

# **KPBU as the Scheme of Accountable, Transparent and Competitive Infrastructure Procurement**

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Indonesian Government has realized the significance of infrastructure and placed infrastructure as the main agenda to accelerate and evenly distribute national economy development, meanwhile data on Bappenas show that APBN and APBD cannot meet all fund requirements for the infrastructure development. Therefore, the officers within the government at central level or region are increasingly supported to involve private for the development of infrastructure, chiefly to the infrastructure which can reach commercial feasibility in which the private can be interested to be involved. In the currently existing regulation, there have been some methods or scheme to involve the private investor to provide infrastructure, one of them is the scheme of Government Cooperation with the Corporate Body or abbreviated to KPBU based on the Presidential Regulation Number 38 of 2015 concerning Government Regulation with the Corporate Body in the Provision of Infrastructure (“Perpres KPBU”) along with the associated regulation, such as Regulation of Minister of Bappenas Number 4 of 2015 concerning Procedure for the Implementation of Government Cooperation with the Corporate Body to Provide the Infrastructure (“Permen Bappenas KPBU”)

and Regulation of Agency Head of Policy on Goods/Services Procurement of Government Number 19 of 2015 concerning Procedure for the Implementation to supply Corporate Body of Government Cooperation with the Corporate Body to provide Infrastructure (“Perka LKPP KPBU”). The scheme of KPBU furthers some main principles, one of them as mentioned in Perpres KPBU Article 4 shall be a competitive principle, namely cooperation partner procurement of Corporate Body is made through the stage of fair and transparent selection, and take into account the fair business competition principle.

Sound business competition and stage of fair, open and transparent selection will add the level of trust for the Government and people that the necessary infrastructure will be provided by the investor having sufficient qualification with the level of service and optimum cost. Therefore, success for any corporate body procurement for the infrastructure is specified by the committee success carrying out the process to keep the level of competition from the beginning to the end of the process. Competition level will be maintained as long as the project is proper and prepared/structured well and the level of trust for the candidate investor is maintained through the transparent procurement process. The procurement process conducted by such manner can give accountability and creditability for the Government agency carrying out the same due to the result from the transparent process can be at any time justified.

Then, the interesting topic for acknowledgment is how to conduct sound business competition and stage of fair, open and transparent selection as expected can be created in the scheme of KPBU based on Perpres KPBU at this time. In Perpres KPBU has some items supporting the process of competitive and transparent procurement, namely:

- Pre-Feasibility Study Preparation and bid document by the Government with the international standard
- Specification of risk allocation and efficient transaction structure
- Finalization of structure, terms and conditions of the agreement before the receipt of bid thereby eliminating the negotiation post-tender

Three of the matters show activity for the procurement process of KPBU which tend a lot and complex in the beginning as it is indeed required to produce competition, transparency and security for the implementation of project properly in the long-term as further explained below.

In the preparation stage of KPBU project, Permen Bappenas No 4 Tahun 2015 Article 21 requires the preparation of Pre-Study Feasibility is made by the Government completely, take best practice or international standard. With the result of the study, the Government has sufficient information to be offered to the candidate investor wider and more interesting for the

competent candidate investors. Permen Bappenas KPBU Article 27 opens consultation or taxation with the candidate investors so that the Government gets feedback and is able to ensure the interest of the candidate investors to participate. The Government needs to respond the condition so requested by the investor to invest in the infrastructure project to be offered, given that in the globalization era, the candidate investors with the limited sources encountered to various opportunities for the investment in various opportunities of investment are not only in Indonesia, but all over the world. Any sufficient project preparation standard either by taking into account the input from the candidates investor are expected to make the project offered by the Government in Indonesia which is able to compete with the other project offered in other countries to make investors interested.

After passing through the stage of preparing KPBU project, in the stage of transaction of Permen Bappenas KPBU requires the risk allocation that can improve additional value for the stakeholder. Risk allocation becomes basis for the structure of KPBU to be contained in KPBU agreement. The process of risk allocation conducted properly will improve the additional value, in which the party covering any risk is the most competent one to control the risk. For instance, risks on land acquisition and permit arrangement being one of the fearing situation in the exploitation of infrastructure has become the

risk to be borne by Government as Permen Bappenas KPBU Bappenas requires the Cooperation Project Person in Charge to carry out the land acquisition and help the process of permit arrangement to organize KPBU in accordance with the authority. Therefore, the risk profile of the project can increase to be better and more proper to be financed (bankable). Like a beautiful girl, the better risk allocation of any project, the interested persons are many and created for the sound competition.

In the stage of transaction for KBPU, Perka LKPP KPBU requires that the negotiation or discussion for the technical optimization, financial and design aspects of KPBU Agreement is only made after the evaluation of Bid Document Stage I and before submitting the Bid Document in Stage II. Therefore, all bidders will be informed and can ensure that all structures, terms and conditions of the agreement submitted in the tender document shall be final and applicable to all bidders when they submit bid document for the last stage. The level of trust can create sense of fair between the bidders and encourage the tenders to soundly compete.

With the process of KPBU already designed by the competitive principle as explained above, we can understand why the Minister of Finance wishes to encourage the scheme of KPBU by providing the facility of fiscal support in

terms of infrastructure encumbrance through PT PII (Persero) and feasibility support or viability gap fund for the projects of KPBU.

Furthermore, it is expected the scheme of KPBU can be the main preference for the official of Government having authority as the owner of project or Cooperation Project Person in Charge (PJPK) to supply infrastructure for the public interest, chiefly for the projects that can reach commercial feasibility and have the large scale that the opportunity of private participation can increasingly be real in support of the program of Government for the people goodness.