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The Second Supreme
Court Judicial Review
Decision to Annul
Several Articles
in Ride-Hailing
Regulation

PwC Indonesia Legal Alert

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An Overview

Given the increasing demand for ride-hailing in Indonesia, the Minister of Transportation (the “**MOT**”) saw the need to regulate it by virtue of MOT Regulation No. 108 of 2017 on the Operation of Non-Trajectory Transportation with Public Motor Vehicles (the “**MOT Regulation No. 108/2017**”).

On 31 May 2018, however, the Supreme Court issued Decision No. 15 P/HUM/2018 (the “**Decision**”), requiring the MOT to revoke several articles under MOT Regulation No. 108/2017.

In essence, this Decision constitutes the approval by the Supreme Court of a petition submitted by a group of individuals who work as online taxi drivers. The reasoning behind the Decision was because (i) MOT Regulation No. 108/2017 re-regulated certain matters under certain provisions of the previous MOT Regulation on the same matter under MOT Regulation No. PM 26 of 2017 on the Operation of Non-Trajectory Transportation with Public Motor Vehicles (the “**MOT Regulation No. 26/2017**”), which had already been revoked by the Supreme Court under Decision No. 37 P/HUM/2017 on June 20, 2017 (the “**Supreme Court Decision No. 37/2017**”); and/or (ii) the articles decided to be revoked were deemed to contradict Law No. 20 of 2008 on Micro, Small, and Medium Businesses (“**SME Law**”).

Key Decisions

Upon the issuance of the Decision, the Supreme Court required the MOT to revoke several articles from MOT No. 108/2017, as follows:

- a. Those articles which have similar provisions with the articles that have been annulled by Supreme Court Decision No. 37/2017:
 1. Article 6 paragraph (1) letter (e)
 2. Article 27 paragraph (1) letter (f);
 3. Article 38 letter (a);
 4. Article 38 letter (b);
 5. Article 38 letter (c);
 6. Article 39 paragraph (1);
 7. Article 39 paragraph (2);
 8. Article 40;
 9. Article 48 paragraph (10) letter (a) number (2);
 10. Article 48 paragraph (10) letter (b) number (2);
 11. Article 48 paragraph (11) letter (a) number (3);
 12. Article 48 paragraph (11) letter (b) number (3);
 13. Article 51 paragraph (9) letter (a) number (2);
 14. Article 51 paragraph (10) letter (a) number (3);
 15. Article 56 paragraph (3) letter (b) number (1) sub (b);
 16. Article 57 paragraph (10) letter (a) number (2);
 17. Article 57 paragraph (11) letter (a) number (2);
 18. Article 65 letter (a);
 19. Article 65 letter (b); and
 20. Article 65 letter (c).

Please note that the revoked provisions in Decision No. 37/2017 are mostly included under MOT No. 108/2017 except for three annulled provisions (i.e. Article 30 letter (b), Article 36 paragraph (4) letter (c), and Article 37 paragraph (4) letter (c) of MOT Regulation No. 26/2017) in the Supreme Court Decision No. 27/2017 that are not reinserted in MOT Regulation No. 108/2017.

- b. The articles deemed to be in conflict with Article 4 and Article 5 of SME Law are:
 1. Article 27 paragraph (1) letter (d);
 2. Article 27 paragraph (2); and
 3. Article 72 paragraph (5) letter (c).

Implications

Upon the annulment of those articles on ride-hailing, the following key restrictions that were regulated under MOT Regulation No. 108/2017 have become no longer applicable:

1. Vehicle Road Worthiness.

It was stipulated in MOT Regulation No. 108/2017 that a Certificate of Type Assessment Registration (*SRUT*) must be submitted as a required document for:

- a. applying for a new license;
- b. applying for an amendment of the existing license; and
- c. applying for a license for the establishment of a branch office (*cabang perusahaan*).

By the issuance of the Decision, the submission of such a certificate is no longer required.

2. The Placement of Stickers on Vehicles.

Article 27 paragraph (1) letter (d) of MOT Regulation No. 108/2017 stipulates that vehicles used for special rental transportation services must be equipped with a special sign in the form of stickers. Such stickers should be placed on the top right of the rear windshield, containing information on the operating area, year of issuance of supervision card, name of legal entity, and background of the transportation logo. This article has been annulled because it caused the online taxi drivers to feel unsafe due to the competition with conventional taxi drivers. The Supreme Court considered that the placement of such a sticker was not necessary, as the ordinary license plate issued by the State Police of Republic of Indonesia stipulation gave sufficient protection to both service provider and service user. As such, now online drivers can continue using their vehicles to conduct business without having to put the sticker on their vehicles.

3. Ride-Hailing Application Ban.

According to Article 65 of MOT Regulation No. 108/2017, the ride-hailing provider is prohibited from making the following arrangements:

- a. provide application access to public transportation companies which have not had Operation of Non-Trajectory Transportation with Public Motor Vehicles Licence (*Izin Penyelenggaraan Angkutan Orang dengan Kendaraan Bermotor Umum Tidak Dalam Trayek*).
- b. provide application access to individuals as transportation service providers;
- c. hire a driver;
- d. determine rates; and
- e. offer fare promotion below the lower rates.

However, as of the issuance of the Decision, the provisions in points (a), (b), and (c) above are now allowed.

4. Ride-hailing Service Rates.

Ride-hailing service rates may only be calculated based on a taximeter (argometer). Before the issuance of the Decision, Article 6 paragraph (1) letter e of MOT Regulation No. 108/2017 stipulates that online-based taxi has the option to use the rates appearing on the taximeter (argometer) or the rates appearing in the ride-hailing application.

5. Minimum Vehicle Ownership.

Article 38 letter a of MOT Regulation No. 108/2017 stipulates that the public transportation company shall own at least five vehicles as one of the requirements to obtain the Operation of Non-Trajectory Transportation with Public Motor Vehicles license from MOT. By the issuance of the Decision, the provision concerning this matter is no longer applicable.

Up until the date of this publication, we understand that the MOT has prepared two draft regulations on ride-hailing apps, whereby the first is related to the implementation of specific ride-hailing apps and the second is related to minimum service standards upon the issuance of the Decision.

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