NUSANTARA - LATEST DEVELOPMENTS OF INDONESIA’S PLAN TO MOVE CAPITAL CITY

AUGUST 2022

 Shortly after the announcement by President Jokowi in 2019 of a plan to move Indonesia’s capital from Jakarta to a newly dedicated area in East Kalimantan (on the island of Borneo), Covid-19 hit and substantially slowed down implementation as the Government shifted its attention to mitigate the impact of the pandemic.

Whilst there is still a great deal of speculation as to whether this enterprise of colossal proportions will materialise (or when it will), the Government of Indonesia has been busy preparing some of the (regulatory) foundations of the move. On 15 February 2022, the Government issued Law No. 3 of 2022 on the State Capital City which is intended to form the legal bedrock of the grand plan. Over the past few months, the Government has also been churning out implementing regulations which provide further details on certain important aspects of the preparation, development and relocation of the new capital city such as funding, land procurement and the procurement of works and services. The list below provides an overview of the regulations issued so far in relation to the new State Capital City:

- Law No. 3 of 2022 on State Capital City
- Government Regulation No. 17 of 2022 on Funding and Budget Management for the Preparation, Development, and Relocation of the State Capital City
- Presidential Regulation No. 62 of 2022 on State Capital Authority
- Presidential Regulation No. 63 of 2022 on the Master Plan for the State Capital City
- Presidential Regulation No. 64 of 2022 on Spatial Plan for the State Capital City
- Presidential Regulation No. 65 of 2022 on Land Acquisition and Management in the State Capital City
- LKPP Regulation No. 5 of 2022 on Guidelines for the Procurement of Infrastructure and Other Goods/Services, specifically for the State Capital City

This update follows our previous article on this topic “Indonesia Moves Capital City: An Illusion or an Era of New Opportunities?” released in November 2019 and focuses on the salient points of the recent regulatory package issued by the Indonesian Government to lay the ground work of its vision for the relocation.
1. **KEY TAKEAWAYS**

- The State Capital Law formally establishes the status of Nusantara, with the **State Capital Authority** as the Government’s institution in charge of the administration and management of the new capital city.
- The **Master Plan** unveils the Government’s vision and plans for the various development phases of Nusantara.
- The State Capital Authority is in charge of the management of all land and land rights in Nusantara and may grant delegated land rights to third parties by entering into land utilization agreements.
- Given the costs involved (which are in the tens of billions of US dollars), **funding** is undeniably one of the keys to the feasibility of this enormous enterprise and more clarity will be needed to understand exactly the various sources of financing contemplated by the Government.
- If the move does indeed proceed according to plan, further down the line the **redevelopment of governmental clusters in Jakarta** should offer major opportunities to investors and contribute to the Government’s plans for urban regeneration within the then-old capital city.

2. **SPECIAL ADMINISTRATIVE STATUS AND AUTHORITY**

Article 5 of the State Capital Law mandates Nusantara to be governed by the **State Capital Authority**, a ministry-level institution that has responsibility for the preparation, development, and relocation, as well as the administration of the capital. Similar to DKI Jakarta, the Government attributes Nusantara with a “special administrative” status, which effectively grants the State Capital Authority with the autonomy to regulate matters which have been delegated to it under the State Capital Law and its implementing regulations.

In addition, pursuant to Article 4 of the State Capital Law, the State Capital Authority also carries out functions to coordinate, direct, monitor, and control the preparation, development, and relocation of the State Capital City that is carried out by other Government entities, SOEs or the private sector.

The **key authorities** which have been specifically delegated from the Central Government to the State Capital Authority under Article 12 of the State Capital Law relate to:

- business licensing;
- non-licensing for ease of doing business; and
- special facilities/incentives for the planning, development and relocation of the new capital city.

The details of the prerogatives of the State Capital Authority are regulated further in Presidential Regulation No. 62 of 2022 on State Capital Authority which was issued on 18 April 2022. On 10 March 2022, President Joko Widodo already appointed Bambang Susanto as the Head of the State Capital Authority, and Dhony Rahajoe as Deputy Head.

3. **MASTER PLAN**

The State Capital Law and Presidential Regulation No. 63 of 2022 on Details of the Master Plan for the State Capital City include a **detailed master plan** of Nusantara of more than 800 pages in its appendix. The Master Plan outlines the Government’s plan for the development of a **total of 256,142 hectares of land and 68,189 hectares of territorial waters**. According to the Master Plan, Nusantara will be divided into **three main regions**:

(i) the capital city with 56,180 hectares, (ii) the Government centre (Kawasan Inti Pusat Pemerintahan) - 6,671 hectares, and (iii) a development area (Kawasan Pengembangan Ibu Kota Nusantara) of 199,962 hectares.

Pursuant to the State Capital Law and the Master Plan, the three regions will be developed in **five different phases** as outlined below.
Phase I  
(Section 6.1 of the Master Plan)  
The first phase encompasses the construction of basic infrastructure such as main roads and core public transportation infrastructure, IT, electricity, and water supply, and is planned to start in 2023 and to be completed by the end of 2024. During this period, the development will be focused on supporting the move of agencies and institutions from Jakarta to Nusantara. Based on the Master Plan, it is envisioned that by 2024, the executive, legislative and judicial as well as the military and police representative bodies, will have relocated to Nusantara. This is arguably an ambitious target which will require an accelerated procurement process (including for the design and engineering of such basic infrastructure) to be achievable.

Phase II  
(Section 6.2 of the Master Plan)  
The second phase is planned to start in 2025 and be concluded in 2029 and will focus on the development of mixed-use areas to accommodate business and industrial districts, educational and tourism facilities, as well as advanced IT infrastructure and additional facilities to support the target population. By the end of this phase, it is estimated that around 1.2 million people will have relocated to Nusantara consisting of civil servants, students, academicians, researchers as well as those working in the services sectors, including construction, accommodation, food & beverage and retail.

Phase III  
(Section 6.3 of the Master Plan)  
The development of mass transportation infrastructure is naturally also being planned by the Government and will, according to the Master Plan, mainly be developed during the third phase commencing in 2030. Expansion of waste and water infrastructure will also be a focus of this phase which is meant to stretch until 2034. This period will also see the focus shift on economic growth by accelerating the expansion of businesses and industries within the new capital area.

Phase IV & V  
(Sections 6.4 & 6.5 of the Master Plan)  
in the fourth and fifth phases of the development, the Government plans to increase residential areas and implement the "smart city" concept throughout the area to support the projected increase in population. In particular, phase four will focus on developing the education and health sectors in Nusantara. By phase 5 (2040), it is projected that the population of Nusantara will be approximately 1.7 to 1.9 million.
4. LAND PROCUREMENT AND RIGHTS

The State Capital Law provides that the State Capital Authority controls all land over the entire area of Nusantara through two types of land titles:

(i) **Right to Use** *(Hak Pakai/HP)* mainly for land used for governmental activities; and

(ii) **Right to Manage** *(Hak Pengelolaan/HPL)* which can be further delegated to third parties for the development of non-governmental infrastructure and activities.

Such broad-based HP and HPL will then be divided into smaller clusters and subordinate rights (such as Right to Build *(Hak Guna Bangunan/HGB)*) which can then be granted to developers and residents.

There are inherent risks for private parties when holding a subordinate HGB over HPL. For example, there are concerns over the transferability of such land title. Typically, a HGB over HPL can only be transferred after obtaining a prior approval from the HPL holder (in this case, the State Capital Authority). Another issue revolves around the possibility of using the land as a security / collateral which is debatable where the land is ultimately state-owned given the HGB over HPL status. Further assurances and specific protections will therefore be necessary for private parties to properly mitigate such risks.

As an effort to tackle these issues, the Government has enacted Presidential Regulation No. 65 of 2022 on Acquisition and Management of Land in Nusantara State Capital *(PR 65/2022)*. Pursuant to Article 14 of PR 65/2022, the State Capital Authority will be authorized to manage the use of land within Nusantara and will be the grantor of land rights. As the ultimate land owner, the State Capital Authority is allowed to enter into “land utilization agreements” with third parties for the granting of land rights within the Nusantara area.

PR 65/2022 also specifically authorizes the State Capital Authority to provide guarantees or assurances on the applicable tariffs, extension or renewal of HGB titles under such land utilization agreements. The State Capital Authority is also meant to exert control over the land by way of tariffs on the ownership of land similar to what BP Batam is implementing through its Mandatory Annual Contribution *(Uang Wajib Tahunan)* on land in the Batam special economic zone. It remains to be seen how robust the proposed land utilization agreements will be as these protections will only be granted on a contractual basis without being enshrined in regulation.
5. **SMART AND LOW EMISSIONS CITY**

Environmental sustainability is front and centre in the plans to move the capital city and the design of Nusantara. The State Capital Law emphasizes that all development within the new capital city shall follow “prudent environmental protection and management practices”.

Safeguards are being introduced in the State Capital Law, including mandating a comprehensive and detailed spatial plan to be issued by the State Capital Authority, which is also tied into the requirements for activities and businesses to have all necessary environmental impact analysis and permits.

On top of these administrative safeguards, President Jokowi has repeatedly conveyed that Nusantara will be a model of **green and sustainable city** forming a blueprint for future city developments across Indonesia. This principle will be linked to the “smart city” concept which the Government envisioned in the Master Plan, whereby advances in information and communication technology, urban data management, and digital technology to plan and manage core urban functions are utilized in an efficient, innovative, inclusive and resilient manner. We will have to wait and see if and how these ambitious intentions are rolled out in practice, especially in view of the current lack of clarity on the sources of funding for the project (see point 6 below).

6. **SOURCES OF FUNDING**

Funding is obviously one of the key hurdles which will need to be resolved for the ambitious plan to become reality. This is particularly the case after 2 years of impact and disruption caused by the COVID-19 pandemic, and now also more recently other severe macro-economic constrains affecting recovery of economies around the world.

While the State Capital Law only provides high level ideas on how the Government plans to finance the development of Nusantara, Government Regulation No. 17 of 2022 on Funding and Budget Management for the Preparation, Development, and Relocation of the State Capital and the Administration for the Special Region of Nusantara Capital City (GR 17/2022) was issued mid-April 2022. Article 3 of the regulation provides that the funding for the relocation will be sourced from the **State budget** (Anggaran Pendapatan dan Belanja Negara or APBN) and “other valid sources in accordance with the law”.

In accordance with Article 4 of GR 17/2022, for funds sourced from the APBN, the funding scheme is to be arranged through (i) utilization of State property, (ii) implementation of Public Private Partnerships (PPPs) and (iii) other forms of participation or funding schemes. Article 7 of GR 17/2022 also sets out that the relocation is deemed as a “national priority program”, although it is unclear what implications this has as the terminology used does not correspond to the Government’s current infrastructure development acceleration program known as the “National Strategic Projects” programme (NSP).

Specifically to support the implementation of PPP/KPBU, as stated above, Article 39 of Government Regulation No. 17 of 2022 stipulates that the Government shall provide support in the form of:
Ministerial, institutional, regional Government and/or State Capital Authority support; and/or
Support from the Ministry of Finance in the form of facilities for the preparation and implementation of PPPs, feasibility support, tax incentives, Government guarantee and/or utilization of State property.

While there is little doubt that most of the main State-Owned Enterprises (SOEs) will be involved, there are concerns that those entities are already being financially overstretched. It is therefore expected that the Government will turn to the private sector to help finance the development as was laid out in 2019 when the move was initially announced and conceptualized by the President and the Government (see section "What are the plans for the grand move?" of our previous article).

We might therefore see a number of individual infrastructure projects within the Nusantara Master Plan being offered as PPPs as well as being earmarked as NSPs. This would allow for such projects to benefit from a wide range of incentives and forms of support under the applicable regulatory framework for the NSP programme.

7. PROCUREMENT OF GOODS AND SERVICES

On 18 May 2022, the National Public Procurement Agency (Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah or LKPP) issued LKPP Regulation No. 5 of 2022 on Guidelines for the Procurement of Infrastructure and other Goods/Services, specifically for the Activities of Preparation, Development, and Relocation of the State Capital City, as well as the administration of the Special Region of Nusantara Capital City (LKPP 5/2022). This regulation provides guidelines on the types of procurement, selection methods and contracts to be implemented for the development of the new capital city.

Based on Articles 9-11 of LKPP 5/2022, there are currently only 2 types of construction modalities that may be implemented for the provision of infrastructure in Nusantara, as follows:

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<tr>
<th>TYPES OF PROCUREMENT</th>
<th>DETAILS AND CRITERIA</th>
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<tbody>
<tr>
<td>Design and build</td>
<td>Integrated construction work of design and build is a construction work that is implemented by providers starting from the implementation of design until the construction. This type of procurement method can only be done for simple urgent works which do not require construction management consultancy services.</td>
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<tr>
<td>Engineering, procurement and construction (EPC)</td>
<td>Integrated engineering, procurement and construction works are works that are implemented by providers starting from the design, engineering, procurement and construction. Such integrated engineering, procurement and construction works shall be used for: a. works that require advanced technology; b. works that have high risks of environmental and social impacts; and/or c. works in the form of an integrated system that cannot be separated.</td>
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Pursuant to Articles 14-26, the selection methods for procurement of works consist of:

(i) E-Purchasing for the procurement of consultancy services;
(ii) Repeat orders for the procurement of goods/construction works/other services;
(iii) Panels for consultancy services;
(iv) Competitions/beauty contests.

Furthermore, Articles 27-30 of LKPP 5/2022 provide the types of contracts that can be utilized in relation to the procurements of goods/services for the development of Nusantara:
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<th>DETAILS</th>
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| Modified Turnkey Contracts        | This is defined in Article 1(16) as multi-year development agreements/contracts regarding the development of a project in the event that providers agree to develop the said project completely until it is finished including the installation of all the equipment so that the project is ready to be operated or utilized.  
Requirements:  
a. The modified turnkey contract must include a fixed price applicable until all of the works have been completed; and  
b. Payment may be conducted in stages after the construction works are completed, including the installation of all equipment so that it is ready to be operated or utilized in accordance with the contract. |
| Umbrella Contracts                | This is defined in Article 1(8) as a unit price contract to be implemented within a specific period of time for goods/services of which the volume, source of funds and/or delivery or implementation cannot be determined at the signing of the contract.  
Requirements:  
1. The period of any umbrella contract should be set in compliance with the following:  
a. Must be completed within a minimum period of 1 year and a maximum period of 3 years; and  
b. For reasons of efficacy and efficiency, and based on technical justifications that are approved by the same officials who originally signed the relevant contracts, this completion period may be extended beyond 3 years;  
2. Commitment-making officials (Pejabat Pembuat Komitmen or PPK) should place orders with the relevant service providers based on umbrella contracts in accordance with the requirements of the contracts;  
3. The orders should be followed up by any of the following forms of documents: proof of payment, receipts, letter of work order or agreement letter that takes the form of an implementation/purchase/order contract;  
4. Adjustments of any unit prices that result in any increases or decreases in said prices should be implemented in accordance with the periods and types of work set out under the relevant umbrella contracts. |
| Performance-Based Contracts       | This is defined in Article 1(20) as contracts for the procurement of goods/services under a performance based contract to achieve a certain level of services. |
| Turnkey Contracts or Lump Sum Contracts | Specifically for the procurement of engineering, procurement and construction, Turnkey Contracts or Lump Sum Contracts may also be utilized. |

Other notable provisions also provided in LKPP 5/2022 include that:  
- Providers of goods/services must empower local business entities through partnerships, sub-contracts and/or other forms of cooperation failing which they shall be imposed with sanctions in the form of reprimand or contract termination (Article 31).  
- Local workers and materials must be prioritized, with exceptions for certain circumstances (Article 32).
8. OPPORTUNITIES IN THE REDEVELOPMENT OF JAKARTA

The relocation of the seat of the Government to Nusantara will see the majority of Government buildings in Jakarta being vacant. This gives way for reutilization for other purposes. The Government’s plans on the reconversion or utilisation of these assets are currently unclear, but this may present interesting opportunities for the private and public sector and possibly provide some of the funding for the capital city relocation itself.

Based on applicable law, the Government is allowed to dispose of or otherwise monetize these assets. Such monetisation could take the form of the concessioning or long term leases over respective buildings and include the repurposing of these large real estate assets which are generally located in prime areas of Jakarta.

9. CONSTITUTIONALITY OF THE STATE CAPITAL LAW

Since its issuance, the State Capital Law has faced much scrutiny and criticism. In particular, since the State Capital Law was passed within an unusually short timeframe, it was argued that it lacked public participation in its formulation. Several plaintiffs brought proceedings before the Constitutional Court to strike out the law on grounds that it infringes Articles 27(1) and 28C(2) of the Indonesian Constitution which provide opportunities for citizens to participate in the development of the nation and the exercise of government. However, the Constitutional Court rejected the claims each time, stating that the plaintiffs lacked legal standing and confirming that the State Capital Law is in accordance with the Constitution.
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### APPENDIX: LIST OF IMPLEMENTING REGULATIONS AS AT END JULY 2022

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| Government Regulation No. 17 of 2022 on Funding and Budget Management for  | 18 April 2022    | • Establishes that the funding for the Preparation, Development, and Relocation of the new capital city and the Administration for the Special Region of State Capital City is to be sourced from the State Budget or other valid sources in accordance with the law.  
  • Establishes that the Preparation, Development, and Relocation of the new capital city is determined as a national priority program for a minimum of 10 years in the Government’s work plan from 2022 or at least until the completion of phase 3 of the development of the new capital city as stipulated in the Master Plan.  
  • Establishes that the State Capital Authority may collect non-tax state revenue in executing the tasks and functions of the Government.  
  • Provides a funding scheme and framework for Government and Business Entity cooperation for the provision of infrastructure in Nusantara.  
  • Provides governmental support in the form of transaction preparation and execution facilities for PPP, eligibility support, tax incentives, Government guarantee and State property utilization.  
  • Provides the framework for the planning and budgeting for the State Capital Authority work plan and budget.  
  • Provides the framework for the management and utilization of state property & ADP in the new capital city. |
| Presidential Regulation No. 62 of 2022 on State Capital Authority          | 18 April 2022    | • Establishes the State Capital Authority’s task over the preparation, development and relocation of the new capital city as well as the implementation of the Government for the new capital city.  
  • Sets out the functions of the State Capital Authority and its personnel as well as its organizational structure.  
  • Provides the mechanisms for the appointment and termination of the Head, Vice-Head, Secretariat and Deputy-Head of the State Capital Authority.  
  • Provides that the State Capital Authority has authority over financial management in Nusantara Capital City and is determined as a budget/goods user and the manager of the Nusantara Capital’s income and expenditure, as well as assets/goods belonging to the Nusantara Capital City.  
  • Establishes the State Capital Authority Business Entity in order to support the State Capital Authority by being a master developer and by establishing subsidiaries in accordance with business and service needs. |
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| Presidential Regulation No. 63 of 2022 on Details of the Master Plan for the State Capital City | 18 April 2022    | • Sets out the functions of the Master Plan.  
• Provides the details of the Master Plan (in its 800 page appendix) as follows:  
  (a) Introduction, background, goal and objective;  
  (b) Vision, purpose and basic principles, as well as the main performance indicators for new capital city;  
  (c) Basic principles and strategy for the development of the new capital city;  
  (d) Directives for spatial planning;  
  (e) Directives for the design of building layouts and the environment for the core area of the central Government;  
  (f) Stages/Phases for the preparation, development and relocation of the new capital city;  
  (g) Framework for implementation.  
• Establishes that the monitoring and evaluation of the implementation of the Master Plan will be conducted by the State Capital Authority. |
| Presidential Regulation No. 64 of 2022 on Spatial Plan for the National Strategic Area of State Capital City for 2022-2042 | 18 April 2022    | • Establishes the new capital city's national strategic area (Kawasan Strategis Nasional or KSN), which consists of:  
  i. Nusantara Capital City Area (Kawasan Ibu Kota Nusantara or KIKIN);  
  ii. Nusantara Capital City Development Area (Kawasan Pengembangan Ibu Kota Nusantara or KPIKN);  
  iii. Nusantara Capital City coastal waters.  
• Sets the boundary areas and the coordinates of each KSN.  
• Provides details on the spatial planning, policies and strategy of the new capital city.  
• Establishes the structure plan for the KSN which consists of:  
  i. service centre system plan; and  
  ii. infrastructure network system plan.  
• Sets out the restrictions and general requirements for various zones (e.g. zoning requirements around telecommunication network systems or water resource network systems). |
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| Presidential Regulation No. 65 of 2022 on Land Acquisition and Management in State Capital City | 18 April 2022    | • Establishes that land acquisition in the new capital city will be conducted through the following mechanism:  
  (a) Forest area relinquishment; and  
  (b) Land procurement.  
• Provides that the forestry areas which are to be relinquished will lose their forestry status. This will be conducted by the State Capital Authority upon application to the Ministry of Environment and Forestry.  
• Determines that the land which is acquired for the new capital city will be considered as State property or assets under the control of the State Capital Authority (Aset Dalam Penguasaan Otorita Ibu Kota Nusantara or ADP).  
• Provides that the State Capital Authority has priority over land purchase within the new capital city area. |
| LKPP Regulation No. 5 of 2022 on Guidelines for the Procurement of Infrastructure and other Goods/Services, specifically for the Activities of Preparation, Development, and Relocation of the State Capital City, as well as the Administration for the Special Region of State Capital City | 18 May 2022      | • Provides guidelines for the provision of infrastructure and the procurement of other goods/services specifically in the context of preparation, development, and relocation of the new capital city, as well as the governance for the Special Region of Nusantara Capital City, which includes:  
  a. human resources for the procurement of goods and services;  
  b. type of procurement;  
  c. packaging strategy;  
  d. selection method;  
  e. type of contract;  
  f. empowerment of local business actors; and  
  g. use of local labour and local materials.  
• Establishes that micro, small businesses and cooperatives will be prioritized for the provision of infrastructure and goods/services procurement. |