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## THE GOVERNMENT ENACTS THE NEW PROCEDURES ON THE UTILIZATION OF STATE-OWNED ASSETS

### A. Introduction

The Ministry of Finance (“**MoF**”) issued the Regulation No. 115/PMK.06/2020 of 2020 on the Utilization of State Owned Assets (“**MoF Reg No. 115/2020**”), which came into force on 31 August 2020. The MoF Reg No. 115/2020 revokes and replaces several MoF regulations, among others: (i) MoF Regulation No. 78/PMK.06/2014 on the Procedure of Utilizing State-Owned Assets; (ii) MoF Regulation No. 164/PMK.06.2014 on the Procedures of Utilizing the State Owned Assets in the Context of Infrastructure Provision (“**MoF Reg No. 164/2014**”), which has been amended by the MoF Regulation No. 65/PMK.06/2016 on the Amendment of the MoF Regulation No. 164/2014; and (iii) MoF Regulation No. 57/PMK.06/2016 on the Procedures for Leasing State-Owned Assets.

The purpose of the MoF Reg No. 115/2020 is to implement the Government Regulation No. 27 of 2014, which has been amended by the Government Regulation No. 28 of 2020 on the State/Regional Owned Assets Utilization, and the Presidential Regulation No. 32 of 2020 on Infrastructure Financing Through Limited Management Rights.

To follow is a brief explanation of the key provisions in the MoF Reg. No. 115/2020.

### B. Key Provision

#### The General Principles of the BMN Utilization

The MoF Reg No. 115/2020 specifies broadly the details of the general principles for the utilization of State Owned Assets (*Barang Milik Negara*/"**BMN**"), as follows:

1. It can be conducted so long as it does not interfere with the implementation of the duties and functions of state government administration.
2. It is utilized by taking into account the state and public interest.
3. It is conducted without changing the ownership status of BMN.
4. All related costs to the utilization of BMN such as maintenance, safeguarding, implementation are borne by the BMN utilization partner.
5. State revenue of BMN utilization constitutes as state revenue, which shall be fully paid into the account of the State General Treasury.

6. The BMN object is prohibited to be encumbered or mortgaged.
7. The partner of the BMN utilization is prohibited to use the object of the BMN other than for the purpose stipulated under the agreement.
8. The assessment of BMN for the utilization purposes shall be performed by the independent appraiser, either from the government or private, except for the BMN other than land and/or building held by the User, which shall be appraised by the User's team.
9. The BMN utilization may be carried out for the provision of infrastructure.

## **BMN Utilization Regulatory Scheme**

The MoF Reg No. 115/2020 emphasizes explicitly several schemes of the BMN Utilization, namely, Lease, Borrow-to-Use, Utilization Cooperation, Build Operate Transfer/Build Transfer Operate, Concession (*Kerja Sama Penyediaan Infrastruktur*/"**KSPI**"), and Limited Concession Scheme (*Kerja Sama Terbatas Untuk Penyediaan Infrastruktur*/"**KETUPI**"). As a matter of fact, KETUPI is a new scheme introduced in this regulation, which purpose is to maximize the optimization of the existing BMN utilization.

In addition, MoF Reg No. 115/2020 adds certain conditions that may apply for the payment scheme of leasing, temporary handover of the BMN in the context of the borrow-to-use and fixed contribution in terms of the Utilization Cooperation as well as annual contribution obligation in the Build Operate Transfer/Build Transfer Operate scheme. The certain conditions cover the government assignment stipulated in the Presidential regulation or decree, natural disaster, non-natural disaster, or social disaster. The arrangements for the occurrence of certain conditions are different in each scheme.

## **Objects of the BMN Utilization**

The objects of the BMN utilization comprise of:

1. land and/or building; and/or
2. other than land and/or building.

The objects of BMN can be used partly or entirely. However, it is worth noting that particularly for the KETUPI scheme, the BMN can be granted for the infrastructure of transportation (such as ports, airports, rail lines and bus terminals), toll expressways, water resources, drinking water, wastewater management system, solid waste management system, telecommunications and informatics, electricity, and oil, natural gas, and renewable energy. Such BMN must fulfill the following requirements:

- a. have at least full 2 years of operation;
- b. in the need of increasing the operational efficiency according to the generally accepted international standards;
- c. have the useful life of infrastructure assets for at least 10 years; and
- d. presented in the Ministry/Institution's audited financial statements based on the Government Accounting Standards in the previous period.

## **Sanctions**

The sanctions in the previous regulation are not much different from this regulation.

The BMN's partner will be imposed by the sanctions in the form of a reprimand letter if (i) the partner has not repaired and/or rectified the non-performance of securing and maintaining the BMN at the end of the BMN utilization; or (ii) has not transferred the object and/or result of the BMN according to the agreement. Furthermore, if the BMN's partner does not conduct the repair, rectification and/or handover of such BMN within 1 month as from the issuance of the reprimand letter, the partner will be given a warning letter.

If within 1 month as from the issuance of the warning letter, the partner does not carry out the repair and/or rectification, it will be sanctioned to pay fines in the amount of 2% per day of the delay in carrying out the repair and/or rectification amount **or** 110% of the lease rate calculated by using the daily rental period according to the BMN delivery delay.

## **Conclusion**

The MoF Reg No. 115/2020 has not covered several provisions such as the application to obtain the approval to lease and borrow-to-use scheme. Pursuant to MoF Reg No. 115/2020, further details on the implementation procedure will be regulated under the MoF Decree. However, up to the issuance of this newsletter, such decree has not been released yet. We are anticipating the issuance of such MoF Decree to clarify the non-existence provisions in this regulation.

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