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Indonesia

1. Overview

ASEAN's largest economy, Indonesia, has grown at a robust real GDP growth rate within a range of 5.0–6.5 percent from 2004 to 2014, with an exception of a slight decline in 2009. Despite the economy's vulnerability to global market fluctuations, a small public debt burden and fiscal deficit can be seen as positive fundamentals for long-run economic performance.[15] The future growth sustainability would be underpinned by policy initiatives of the newly elected president, Joko Widodo, particularly to eliminate fuel subsidies to redirect government spending to infrastructure development and poverty alleviation.

The grand design of national development is mapped out in the Masterplan for the Acceleration and Expansion of Indonesia Economic Development 2011–2025 (MP3EI) and the National Medium-Term Development Plan (RPJMN 2015–2019), as well as by the National Long-Term Development Plan (RPJPN 2005–2025). The MP3EI was announced in May 2011, during the second term of the former president. It addresses the importance of infrastructure development in six economic corridors in the acceleration and expansion of the country's economic growth toward a GDP per capita level of US$15,000 by 2025.[16] The RPJMN 2015–2019, the third stage of the RPJPN 2005–2025, was published in January 2015, in which the new government describes strategies and targets for infrastructure development aiming to achieve food sovereignty, energy sufficiency, management of maritime resources, and overall welfare improvement.

Both these development plans identify the huge infrastructure financing needs to achieve the ambitious development targets. The RPJMN 2015–2019, for instance, reckons that the financing requirement for the next 5 years will be around IDR5,300 trillion (approx. US$440 billion), out of which the state budget and local budget may cover around 44 percent of it. The remaining portion, meanwhile, is expected to be fulfilled by private sector (34

[15] Fitch Ratings and Moody's Investor Service have assigned the government's long-term sovereign rating to BBB- and Baa3 (slightly above the investment/speculative grade threshold) with a stable outlook, since December 2011 and January 2012, respectively. In May 2015, Standard and Poor's upgraded its outlook to positive, though it has kept the rating at BB+.

[16] ERIA made a significant contribution to the identification of the six corridors, known collectively as the Indonesia Economic Development Corridor.

percent) as well as state-owned enterprises (22 percent).[17] In meeting the massive requirements, the Government of Indonesia, both under the current and former presidents, has considered PPP as one of the key approaches, and thus, has taken steps to streamline its institutional and regulatory frameworks as below.

2. Institutional and Regulatory Frameworks

2.1 Institutional Framework

The overall inter-ministerial issues in prioritized infrastructure plan are determined through the Committee for Acceleration of Prioritized Infrastructure Development (KPPIP), a steering committee recently reactivated and formulated based on the Presidential Regulation (Perpres) No. 75 of 2014. It will function in the establishment of strategies and policy, capacity enhancement of officials, setting quality standards of pre-feasibility studies and evaluation procedure, or other facilitative roles in the implementation of PPP projects. The KPPIP is chaired by the Minister of the Coordinating Ministry of Economic Affairs (CMEA), with members comprising the Minister of the National Development Planning Agency (BAPPENAS), the Minister of Finance, and Head of the National Land Agency (BPN).

BAPPENAS, a directorate under the president, is in charge of project screening and/or prioritization, provision of guidance, and dissemination of information. A key role of BAPPENAS, led by its PPP unit of the Directorate for PPP Development (PKPS), is the publication of a PPP book presenting information to prospective investors on national PPP projects in the pipeline. The Ministry of Finance (MOF) is also a key body in assessing the necessity for government support (tax incentives, finance, or guarantees) for PPP projects. In the MOF, a PPP Unit has been set up under the Directorate General of Debt and Risk Management on the basis of a finance minister's decree signed in October 2014. As the champion for project preparation and enabling environment to accelerate the PPP agenda, the unit is to act for improving the quality of project selection under KPPIP, supporting the project preparation through the Project Development Fund (PDF), or coordination for a public financing and/or guarantee support package.[18] The BPN is the key body in the process of land

[17] Presentation by PKPS at the Asian Infrastructure PPP Summit in Kuala Lumpur, Malaysia, 10 March 2015.
[18] Presentation by the MOF at the Tropical Landscape Summit in Jakarta on 28 April 2015. The establishment of the PPP Centre in the MOF was mandated as a pilot project at the 2013 APEC Finance Ministers' Meeting.

acquisition for public interest. In consultation with these agencies, government contracting agencies (GCAs or PJPK) (for example, a line ministry, government institution, provincial government, or state-owned enterprise) identify and implement PPP projects under contract agreements with project companies.

In order to support the financial aspects of PPP projects, the government has launched several special purpose institutions, which offer guarantees, financing, or project development services. PT PII, also known as the Indonesia Infrastructure Guarantee Fund (IIGF), was established by the MOF in December 2009 under the PP (Government Regulation) No. 35 of 2009. The IIGF provides guarantees for obligations of GCAs under contractual agreements to mitigate risks stemming from the government's actions and inaction. These include breach of contract, delays in obtaining permits and/or licences, changes in the law, GCA's obligation in contractually agreed revenue payments, and so forth. [19] The government has committed to increase the fund's capital, but depending on the size of a project, the guarantees can be backed up by co-guarantors, the World Bank, or the MOF itself. [20]

PT Sarana Multi Infrastruktur (SMI) is a nonbank financial institution established in February 2009 and wholly owned by the MOF. As a catalyst in the acceleration of infrastructure development, its business scope covers the provision of project financing (senior, mezzanine, and equity), advisory services, and project preparation services. For PPP projects in particular, PT SMI has mainly acted in an advisory role to help GCAs in project preparation activities, such as pre-feasibility studies, market sounding, bidding process or contract settlement. Indonesia Infrastructure Finance (IIF) was established by the MOF through the PT SMI in January 2010.[21] Focusing on commercially viable infrastructure projects, it offers fund-based products (for example, long-term financing in rupiah and mezzanine financing), non-fund based, and fee-based services (for example, guarantees and syndication).

The Government of Indonesia has also prepared other types of fiscal support to early stage PPP projects. For instance, the Viability Gap Fund can be allocated as a cash contribution

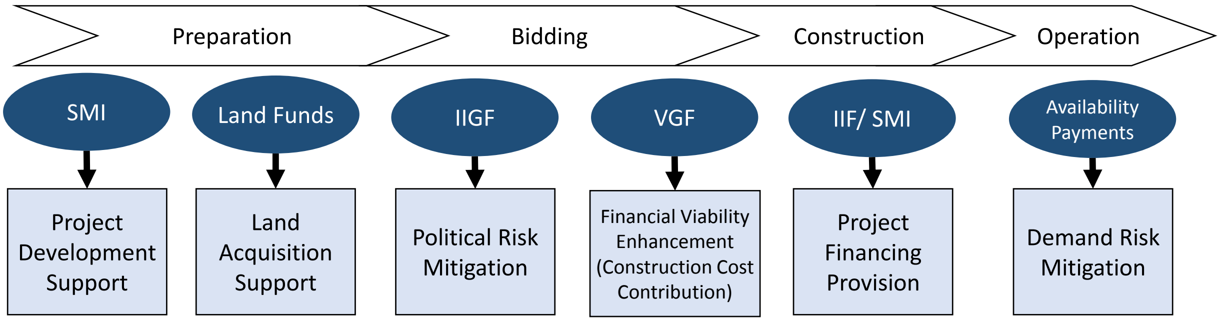
[19] The IIGF periodically publishes 'Risk Allocation Guidelines' (based on the MOF Regulation No. 260 of 2010), which illustrate basic risk allocation between GCAs and business entities in each sector/structure as a reference to guarantee proposals from the GCAs. Guidance notes on appraisal process or criteria can be found in the IIGF's 'Infrastructure Guarantee Provision Guidelines' and other documents.

[20] For IPP projects undertaken under the Electricity Law (not under a PPP framework) in particular, the MOF may issue a Business Viability Guarantee Letter to guarantee obligations of a state-owned electricity offtaker, PLN.

[21] The IIF is currently funded through equity participation by the SMI, Asian Development Bank (ADB), the International Finance Corporation (IFC), Deutsche Investitions-und Entwicklungsgesellschaft mbH, and Sumitomo Mitsui Banking Corporation.

to a part (not dominant) of the construction cost of well-prepared PPP projects (which are economically feasible but not financially viable) under the approval of the MOF.[22] Several forms of land funds for land acquisition or clearance mainly in toll road projects (not necessarily PPP) are also in place, such as the Land Capping Fund for protection against a significant increase in land prices, or the Land Revolving Fund which temporarily covers acquisition costs to be reimbursed by the project's investors.

Figure 3: Forms of Fiscal Supports for PPPs in Indonesia



IIF = Indonesia Infrastructure Finance, IIGF = Indonesia Infrastructure Guarantee Fund, SMI = Sarana Multi Infrastruktur, VGF = Viability Gap fund.
Source: Extension of a presentation material by the MOF at the Tropical Landscape Summit in Jakarta on 28 April 2015.

2.2 Regulatory Framework

During the period of the former president, Susilo Bambang Yudhoyono, Perpres (Presidential Regulation) No. 67 of 2005 as amended by Perpres No. 13 of 2010, No. 56 of 2011, No. 66 of 2013 on Cooperation between Government and Business Entity in Infrastructure Provision set out the provisions necessary for implementation of PPP. Today, the set of regulations is considered to have been replaced by a new cross-sector regulation on PPP promulgated in March 2015, Perpres No. 38 of 2015.

Perpres No. 38 of 2015 covers topics such as the core purposes and principals, applicable sectors, land acquisition, sources of investment return, unsolicited projects, government support and guarantees, project identification and budgeting, and transaction and contract signing. As for its sectoral outreach, the regulation specifies not only economic infrastructure (including transportation, roads, water resources and irrigation, water and

[22] Eligible criteria, such as a minimum investment expenses of IDR100 billion, or user pays principal, are stipulated in the MOF Regulation No. 223 of 2012. Further technical guidelines are elaborated in the FM Decree No 340/KMK.011/2013, and the FM Regulation No. 143/PMK.011/2013.

waste management, ICT, electricity, oil and gas, and renewable energy), but also social infrastructure (including urban, educational, tourism, sports, health facilities, and public housing) as types of infrastructure that can be implemented under sectoral legislations and guidelines. The regulation also enables two types of infrastructure to be bundled as one PPP project.

This new regulation introduced an availability payment model as a source of investment return, in addition to traditional user payments. Also, as in the previous regulations, unsolicited proposals can be submitted by business entities under the condition that the projects are economically and financially feasible.[23] In this unsolicited mode, proponents are entitled to obtain one out of three possible forms of compensation: (i) additional points in the evaluation (10 percent), (ii) a right to match the offer of the first-ranked bidder, and (iii) financial compensation for intellectual property rights (related to a feasibility study made by the proponent) by the government or winning bidders. Regarding the government support and/or guarantees, it stipulates that the MOF approves government support by way of fiscal contributions as well as tax incentives under its criteria of risk management. Additionally, financing may be provided partially from GCAs. Notably, the selection of project companies may now be conducted through direct appointment as well as competitive bidding under specific conditions.[24] It further clarifies that financial closure should be achieved within 12 months after PPP agreements are met, but the deadline may be extendable at most 6 months from time to time in accordance with criteria and approval by the government.

Procedural guidelines for the PPP arrangement are provided through a newly-issued BAPPENAS Regulation No. 4 of 2015 which further details requirements in each procurement stage, namely, (i) planning (identification, budgeting, categorization), (ii) preparation (pre-feasibility study, government support, guarantees), and (iii) transaction (market sounding, public tender, agreement, financial close). The Regulation also specifies the roles and

[23] In addition, the proponents are required to have sufficient financial capacity to implement the project; and projects are technically integrated with the master plan in each sector. If the proponent is a Foreign Legal Entity, it is required to establish a local business entity to sign cooperation agreements with a GCA once it is awarded a project. Foreign equity investment in each detailed sector is restricted by its Negative Investment List.

[24] The direct appointment is applicable only if either (i) a project involves development or expansion of a infrastructure which was built and/or operated by the same enterprise; (ii) the use of a new technology, which can be provided by only one enterprise, is required; (iii) the entity already controls most or all of the land; or (iv) only one entity is qualified through the prequalification process.

responsibilities of PPP nodes, PPP teams and procurement committees that shall be established under regional governments and sectoral ministries.

A legal framework pertaining to land acquisition has been stipulated through Law No. 2 of 2012; Land Procurement for Public Interest, Perpres No. 71 of 2012 as amended by Perpres No. 40 of 2014, No. 99 of 2014, and No. 30 of 2015; Land Acquisition for Public Projects, and Regulation of National Land Agency (BPN) No. 5 of 2012; Technical Guidelines for Implementation of Land Procurement. Law No. 2 of 2012 sets out that land procurement for public interest shall be conducted by the government in line with spatial or development plans and with adequate and fair compensation. Its implementing regulation, Perpres No. 71 of 2012, defines and provides details of a four-stage process, consisting of (i) planning, (ii) preparation, (iii) implementation, and (iv) handover stages. Under this framework, a maximum duration for land acquisition is estimated to be 583 working days. The compensation, determined with an independent appraiser, shall be sourced from the national budget and/or the regional budget, although if a project is financially feasible, a winning bidder shall pay back some or the entire cost of land (according to Perpres No. 38 of 2015).[25]

Perpres No. 40 of 2014 is mainly for raising the amount of land to be acquired directly without the four-stage procedure from the previous 1 hectare to 5 hectares. The latest amendment, through Perpres No. 30 of 2015, articulates that the projects which have obtained location approval while not finishing acquisition to adhere to the abovementioned procedure, but it can start from the implementation stage. To further speed up the process, the Perpres also makes it possible that the private sector first finances the land procurement and seeks reimbursement from the government afterwards.

3. Recent Developments in PPP

3.1 Highlighted Projects

According to the PPP Book 2013, through the years 2009 to 2013, a total of 21 projects proceeded to the tendering process. Among them, an internationally structured ‘symbolic’ deal is the Central Java 2 x 1,000MW power plant project, sponsored by PT Adaro Energy (Indonesia), J-Power Ltd (Japan), and Itochu Corporation (Japan). In October 2011, the project

[25] In the case where a GCA is a state-owned enterprise or regional enterprise, funding for land acquisition can be sourced from these entities or business entities.

agreements, including a 25-year power purchase agreement (PPA) with PT PLN and a guarantee agreement with the MOF and IIGF (joint guarantee), were signed as the first PPP project under the country's PPP framework. However, due to difficulty in land acquisition, financial close has been extended from original October 2012. In June 2014, the consortium declared force majeure to seek government support for the issue.[26]

The Express Railway project connecting Soekarno-Hatta International Airport and Halim Perdanakusuma Airport is categorized as a 'ready-to-offer project' in recently published 'List of Infrastructure Project Plan Year 2015', up from 'prospective' status in the 2013 PPP Book. The SMI has been playing an advisory role to the Ministry of Transportation for the project promised to alleviate traffic congestion in the metropolitan area, which has been a major constraint to economic growth of the country. The other major railway projects expected to be conducted under PPP will include Bandung LRT, Tanjung Enim – Tanjung Api-Api Railway, or South Sumatera Monorail.

The other projects in the List of Infrastructure Project Plan Year 2015 are 12 airports (new airports in Bali and Yogyakarta, and expansion of 10 regional airports), 7 sea ports (including Kuala Tanjung and Bitung International Hub Port); 8 toll roads (including Manado-Bitung, Tanjung Priok Access, Balikpapan- Samarinda); and 3 water supply projects (including West Semarang, Pondok Gede, Pekanbaru).

3.2 Regulatory and Institutional Issues

The recent issuance of Perpres No. 38 of 2015 has upgraded its PPP framework in the following respects: (i) accelerated process through allowing for direct appointment; (ii) more flexible criteria for unsolicited projects; (iii) clarification of the government's support in land acquisition, guarantees, or project budgeting; (iv) expansion of sectorial coverage to social infrastructure; or (v) introduction of availability payment scheme.

Most recently, the SMI is reportedly in the process of transforming into an infrastructure bank. The government will submit the Indonesian Infrastructure Financing Agency bill to provide a legal basis to merge a MOF fund, the Centre for Government

[26] PT Adaro Energy (2014), News Release. 7 July.

Investment, into the SMI.[27] In line with the direction, the SMI has started to play a role as a Regional Infrastructure Development Fund for local government projects.[28]

The issue of land acquisition has been one of the biggest bottlenecks despite all the law and regulations in place. Other proposals currently under consideration, the institutionalization of a Land Bank[29] or strengthening of the Land Law[30], are expected to expedite the process. All these efforts and initiatives in regulatory and institutional enhancements are considered to be in the right direction; nevertheless it is worthless unless the government agencies collectively will put them into action with strong decisiveness and authority.

[27] *The Jakarta Post* (2015) 'SMI to get more power in channeling funds' 19 June.
[28] Presentation by SMI at the Indonesia Green Infrastructure Summit in Jakarta, Indonesia on 10 June 2015.
[29] Presentation by PKPS at the Asian Infrastructure PPP Summit in Kuala Lumpur, Malaysia on 10 March 2015.
[30] *The Jakarta Post* (2015) 'Mega power project gets legal backing' 26 June.