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Opportunities and Legal Framework on the Utilization of State Owned Assets:

Optimal Strategies for Business Actors and Investors in Indonesia

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Opportunities and Legal Framework on the Utilization of State Owned Assets:
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Indonesia holds a vast portfolio of State Owned Assets worth around IDR 13,692 trillion (as of end 2024) including land, buildings, infrastructure, machinery, and facilities of high economic value. Many remain underutilized, representing untapped revenue and growth potential. The legal framework enables State Owned Enterprises (or *Badan Usaha Milik* Negara **"BUMN"**), Regional Government-Owned Enterprises (or *Badan Usaha Milik Daerah* **"BUMD"**), and private companies to partner with the Government to optimize these assets, boosting infrastructure, productivity, investment, and mutual economic benefits.

A. GOVERNING LAWS

Indonesia manages State Owned Assets under a strict legal framework to safeguard value while ensuring transparency, accountability, and compliance, based on complementary regulations including Law No. 17 of 2003 on State Finance (**"Law 17/2003"**), Government Regulation No. 28 of 2020 on the Management of State Owned/Regional Owned Assets (**"GR 28/2015"**), Presidential Regulation No. 38 of 2015 on Public-Private Partnerships in Infrastructure Provision (**"PR 38/2015"**), and Minister of Finance Regulation No. 115/PMK.06/2020 on the Utilization of State Owned Assets (**"MoF Reg. 115/2020"**). Unused assets may be commercially utilized under regulated schemes, with ownership retained by the State, while providing legal certainty for public and private partners to invest, mitigate risks, and support sustainable, mutually beneficial cooperation.

B. PURPOSE OF THE UTILIZATION AGREEMENT

Many State Owned Assets such as land, buildings, and infrastructure, remain underutilized despite Indonesia's position as the largest economy in ASEAN, ranking first with a GDP of approximately USD 1.4 trillion, representing about 35% of the region's total output, yet its GDP per capita stands at just $5,000, lower than regional peers like Malaysia or Thailand. Manufacturing currently contributes around 19% to Indonesia's GDP, while services account for more than 43%, a structure that lags behind some regional peers where manufacturing exceeds 20-25%. Strengthening the manufacturing sector through effective asset utilization is crucial to diversify the economy, increase value added production, enhance competitiveness, and sustain long term growth.

C. LEGAL FRAMEWORK AND SCHEMES FOR THE UTILIZATION OF STATE OWNED ASSETS

I. Parties Involved

The cooperation agreement shall be entered into between the Government and the Private Partner, with the prior approval of the Director General at the Ministry of Finance, to utilize State Owned Assets that are not currently needed by government offices in order to increase their value and generate revenue for the State without changing ownership. This process involves several parties with distinct roles and authorities under applicable laws and regulations, namely:

(i) Asset Administrator, the Minister of Finance, as Asset Administrator, holds strategic authority to set policies, approve or reject utilization requests, and oversee implementation to ensure legal compliance and optimize the economic value of State assets;

(ii) Asset User**,** an Asset User is a Minister or head of a government institution responsible for identifying potential assets, requesting their utilization, executing agreements within their authority, and ensuring use aligns with the agreement without disrupting public services; and

(iii) Private Partner, a Private Partner can be a State Owned, BUMN, BUMD, or private (local or foreign) company that helps fund, develop, and manage State Owned Assets. They must follow the contract, run operations properly, and obey the law. Most partners are chosen through a tender, but for key assets like airports or ports, the government can directly appoint State or BUMD or their subsidiaries.

The utilization of State Owned Assets shall be carried out by the Asset User through the identification of unused or underutilized assets, followed by submission to the Directorate General of State Assets (or **"DGSA")** for approval of the utilization scheme, determined based on asset value, purpose, and investment needs. The Private Partner shall be selected through a tender process or direct appointment for certain strategic assets. Strategic assets that require a tender process include the utilization of vacant land for the development of shopping centres, hotels, and other commercial buildings, as well as the use of infrastructure assets for public services such as ports, toll roads, and airports. Best practices for such tender processes include ensuring transparency, applying clear technical and financial criteria, engaging independent oversight, conducting market sounding, and adopting a value-for-money approach that considers long term public benefits.

II. Utilization Schemes (Minister of Finance Regulation No. 115/PMK.06/2020)

State Owned Asset utilization under MoF Reg. 115/2020 can take various forms, including:

(i) **Lease**, this scheme leases unused State Owned Assets to private parties for up to 5 years, or up to 50 years for infrastructure projects;

(ii) **Cooperative Utilization Agreement**, this scheme allows private use of State Owned Assets for up to 30 years, or up to 50 years for infrastructure projects;

(iii) **Build Operate Transfer (BOT)**, this scheme lets private parties build on State land and transfer the facility to the State after operating it for up to 30 years, non-extendable;

(iv) **Build Transfer Operate (BTO)**, similar to BOT, this scheme transfers the asset to the State upon completion to ensure State ownership while granting the private partner agreed utilization rights;

(v) **Infrastructure Provision Cooperation**, this scheme is a Public-Private Partnership where the private party finances, builds, and/or operates public infrastructure for up to 50 years (extendable) to develop and manage key facilities such as toll roads, ports, airports, and water systems; and

(vi) **Limited Infrastructure Financing Cooperation,** this scheme monetizes State Owned Assets by requiring the private partner to make an upfront payment for the right to manage and improve them, providing the State with immediate funds for strategic projects without waiting for new budget allocations.

D. CRUCIAL COMMERCIAL AND LEGAL ASPECTS

All payments from the use of State Owned Assets including rent, fixed contributions, profit sharing, or other agreed forms must be paid into the State Treasury as Non-Tax State Revenue (or *Penerimaan Negara Bukan Pajak* **"PNBP"**). All proceeds from the utilization of State Owned Assets shall be deposited into the State General Cash Account, which is managed by the Minister of Finance in their capacity as the State General Treasurer.

Key commercial and legal aspects to consider include:

(i) Risk Allocation

State Owned Asset Utilization Agreements must clearly allocate construction, operational, market, and regulatory risks covering issues such as delays, service disruptions, revenue fluctuations, and legal changes. These should be assigned to the parties best positioned to manage them, ensuring effective risk management and project continuity.

(ii) Protection of Public Interest

State Owned Asset utilization must prioritize public interest, maintain service quality and continuity, comply with laws, and uphold public order, morality, and national interests to ensure economic optimization aligns with constitutional goals for public prosperity.

(iii) The Critical Role of Legal Advisory

Given the complexity of regulations, partner selection, and contractual obligations in State Owned Asset Utilization, legal advisory is key to project success. Law firms add value by:

i. Conducting legal due diligence on asset status, disputes, restrictions, and project feasibility;

ii. Drafting and negotiating compliant agreements covering rights, obligations, payments, risk allocation, and dispute resolution; and

iii. Ensuring compliance with state finance rules, managing legal risks, and protecting client interests.

Integrated legal support from planning to execution minimizes disputes, ensures legal certainty, and keeps projects on track.

E. BENEFITS FOR PRIVATE PARTNERS

With legal certainty and flexible schemes, partnerships in State Owned Asset utilization offer businesses strategic benefits, including:

(i) Access to Strategic Assets, private partners can use government owned land, buildings, and infrastructure in strategic, high value locations;

(ii) Long Term Rights with Legal Certainty, partnerships come with clear legal agreements allowing private partners to manage assets for up to 50 years, giving stability for long term planning and investment;

(iii) Oppurtunity to Participate Major Infrastructure Projects, these partnerships give businesses the chance to help develop and manage important national infrastructure projects; and

(iv) Predictable Returns on Investment, the return on investment is structured clearly through user fees, government payments, or profit sharing making future income more predictable and reducing financial risk.

F. DISPUTE RESOLUTION

Given the long term nature of State Owned Asset utilization, agreements must include clear dispute resolution mechanisms starting with negotiation and, if needed, proceeding to arbitration or court with arbitration often favoured in high value projects for its speed, confidentiality, and expert adjudication, thereby ensuring legal certainty, preserving partnerships, and maintaining project continuity.

G. CONCLUSION

The utilization and management of State Owned Assets offer businesses a strategic opportunity to partner with the Government in high value projects that advance economic growth and infrastructure development. A strong legal framework safeguards State ownership while ensuring legal certainty and investment protection for private partners. However, private partners must exercise caution to ensure that agreements are signed by the authorized official/institution representing the state as the legal owner of the assets. If executed with an unauthorized party, such agreements may be deemed null and void by law, exposing private partners to significant legal and financial risks. With experienced legal advisors guiding planning, due diligence, contract drafting, compliance, and dispute resolution, agreements can be structured to maximize value, protect interests, and ensure sustainability thus optimizing asset potential and contributing to Indonesia's long term economic prosperity.

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