settlement of disputes that may arise between the Guarantor and the Guarantee Beneficiary which is prioritized through alternative mechanisms for dispute resolution and / or arbitration;

d. applicable law is the law of Indonesia.

Part Five
Filing and Settlement of Insurance Claims
Article 11

Guarantee Beneficiary submit the claim to the Guarantor if:

a. Guarantee Beneficiary has received a notice from the Guarantor that the Cooperation Project Responsible Holder has recognized its unavailability to implement the Financial Obligations of Cooperation Projects Responsible Holder before the passage of time as specified in the Cooperation Agreement; or

b. within the period determined for the implementation of Financial Obligations of Cooperation Projects Responsible Holder under the Cooperation Agreement, Cooperation Project Responsible Holder does not pay the bill submitted by the Beneficiary Guarantee.

Article 12

Guarantor examine the claims filed by the Guarantee Beneficiary to ensure:

a. correspondence between the claims with insurance coverage that has been approved under the Guarantee Agreement, and

b. There is no conflict between the Cooperation Project Responsible Holder and Guarantee Beneficiary regarding the bills filed by the Guarantee Beneficiary to the Cooperation Project Responsible Holder.

Article 13

Guarantor to implement of its obligations to the Guarantee Beneficiary after verification results show that the conditions as referred to in Article 12 are met.

Article 14

(1) In the event of a dispute between the Project Cooperation Responsible Holder and Guarantee Beneficiary in connection with the bills filed by the Guarantee Beneficiary to the Cooperation Project Responsible Holder, dispute settlement is done by way of agreed upon by both parties.

(2) Decision of dispute settlement as referred to in secton (1) become the basis for the Guarantor to perform the guarantee obligation.
Part Six
Regres
Article 15

(1) In the event that the Guarantor has implemented its obligations under the Agreement to the Guarantee Beneficiary, then the Cooperation Projects Responsible Holder are obliged to meet the Regres.

(2) In the event that the Cooperation Project Responsible Holder is the Minister / Head of the Institution, Regres is performed with a compliance mechanism of the State Budget (APBN).

(3) In the event that the Cooperation Project Responsible Holder is the Head of Regional, Regres is performed with a compliance mechanisms of the Regional Budget (APBD).

(4) In the event that the Cooperation Project Responsible Holder is BUMN /BUMD, Regres is performed with a compliance mechanisms of corporate based on the prevailing regulations.

(5) Further provisions concerning the fulfillment of Regres as referred to in section (2) provided for in Regulation of the Minister of Finance.

Part Seven
Return on Assurance Services
Article 16

(1) On Infrastructure Guarantee that is granted, Infrastructure Guarantee Agency may impose guarantee fee.

(2) In determining the value of the guarantee fee to be charged, Infrastructure Guarantee Agency may consider:

   a. value of financial compensation of the Infrastructure Risk type that will be guaranteed;
   b. costs incurred to provide a guarantee;
   c. a reasonable profit margin.

(3) Further provisions on the guarantee fee to be stipulated in the Regulation of the Minister of Finance.

CHAPTER IV
INFRASTRUCTURE GUARANTEE AGENCY
Part One
Infrastructure Guarantee Implementor
Article 17

In order to carry out specific tasks to execute the Infrastructure Guarantee, Infrastructure Guarantee Agency should have a capital adequacy, independence, solvability, and a credible management making it possible to have a higher rank than the rank of government (sovereign rating), or equal to investment
Article 18

(1) In order to enhance the credibility of Infrastructure Guarantee, Infrastructure Guarantee Agency:

a. shall implement the management principles of good corporate governance and in accordance with laws and regulations;
b. cooperation with multilateral financial institutions or other parties who have similar aims and objectives.

(2) In the case of the cooperation referred to in section (1) letter b requires a government guarantee, the Minister of Finance may provide counter-guarantee to multilateral financial institutions or other parties who have similar aims and objectives.

(3) In the event that the Minister of Finance to give counter guarantee as referred to in section (2), contingency liabilities that arise should be reported in the APBN.

(4) Further provisions regarding the granting for counter guarantee provided for in Regulation of the Minister of Finance.

Part Two
Assets

Article 19

(1) Infrastructure Guarantee Fund sourced from all assets owned by Infrastructure Guarantee Agency.

(2) Assets owned by Infrastructure Guarantee Agency sourced from equity participation of the State of Republic of Indonesia.

(3) The Minister of Finance sufficient the assets of Infrastructure Guarantee Agency through the mechanism of the state budget (APBN).

(4) In conducting its activities, the Infrastructure Guarantee Agency may seek funding from:

a. profits of operations;
b. grants;
c. loans; and
d. third-party equity.

Article 20

Placement of a certain number of Infrastructure Guarantee Agency assets in the form of financial instruments, based on the provisions stipulated by the Minister of Finance.

Article 21
Minister of Finance shall determine the provisions regarding the capital adequacy of Infrastructure Guarantee Agency and reviewing the capital adequacy ratio at the latest every 2 (two) years, taking into account economic conditions and the national acceleration program of infrastructure provision or the proposal of Infrastructure Guarantee Agency.

Part Three
Guidance and Supervision
Article 22

Guidance and supervision of activities of Infrastructure Guarantee Agency in implementing the Infrastructure Guarantee as stipulated in this Presidential Regulation is governed by Regulation of the Minister of Finance.

Article 23

In the framework of the guidance and supervision as referred to in Article 22, Infrastructure Guarantee Agency shall submit:

a. quarterly management of contingency liability control reports;
b. quarterly financial reports;
c. semesterly reports of business activities; and
d. annual financial statements which has been audited by Public Accountant.

CHAPTER V
TRANSITIONAL PROVISIONS
Article 24

Against the Guarantee Proposal of Cooperation Project Responsible Holder which has been submitted to the Minister of Finance for the Cooperation Project which has been started its procurement prior to the issuance of this Presidential Regulation, the said Guarantee Proposal process can be transferred by the Minister of Finance to the Infrastructure Guarantee Agency in order to be followed up and pursued its implementation by Infrastructure Guarantee Agency in accordance with its duties under this Presidential Regulation.

Article 25

In order to implement the provisions of Article 24, but the capital of Infrastructure Guarantee Agency is inadequate, the Minister of Finance can provide a guarantee along with the Infrastructure Guarantee Agency

CHAPTER VI
CLOSING
Article 26

This Presidential Regulation shall come into force on the date of enactment.

Stipulated in Jakarta
on December 21, 2010
PRESIDENT OF THE REPUBLIC OF INDONESIA,
Signed.
DR. H. SUSILO BAMBANG YUDHOYONO

Signed
Deputy Cabinet Secretary for Legal Affairs,
Signed
Dr. M. Iman Santoso