

Accountability Aspects in Government Investment in Finance Minister Regulation Number 118/PMK/06/2020: Indonesia's National Economic Recovery Program amidst COVID-19



Introduction

The current economic situation is often compared with the 1998 economic crisis, as both events have many similarities. What follows from this kind of comparison is that a state investment to sectors which are vital to the economy, akin to the recovery needed post 1998, is very likely. As it happens, state-owned enterprises are set to receive funding in the form of investment from the government of Indonesia. This comes as no surprise, based on previous notable economic events. The Minister of National Development Planning/the Head of the National Development Planning Agency, Suharso Monoarfa, said that development in 2021 will focus on economic recovery. Suharso highlighted that there are 7 national priorities in 2021 which will be implemented in national development, namely: 1. strengthening of economic resilience; 2. regional development; 3. human resources improvement; 4. mental revolution improvement and cultural development; 5. infrastructure strengthening; 6. environmental development as well as disaster and climate change resilience; as well as 7. legal political stability and public transformation. These seven national priorities, which are development agendas, are in accordance with the National Medium Term Development Plan (RPJMN) 2020-2024 in Indonesia.¹

Within the national priority of strengthening economic resilience, the idea of government investment in state-owned enterprises comes to fruition. What comes as a surprise is the amount of monies that will be invested, i.e. IDR 19.7 trillion. The five state-owned companies that have received the funds are (in order): PT Garuda Indonesia Tbk. (GIAA) amounting to IDR 8.5 trillion, PT Krakatau Steel Tbk.

¹ ANTARA (2020), 'Government's 2021 working plan to focus on social, economic recovery', Source: <https://en.antaraneews.com/news/147298/governments-2021-working-plan-to-focus-on-social-economic-recovery> (Accessed on 11 October 2020).

(KRAS) worth IDR 3 trillion, PT Perkebunan Nusantara (Persero) amounting to Rp. 4 trillion, PT Kereta Api Indonesia (Persero) amounting to 3.5 trillion, and PT Perum Perumnas (Persero) amounting to Rp 700 billion.² This is regulated by Finance Minister Regulation Number 118/PMK/06/2020 on Government Investment in the Framework of the National Economic Recovery Program (hereinafter referred as “PMK No 118”). With massive amounts of money to be invested in state-owned enterprises, the question is paramount as regards to the accountability aspects of this government investment, especially bearing in mind that Good Corporate Governance is part and parcel for state-owned enterprises in Indonesia.³ State Owned Enterprises Minister Decision (*Menneg BUMN*) No Kep-117/M-MBU/2002 on the Implementation of Practices of Good Corporate Governance in State Owned Enterprises (“**Menneg BUMN No 117 Year 2002**”) reifies the GCG principles, which include the principles of transparency, independence, accountability, responsibility and fairness. Hence, even in situations where injection of funding is necessary, accountability should never be set aside.

Who is in Charge of the Government Investment in the National Economic Recovery Program?

PMK No 118 specifies in Article 10 that it is the Minister of Finance, as the state’s general treasurer, in charge of managing and administering Government Investment in the National Economic Recovery Program (*Investasi Pemerintah dalam Rangka Program Pemulihan Ekonomi Nasional*, henceforth, referred to as GINERP). In this regard, the Minister of Finance is authorised to, according to subsection (2) of Article 10;

1. Appoint the Budget User Authority of GINERP;
2. Determine the criteria of Investment Recipient;
3. Appoint/Establish the Investment Recipient;
4. Establish the form, value and scheme of GINERP for every Investment Recipient;
5. Assign State-Owned Enterprises or Indonesia Eximbank as Investment Executor
6. Conduct the implementation of an Investment Agreement
7. Supervise and evaluate the execution of GINERP by Investment Executor
8. Establish restructuring of GINERP; and
9. Conduct the settlement of GINERP apart from the settlement of the Investment, which regulated the agreement between the Investment Executor and Investment Recipient

²Santoso, Yusuf Imam (2020) ‘Here are contents of government investment and 5 state-owned enterprises’ (Ini Isi Perjanjian Investasi Pemerintah dan 5 BUMN), Source: <https://nasional.kontan.co.id/news/ini-isi-perjanjian-investasi-pemerintah-dan-5-bumn> (Accessed on 12 October 2020).

³Hukumonline (2002) ‘State-Owned Enterprises Are Obligated to Implement Good Corporate Governance’ (BUMN Wajib Terapkan Good Corporate Governance). Source: <https://www.hukumonline.com/berita/baca/hol6560/bumn-wajib-terapkan-igood-corporate-governancei/>(Accessed on 12 October 2020).

It is further stipulated in subsection 3 that the Minister of Finance delegates the mandate of authority, as referred to in section (2) letter f and letter g to Director General. It is not specified to which Director General it would be within PMK No.118. The ensuing section shall look into aspects of accountability.

Accountability Aspects

Accountability aspects are essential to ensuring the implementation of Good Corporate Governance in state-owned enterprises in Indonesia. Taking a look back in 1998, there is a sombre example of how preferential treatment took place. A bank owned by Suharto's eldest son -- one of 16 that was ordered to be closed by the government in November under the IMF agreement -- quietly reopened under a different name.⁴ Article 11 stipulates the first monitoring or oversight, namely through reporting as Director General which reports the results of monitoring and evaluation on Investment Executor and/or Investment Recipient. The Director General could form a committee with the following memberships and structure: a. Director General concurrently as chairman; b. Deputy for Finance and Risk Management of Ministry of State-owned Enterprises; c. Director General of financing and risk management of Ministry of Finance; and/or; d. Other party. The latter may include consultants and related units in the Ministry of Finance and Ministry of State-owned Enterprises.

Furthermore, Article 30 states that:

- (1) The Director General is responsible for monitoring and evaluating as referred to in Article 25 section (2).
- (2) In case of loss resulting from degradation of investment value of GINERP, the Minister, Director General, Proxy of Budget User and/or Committee are released from responsibility in case of:
 - a. having completed the function of monitoring and evaluating with good faith and cautiousness for government interest and in accordance to the purpose and objectives of
 - b. GINERP;
no conflict of personal interest either directly or indirectly regarding the action of executing GINERP which resulted in a loss; and has provided advice to the Investment Executor to prevent continuity of that loss.

⁴Ressa, Maria (1998) 'IMF Expects More Indonesian Reforms' Source: <http://edition.cnn.com/WORLD/9801/14/indonesia.imf/> (Accessed on 12 October 2020).

Article 29 stipulates:

- (1) In exercising GINERP in accordance to duty and authority as Investment Executor, as referred to in Article 12, the Board of Director, Executive Director and Managing Director from Investment Executor have to apply the good faith principle and take on full responsibility.
- (2) Investment Recipient is fully responsible for correctness, accuracy and completeness in every aspect of the contents of GINERP support proposal.
- (3) In case of exercising the GINERP, as referred to in section (1) exist degradation of investment value, the Board of Directors/Executive Director/Managing Director from Investment Executor could be held responsible for investment loss and/or state loss if the following can be proven:
 - a. the loss did not come from an intended mistake or negligence;
 - b. execution and monitoring with good faith and cautiousness for the interests and in accordance to the purpose of GINERP were completed;
 - c. no conflict of interest either directly or indirectly regarding an execution action of GINERP; and
 - d. has completed action to prevent the continuity of degradation GINERP value in accordance with fair business practice.
- (4) Accountability of Investment Executor on conflict of interest, as referred to in section (3) letter c, is exempted from interest which are evident from every investment or loan to the Investment Recipient who was given by the Investment Executor and announced before the Minister.

In summary, the accountability aspects of PMK are regulated internally and externally. One of the key players in enforcing such aspects is the Minister and Ministry of Finance. Implementing Good Corporate Governance, even in times of economic recovery during Covid-19, is a must. It would be unthinkable for history to repeat itself in 2020-2021 and to have cronyism dictate such aspects akin to 1998. PMK 188 should be implemented in light of other laws, such as Meneg BUMN No 117 Year 2002, Banking Law and Bankruptcy Law in Indonesia.

Acknowledgement

Contribution of Karina Tan for this Legal Alert is gratefully acknowledged.



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