

The Role of Infrastructure Guarantee Institution in Infrastructure Project Provision Through Public-Private Partnership Scheme

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Abstract

This study aims to examine the role of Indonesia Infrastructure Guarantee Fund (IIGF). in the Public and how it functions to encourage the acceleration of infrastructure development. This study utilizes a normative juridical research method with a specification of descriptive-analytical. Results indicate that: from a legal perspective, IIGF is an institution that provides a guarantee for losses due to political risks such as changes in regulations, delays, or failures of financial close, as well as failures in granting licenses and approvals. As an institution that provides a guarantee, IIGF is a development of a corporate guarantee whose legal basis uses the concept of a Recourse Agreement according to Civil Code, but its implementation regulated in separate statutory regulations. IIGF performs a guaranteed function and adds value to infrastructure development that has the greatest impact on the benefit of the people of Indonesia; protects the interests of the government in fulfilling infrastructure development through transparent and accountable processes; and increases investor trust by providing investment convenience and payment certainty for claims of risk of loss for a collaborative infrastructure project.

KEYWORDS *Public-Private Partnership, Indonesia Infrastructure Guarantee Fund, Development of Guarantee institutions*



Introduction

Indonesian National Medium-Term Development Plan 2020-2024 places infrastructure development as one of the 7 development agendas. This infrastructure development is a strategic choice in order to accelerate the development and equity of the Indonesian economy. Government attention in the field of infrastructure in recent years has contributed to improving the quality of infrastructure in Indonesia, however, Indonesia's infrastructure competitiveness still requires improvement.¹ In the 2019 Global Competitiveness Index (GCI) released by the World Economic Forum, Indonesia's infrastructure competitiveness ranking is still lagging in the Southeast Asian Region (ASEAN), i.e., at the level of 67.7 points on a scale of 1-100. This ranked Indonesia the 71th of 141 countries surveyed and ranked the 5th in the ASEAN Region, while Singapore remained in the top rank as the country with the highest infrastructure competitiveness in ASEAN and in the world with a score of 95.1.²

One obstacle in infrastructure development is the need for a relatively large source of funding. As an illustration, for financing infrastructure development in Indonesia for 2015-2019, the Indonesian government is only able to finance infrastructure projects at 30% of the total estimated infrastructure development costs. According to Bappenas (The National Planning Agency), the Indonesian government is only able to finance infrastructure projects add up to Rp1,443 trillion from Rp.4,396 trillion in total costs needed to develop Indonesia's infrastructure in the period of 2015-2019. The National Planning Agency expected that the funding gap to be 36% funded through the Public-Private Partnership (PPP)

¹ Bappenas, "Rancangan Teknokratik Rencana Pembangunan Jangka Menengah Nasional 2020-2024," *Kementerian PPN/Bappenas*, 2019.

² World Economic Forum, "Daya Saing Infrastruktur Indonesia Urutan Kelima Di ASEAN," 2020.

scheme.³ The International City/County Management Association (ICMA) states that in addition to traditional infrastructure funding through the APBN/D (State and Regional Budget), there are several alternative infrastructure financings, namely: 1) new financing sources, 2) new financing mechanisms, or 3) new financing scheme. New financial sources can be additional sources of income to fund infrastructure projects. Meanwhile, new financing mechanisms can take the form of new loans that are flexible and/or potentially cost-effective to fund an infrastructure project. At last, new financing scheme can involve new partners (private, non-profit, or community) to participate in infrastructure financing and project implementation.

The involvement of Business Entity/private sector in infrastructure financing is carried out with the Public-Private Partnership (PPP) scheme.⁴ Through this scheme, the government encourages the private participation in the development of national infrastructure through the support of policies, instruments and fiscal frameworks. One of the Institutions that plays an important role in providing infrastructure with the PPP scheme is the Indonesia Infrastructure Guarantee Institution (IIGF). IIGF was created by Indonesian Ministry of Finance as state owned enterprise to improve the creditworthiness and quality of PPP for infrastructure project in Indonesia which is provides guarantees for one or several financial obligations of a public contracting agency that participates in a PPP consortium. If the economic feasibility of the PPP project is disturbed due to perils caused by the public contracting agency, IIGF will provide compensation⁵. The government has provided a legal basis for an Infrastructure Guarantee Institution establishment by issuing Presidential Regulation Number 78 of

³ Informasi Publik, “Peran PT Penjaminan Infrastruktur Indonesia (Persero) Dalam Meminimalisasi Risiko Fiskal Atas Kewajiban Kontinjensi Pemerintah Indonesia Yang Timbul Dari Proyek Infrastruktur,” 2019, 7–10.

⁴ Suhendra Maman, “Manajemen Keuangan Publik,” *Jurnal Manajemen Keuangan Publik* 1 (2017): 41–47.

⁵ International institutional for Sustainable Development, <https://www.iisd.org/credit-enhancement-instruments/institution/indonesia-infrastructure-guarantee-fund/> accessed on 10 May 2022

2010 on Infrastructure Guarantee in Government Cooperation Projects with Business Entity carried out through the Infrastructure Guarantee Institution (Presidential Regulation on Infrastructure Guarantee Institution). One of the motives of the issuance of the Presidential Regulation is to increase the creditworthiness of infrastructure projects. That is an effort to encourage Business Entity participation in infrastructure development, more specifically infrastructure projects provided under the PPP scheme. Therefore, the government has established the Indonesia Infrastructure Guarantee Fund (IIGF) as a single-window policy in evaluating, arranging guarantee structures and providing guarantees for PPP-scheme infrastructure projects in order to accelerate Indonesia's economic growth. A single-window policy is a policy assigned by the government to IIGF as an infrastructure guarantee institution to carry out the infrastructure guarantee process. This single-window policy is beneficial for realizing transparency and consistency in processing guarantees and claims. The IIGF is developed in reference to various international experiences involving the use of government guarantees to attract private financing for infrastructure development. Several international institutions, including the World Bank, also provided technical support in the preparation of evaluation procedures, corporate governance and other critical functions at IIGF. It is expected that IIGF will be able to attract similar financial institutions to partner in the provision and capacity building of guarantees.⁶

PPP projects are infrastructure projects provided by the Government in collaboration with private sectors/business entities. Furthermore, the PPP scheme is realized through the Partnership (agreement) that involves the government as the Contracting Agency. The type of cooperation agreement is in the form of joint operation and maintenance of infrastructure facilities to finance, supply and operate infrastructure facilities. The duration of partnership agreements usually is for a relatively

⁶ Indonesia Infrastructure and Guarantee Fund, "GUARANTEEING INDONESIA," 2017.

long period of time (more than 15 years) to enable the return of investment by the Business Entity. The basis of the PPP project cooperation agreement is the distribution of risk allocation between the Government (through the Contracting Agency) and the Business Entity. Every risk is allocated to the party who is relatively better able to control, manage, or prevent it. Risk management is one of the factors considered by the Business Entity in collaborating, although it is not the sole factor. In addition to the legal and regulatory basis, the type and pattern of PPP are weighed more by government stakeholders.⁷

The infrastructure guarantee aims to improve the creditworthiness and quality of PPP infrastructure projects by a means of a clear and consistent framework for evaluating and managing claims for guarantees; improving governance and transparency in the implementation of guarantee provision; facilitating and encouraging the success of transactions for Contracting Agencies (Ministries, SOEs, Regional Governments) by providing guarantees for PPP projects that are well-structured and ring-fencing government contingent obligations as well as minimizing shocks to the state budget⁸. Hence, the success of PPP in infrastructure development is inseparable from the function and position of IIGF as a guarantor. However, not all infrastructure development can be guaranteed by IIGF. The regulations govern what infrastructure projects can be carried out under the PPP scheme and guaranteed by IIGF. From the positive legal aspects regarding security law in Indonesia, it is compelling to conduct a study on the role of IIGF as a guarantor in infrastructure development, especially the practices and guarantee mechanisms of the PPP scheme. Based on the aforementioned description, this study aims to examine and analyze how the role and function of IIGF as a guarantee

⁷ Adhistry Syamshabrina and Putu Gde Ariastita, "Preferensi Pemerintah Dan Badan Usaha Dalam Pengembangan Lyn Sebagai Angkutan Umum Feeder Di Surabaya Melalui Skema Kerjasama Pemerintah Dan Badan Usaha (Studi Kasus : Angkutan Lyn Rute S Dan Rute G Surabaya)," *Jurnal Teknik ITS* 6, no. 2 (2017): 2-4, <https://doi.org/10.12962/j23373539.v6i2.25846>.

⁸ Syamshabrina and Ariastita.

institution in the PPP scheme in the attempt to accelerate infrastructure development in Indonesia.

Method

This study used normative legal research, which focuses on examining the application of the rules or norms in positive law⁹ and also used the positivist legalist conception approach. This concept views the law as identical with written norms created and promulgated by authorized institutions. This conception views the law as a normative and independent system.¹⁰ The research is descriptive-analytical since it makes a systematic, factual, and accurate description of the facts. Therefore, the study examines and describes The Role of Infrastructure Guarantee Institution in Infrastructure Project Provision Through Public-Private Partnership Scheme.

Result and Discussions

The Position of Indonesia Infrastructure Guarantee Fund (IIGF) in Infrastructure Development Through PPP Scheme the Provision of Infrastructure Through Public-Private Partnership

Adequate and sustainable infrastructure availability is an urgent need to support the national development implementation to improve the national economy, the welfare of the people, and Indonesia's competitiveness in global competition. Good transportation infrastructure, for example, will facilitate the flow of people and goods, thus it can

⁹ Johny Ibrahim, *Theory and Methodology of Normative Legal Research*, Bayumedia Publishing, 2006

¹⁰ Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetry*, Jakarta: Ghalia Indonesia, 1988.

encourage sustainable economic growth. Therefore, comprehensive steps are required to create a conducive investment climate to encourage the participation of business entities in the provision of infrastructure and services based on sound business principles. With regard to these considerations, Presidential Regulation No. 35 of 2015 on Public-Private Partnership (Presidential Regulation on PPP) was issued to protect and safeguard the interests of consumers, the community and business entities in a fair manner. In addition, the Presidential Regulation was issued so that PPP could be carried out broadly, quickly, effectively, efficiently, comprehensively and continuously. In some countries, PPP schemes have proven to be more effective and efficient than traditional schemes. The PPP concept is considered a strategic infrastructure provision scheme that is able to prepare projects by focusing on project expediency. In some developing countries such as India, Mexico and Brazil, PPP pattern has contributed very significantly in meeting the needs of infrastructure funding, i.e., reaching around 25-30% of their total needs ¹¹. In Australia, based on a study conducted on 67 projects by a researcher team of the University of Melbourne in 2008, results show that the project costs were closer to those estimated if carried out under a PPP scheme rather than traditional provision. In the UK, based on the National Audit Office (NAO) report in 2009, only 31% of PPP projects experienced delays in completion, while 37% of non-PPP projects experienced delays in completion. In addition to time efficiency, cost efficiency also occurs in PPP projects where 65% of PPP projects are in line with estimated costs, while in non-PPP projects, it is only 54%¹².

Based on the Presidential Regulation on PPP, it can be concluded that several elements in the PPP are: 1) cooperation between the government and business entities in the provision of infrastructure services

¹¹ Maman Suhendra Penyediaan infrastruktur Dengan Skema Kerja Sama Pemerintah dan Badan Usaha (Public Private Partnership) di Indonesia, *Jurnal Manajemen Keuangan Publik*. Vol 1 No 1, hlm 42”

¹² Rahmat & Sevi Wening P Mulyono, “KPBU : Pembiayaan Infrastruktur Dalam Menjaga APBN Yang Sehat,” 2017.

for the public interest; 2) this collaboration is contained in the agreement between the Government and Business Entity; 3) attentive to the principle of risk-sharing among the parties; 4) the government will be represented by the Minister/Head of Agency/Regional Government, referred to as the Contracting Agency. One criticism of the PPP is the concern over privatization¹³. In contrast to traditional asset provision and privatization, PPP scheme has several advantages, namely:

1. PPP is not focused on the provision of assets. PPP is a partnership between the government and Business Entity to find the most effective and efficient solutions in an effort to provide public services for the community in a relatively long period of time.
2. The risk is allocated to the most competent parties to control it. Contracting Agency are fully taken the political risk and the changing policy meanwhile construction risks; market risks and operational risks are managed by the Business Entity.
3. The partnership is transparent; thus, it will reduce political intervention;
4. The Government guarantees the certainty of return on investment.

It is expected that the advantageous points of the PPP will be able to attract business/private entities to invest in infrastructure development in Indonesia.

A. Public-Private Partnership Agreement

From a legal perspective, PPP involves several legal aspects: contract law, financial law and security law. The legal relationship of the parties within the PPP arises partly from the following agreements: 1) the partnership agreement between the Contracting Agency representing the Government and the Business Entities; 2) the guarantee agreement between the IIGF and the Business Entity; 3) the Recourse Agreement between the

¹³ Maramis B. Joubert, "Joubert B . Maramis Keywords : KPBU , PPP , Infrastrucktur , Success , Implementation Corresponding Author : Joubert B . Maramis" 5, no. 1 (2018): 49–63.

IIGF and the Contracting Agency, and 4) the financing agreement between the Business Entity and the Sponsor or Lender if the Business Entity does not provide its own financing. In addition to the terms of the contract, the legal relationships between the parties are governed by several rules and regulations. As the type of contract develops in the provision of infrastructure, the PPP agreement contains specific elements that distinguish it from other partnership agreements. The following are the elements of a PPP contract:¹⁴

1. The parties in the PPP agreement are the Government represented by the Contracting Agency (Minister, Head of Agency, Regional Head, State-Owned Enterprises or Regional-Owned Enterprises) with Business Entities (State-Owned Enterprises or Regional-Owned Enterprises, Limited-Liability Company and Cooperatives Enterprises).
2. The object of partnership is economic and social infrastructure. Based on Article 5 Paragraph (2) of Presidential Regulation on PPP, 19 types of infrastructure can be cooperated under PPP schemes.
3. Government contributions can be in the form of partial PPP financing, Government Support and Government Guarantees.
4. Business Entity Investment Returns can be in the form of payments by users in the form of a tariff (user charge); payment of service availability (availability payment) and other forms that do not conflict with statutory regulations.
5. The stages in PPP consist of planning, preparation and transaction.

B. Government Contribution to PPP

In addition, with regards to a series of regulation, the government provides facilities and support for PPP projects in the forms of:

¹⁴ Kementerian PPN/Bappenas, “Kerjasama Pemerintah Dan Badan Usaha (Kpbu),” 2017.

TABLE 1. Government Facilities/Support for PPP Projects

Project Preparation Funding (Project Development Facility)	Facilities are used to finance the provision of the final feasibility study and transaction assistance (legal basis: Regulation of the Minister of Finance No. 265/2015 and No. 129/2019).
Feasibility Support Funding (Viability Gap Funding)	The central government contributes a portion of the construction costs to the PPP project in order to improve the financial feasibility of the project (legal basis: Regulation of the Minister of Finance No 223/2012 and No 143/2013. Feasibility support is provided in cash to PPP for a portion that does not dominate the construction costs (maximum 49% of construction costs)
Government guarantees due to political risks	The Minister of Finance through IIGF carries out infrastructure guarantees Fund with a single-window policy. IIGF will guarantee (default) the financial obligations of the Contracting Agency due to political risks to the Business Entity/Private Sector as outlined in the guarantee contract. For guarantees given to the Contracting Agency, IIGF has the right to regress to Contracting Agency if a claim arises from a Business Entity/Private Sector.

Source: Ministry of Finance of the Republic of Indonesia, 2017.

The Government's contribution is partially financed in the PPP scheme in the form of providing a portion of infrastructure and that is carried out by business entity. Whereas Government support aims to improve the financial feasibility and effectiveness of PPP in the form of Viability Gap Funding (VGF) or tax incentives approved by the Minister of Finance; and/or other forms that can be given by the Minister/Head of Institution/Head of Region in line with statutory regulations. Another government contribution is the Government Guarantee that aims to increase the bankability and creditworthiness of PPP projects. Based on Article 14 Paragraph (1) of the President Regulation on PPP, the

infrastructure provision initiative that will be cooperated with a Business Entity/private sector originates from the Government be it the Ministry/Head of Institution or Regional Head. However, Article 14 Paragraph (3) of the Presidential Regulation on PPP stipulates that a Business Entity can initiate the provision of infrastructure as long as it meets the following criteria:

1. Technically integrated with the master plan in the sectors concerned;
2. Economically and financially feasible, and
3. Business entities/private sector that propose initiatives have sufficient financial capacity to finance the implementation of infrastructure provision.

The initiating Business Entity/private sector shall prepare the proposed PPP feasibility study. To the Business Entity initiating PPP, alternative compensation can be given, namely an additional value of 10%; granting the right to make an offer by the initiating Business Entity to the best bidder (right to match), in accordance with the results of the assessment in the tender process; or purchasing PPP initiatives including intellectual property rights for them by the minister/head of the Institution/Regional Head or by the winner of the auction.

Guarantee Agreement Between IIGF and Business Entities

A. The Role of IIGF as an Infrastructure Guarantee Institution

Indonesia's major infrastructure deficit, coupled with limited government budget and borrowing capacity, has created promising opportunities for private sector participation. However, to date, these opportunities have been few. Private sector participation in infrastructure outside of the energy and telecommunications sectors, as well as some

limited investment in toll roads and ports, was minimal.¹⁵ To overcome this, the Government has issued a policy to provide opportunities for private sector participation with the existence of IIGF as a guarantor institution that makes investors more secure in legal certainty in carrying out infrastructure development.

One of the Government's contributions to the PPP project is Government Guarantees. There are many reasons for an emerging market and developing economy government to issue a guarantee. In short, government guarantees can enable a PPP project to receive commercial financing when it would not have done so without the guarantee; increase competition in bidding for the opportunity to execute a project by lowering the project's risk profile, thereby expanding the investors' base; increase the amount of financing available to the project; lengthen the tenor of financing; and reduce the cost of the project's financing.¹⁶ This government guarantee is given by taking into account the principles of financial risk management and control in the State Budget. The legal basis for infrastructure guarantee by IIGF is Presidential Regulation No. 78 of 2010 on Infrastructure Guarantee in Public-Private Partnership Projects Conducted through Infrastructure Guarantee Institution (Presidential Regulation on Infrastructure Guarantee Institution). Previously, the Government had issued Government Regulation No. 35 of 2009 on Capital Investment of the Government of the Republic of Indonesia for the establishment of Limited Liability Company in of Infrastructure Guarantee. Based on these regulations, the government established the Indonesian Infrastructure Guarantee Fund (IIGF) that aims: to become the primary SOE gear in accelerating sustainable infrastructure development to improve the quality of life of the Indonesian people; to ensure the accelerated fulfillment of sustainable infrastructure development by providing assurance and added

¹⁵ David Ray & Lili Yan Ing, Addressing Indonesia's Infrastructure Deficit, *Bulletin of Indonesian Economic Studies*, Vol. 52, No. 1, 2016: p. 1–25

¹⁶ Jason Zhengrong Lu et.al., 2019, Government guarantees for Mobilizing Private investment in Infrastructure, International Bank for Reconstruction and Development/ The World Bank, p.11, <https://ppiaf.org/documents/5798/download>

value for infrastructure development that has the greatest impact on the benefit to the people of Indonesia; protect the interests of the government in the fulfillment of infrastructure development through a transparent and accountable process; and increase investors' trust by providing investment convenience and payment certainty for claims of risk of loss for a cooperative infrastructure project. Generally, infrastructure development guarantee are related to the law guarantee. The term guarantee law comes from security of law, which is a set of provision governing guarantees receivables of a person or entity that are contained in various laws and regulations by placing a asset as collateral for payment or ability an obligation.¹⁷

From the perspective of security law, the guarantee agreement made between IIGF and the Business Entity/private sector is similar to the guarantee agreement in general i.e., it has *accessoir* nature or follows the main agreement, namely the PPP agreement. In other words, the initiation and termination of this guarantee agreement depends on the initiation and termination of the PPP agreement, but not vice versa. Another strategic issue of infrastructure guarantee is the scope of the guarantee that is limited by laws and regulations, namely only the financial risk of the Contracting Agency that is in line with the partnership agreement based on reasonable risk allocation. IIGF can guarantee various Contracting Agency financial obligations that have been allocated to the Contracting Agency in accordance with the PPP agreement. Examples of risks that can be guaranteed are:

1. Licenses, permits and approvals: cover risks resulting from delays or failures in granting licenses, permits, or approvals (delays that have negative impacts on construction costs, funding costs and revenue generation).

¹⁷ Anita Kamilah, Regress Rights as a Form of warranty the Indonesia Government in Financing Infastructure Development, *Journal of Legal, Ethical and Regulatory Issues*, Vol. 24, Issue: 3, 2021, p. , <https://www.abacademies.org/articles/regress-rights-as-a-form-of-warranty-the-indonesian-government-in-financing-infrastructure-development-10701.html>

2. Delay/failure of financial close: cover the risk of delay/failure of financial closure due to Contracting Agency actions/inaction (except land and permits issues);
3. The transformation or amendment in laws and regulations: cover losses as a result of transformation in laws/regulations that have negative impacts on projects such as tax regulations, tariff structures, or regulations that affect the technical specifications of the project and cause changes in costs.

In structuring the guarantee fund, IIGF has access to guarantees from IIGF Capital; Multilateral Development Institutions such as the World Bank or other related institutions; and the Indonesian government as Co-Guarantor. The World Bank Group (WBG) had been working closely with the Government and key development partners to expand infrastructure provision in Indonesia. The Bank's focus had been on: improving sectoral policies; establishing appropriate public institutional mechanisms to support private infrastructure; and improving the overall investment climate. The Bank has also supported the Indonesia Infrastructure Finance (IIF) as a non-bank financial intermediary to increase provision of private sector financed infrastructure. For its part, the International Finance Corporation's (IFC's) work in the infrastructure sector in Indonesia included both advisory work (notably in the power sector) and also in investing in the IIF.¹⁸

Refer to IIGF's functions is to guarantee the financial risks of the Contracting Agency and ensure that the Business Entity receives returns on investment, the position of IIGF is similar to a corporate guarantee. Meanwhile, a corporate guarantee is the development of personal guarantee

¹⁸ The World Bank- Indonesia Infrastructure Guarantee Fund Project, Implementation Completion and Results Report, Juni 2019, p.6, <https://documents1.worldbank.org/curated/ar/763571565036833453/pdf/Indonesia-Infrastructure-Guarantee-Fund-Project.pdf>

insurance.¹⁹ In projects with PPP schemes, IIGF carries out infrastructure guarantees, namely the provision of guarantees for the financial obligations of the Contracting Agency conducted under a guarantee agreement. Meanwhile, what is meant by the Contracting Agency financial obligation is the obligation to pay financial compensation to the Business Entity/private sector for the occurrence of infrastructure risks that are the responsibility of the Contracting Agency in accordance with the Risk Allocation as agreed in the Cooperation Agreement? Specifically, the object that can be guaranteed by IIGF is the payment obligation to Business Entity/private sector arising from delays in permit/license, amendment in regulation, failure of tariff adjustments, and failure of integrating networks/facilities that are the government's responsibility.

Infrastructure projects that can be guaranteed by IIGF are projects that apply PPP schemes in line with Presidential Regulation No. 38 of 2015 on PPP. In addition, the project must meet the technical and financial feasibility and corroborate with the law and regulation of the relevant sectors. Referring to Article 5 of the Presidential Regulation on PPP, the infrastructure that can be cooperated is economic and social sectors. There are 19 sectors of economic and social infrastructure projects that can be guaranteed by IIGF, including transportation, roads, water resources and irrigation, drinking water, waste management, telecommunications and information technology, electricity, oil and gas, energy conservation, urban facilities, education, tourism, etc. PPP can be a combination of two or more types of infrastructure.

B. Regress Rights in Guarantee Mechanisms

The role of IIGF as a guarantor in the PPP scheme is analogous to corporate guarantee that is the development of an individual

¹⁹ Lastuti Abubakar, "Telaah Yuridis Perkembangan Lembaga Dan Objek Jaminan (Gagasan Pembaruan Hukum Jaminan Nasional)," *Buletin Hukum Kebankesentralan* 12, no. 2 (2015).

guarantee/underwriter (*borgtocht*) regulated in the Civil Code. Subrogation institutions are the most common guarantee mechanism and are the basis for debt guarantee institutions because they allow the transfer of creditor rights to third parties who have paid them (creditors). Through subrogation, there is a legal relationship that is not found in other guarantee institutions that have received previous arrangements such as fiduciary, mortgage rights, namely the presence of a re-guarantee legal relationship.²⁰

There are 2 characteristics of cover incorporated in IIGF guarantee. First, the coverage can be for a part of the debtor's obligations. In this case, the IIGF only guarantees Government obligations based on the risks allocation as outlined in the PPP agreement. Meanwhile, other risks such as operational and production risks arising from Business Entity risk, according to the agreement, are not guaranteed by IIGF. This limited infrastructure guarantee by the IIGF is in line with the provisions of Article 1822 of the Civil Code, stipulating that underwriting can be carried out only for part of the debt or by reducing the terms/conditions. Second, is the IIGF subrogation right to the Contracting Agency as outlined in the Recourse Agreement in accordance with the provisions of Article 1840 of the Civil Code regulating that the guarantor who has paid or the guarantor may reclaim the principal amount paid to the debtor (subrogation) or "regress" in the guarantee infrastructure. Regress right means the right to collect. The right of regress is the right granted by law. ²¹Article 15 of Presidential Regulation No. 78 of 2010 (Presidential Regulation on Infrastructure Guarantee Institution) stipulates that if the guarantor has carried out its obligations based on the Agreement, the Contracting Agency is obliged to meet the subrogation/regressions carried out through the State/Regional Budget mechanism or a corporate mechanism if the Contracting Agency is

²⁰ Siti Zuleha, "Model Mitigasi Risiko Pada Lembaga Penjamin Kredit Di Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 2 (2018): 291, <https://doi.org/10.22146/jmh.30286>.

²¹ Syananda Al Rizky, legal remedy Against Regress Right for Endosans Who Make Non Payment/Non-Acceptance Judging from the Use of Securities in KUHD, Legal Brief, Vol.9, Issue 2, May (2020),p.106-114.

a State/Regional Owned Enterprises. Based on these provisions, IIGF has a subrogation right to the Contracting Agency for each claim paid by IIGF to investors. The regress value that IIGF can bill to the Contracting Agency is the amount of the claim paid by taking into account the time value of money. IIGF rights and Contracting Agency obligations must be stated in a Recourse Agreement between IIGF and Contracting Agency signed prior to the signing of the Guarantee Agreement between IIGF and the Business Entity/private sector. For infrastructure guarantee services, IIGF can charge guarantee services.

This regression agreement is required for the following reasons:

1. Comply with the provisions of the Civil Code on individual guarantee/underwriter (*borgtocht*), commonly known as subrogation.
2. Ensuring the financial condition of IIGF.
3. Ensuring the Contracting Agency is responsible for its obligations (both financial and non-financial) in accordance with the PPP contract.

From the aforementioned description, it can be concluded that the IIGF subrogation rights to the Contracting Agency arise because there was a guarantee agreement as an *accessoir* agreement from the PPP contract. Therefore, the contractual relationship between IIGF, Contracting Agency and Business Entity/private sector cannot be separated from one another. In the guarantee mechanism, the Business Entity/private sector will submit a guarantee claim to IIGF, then IIGF will make a payment claim to the Business Entity. For this payment, IIGF submitted compensation to the Contracting Agency. What is interesting in the contractual relationship related to the guarantee mechanism is that a Recourse Agreement is agreed upon prior to the signing of the guarantee agreement. From the legal perspective of the underwriting, the guarantor's subrogation rights on the debtor arise as a legal result of the individual guarantee/underwriter (*borgtocht*) agreement. This seems to be conducted to ensure that the IIGF will guarantee all government risks arising in the PPP contract.

Conclusion

The role of the IIGF as an Infrastructure Guarantee Institution is a corporate guarantee as the development of individual guarantee/underwriter (*borgtocht*) regulated in the Civil Code. IIGF guarantees are limited in nature, namely guaranteeing the failure of the government to perform obligations under the PPP contract due to political risks including regulations amendment, failed to grant permits, approvals, and licenses as well as failure or delay in financial closing. Similar to the security interest, IIGF has the right to regress the insurance claim by the Business Entity that can be requested for reimbursement from the Contracting Agency. The right to regress is important to maintain the financial condition of IIGF. One of the considerations in the issuance of Presidential Regulation on Infrastructure Guarantee Institution is to increase the creditworthiness of infrastructure projects to encourage Business Entity participation in infrastructure provision through the PPP scheme. In addition, infrastructure guarantee by IIGF serves to guarantee and ensure that Business Entities/investors obtain their rights in accordance with the PPP contract.

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