

Job Creation Act

Legal Insight

Ease of Indonesia’s Railway Business

As mandated by Law No. 11 of 2020 concerning Job Creation (“**Job Creation Act**”), enacted on 2nd February 2021, the Government of the Republic of Indonesia has now passed Government Regulation No. 33 of 2021 concerning Implementation of the Railway Sector (“**GR 33/2021**”), which repeals and replaces several articles from the regulatory framework put in place by Government Regulation No. 56 of 2009 concerning Implementation of Railways as amended by Government Regulation No. 6 of 2017 (“**GR 6/2017**”).

This GR 33/2021 is basically the implementation of the amendment of Law No. 23 of 2007 concerning Railways (“**Law 23/2007**”) by the Job Creation Act.

Amendment of Law 23/2007

The Job Creation Act offers a simplification of the existing framework by no longer requiring organizers of railway infrastructure and facilities, or parties that organize private railways, to secure multiple licenses in order to run their businesses. The Government hopes that this simplification will increase and boost investment in the railway sector as further regulated by GR 33/2021.

In essence, the amendment of Law 23/2007 under the Job Creation Act covers the following matters:

a. Business Licensing Requirements

Law 23/2007	Job Creation Act
Business entities which organize public railway infrastructure are required to secure the following: a. Business License; b. Development License; and c. Operational License. (Article 24 paragraph (1))	Those licenses have now been integrated into business licensing relating to the organization of public railway infrastructure. (Article 24 paragraph (1) of Law 23/2007, as amended by Article 56 paragraph (1) of Job Creation Act)

Law 23/2007	Job Creation Act
Business entities which organize public railway facilities are required to secure the following: a. Business License; and b. Operational License. (Article 32 paragraph (1))	Those licenses have now been integrated into business licensing relating to the organization of public railway facilities. (Article 32 paragraph (1) of Law 23/2007, as amended by Article 56 paragraph (4) of Job Creation Act)
Business entities may organize private railways in order to support their main activities provided that they secure the following: a. Procurement or development license; and b. Operational License. (Article 33 paragraphs (1) and (2) of Law 23/2007)	Those licenses have now been integrated into business licensing relating to the organization of private railways. (Article 33 paragraphs (1) and (2) of Law 23/2007, as amended by Article 56 paragraph (6) of Job Creation Act)

b. Sanctions

Law 23/2007	Job Creation Act
Not Regulate	<p>Administrative sanctions may now be imposed in relation to the following violations:</p> <p>a. Business entities which organize public railway infrastructure, public railway facilities or special railways without obtaining the required business licenses;</p> <p>b. Operators of railway infrastructure which operate without having competency certificates; and</p> <p>c. Staff of railway facilities that operate the facilities without having proper certification or organizers of the facilities that operate facilities through the utilization of non-certified crews.</p> <p>(Articles 24A, 32A, 33A, 80A, 116A and 116B of Law 23/2007, as amended by Article 56 (2), (5), (7), (9) and (13) Job Creation Act)</p>
<p>Mandates for the imposition of administrative sanctions in the form of written reprimands, suspension of licenses and revocation of operational licenses upon the following parties:</p> <p>a. Business entities which organize railways facilities without fulfilling the railway facility fitness for operation standards;</p> <p>b. Legal entities or institutions that carry out the testing of railway infrastructure or facilities without utilizing experts who have secured expert certification, utilizing testing equipment and/or complying with the prescribed procedures;</p> <p>c. Organizers of railway infrastructure which fail to place complete and clear restriction markings on their railway lines;</p> <p>d. Organizers of railway facilities which perform examinations without utilizing the required experts and procedures;</p>	<p>Only requires the imposition of administrative sanctions upon the parties with respect to the violations, with no specific forms of sanctions as was previously the case.</p>

Law 23/2007	Job Creation Act
<p>e. Organizers of railway facilities that fail to provide other facilities or modes of transportation for passengers in order to reach their destinations or to indemnify the costs of their tickets if there are obstacles which result in trains being unable to continue their journeys; and</p> <p>f. Organizers of railway facilities that fail to have insurance covering their responsibilities to their users.</p> <p>(Articles 28, 77, 82, 107, 112, 135 and 168 of Law 23/2007, as amended by Article 56 paragraphs (3), (8), (10), (11), (12), (14), and (15) of Job Creation Act)</p>	
<p>Criminal sanctions applicable to the organizers of railway facilities, railway infrastructure and their crews under Law 23/2007 may be imposed if perpetrators simply engage in any of the violations specified under the law, without any additional underlying conditions which have to be met as prerequisites for the imposition of sanctions.</p> <p>(Articles 188, 190, 191, 195, 196, 203, 204 and 210 of Law 23/2007)</p>	<p>Criminal sanctions that apply to the organizers of railway facilities, railway infrastructure and their crews may only be imposed if the violations result in death or injury to persons and/or damage to property, safety or the environment.</p> <p>However, through the addition of this condition, the Job Creation Act generally increases and/or adds to the various terms of imprisonment and/or fines that can be imposed.</p> <p>(Articles 188, 190, 191, 195, 196, 203, 204 and 210 of Law 23/2007, as amended by Article 56 paragraphs (17) to (24) of Job Creation Act)</p>

Ease of Railway Business under GR 33/2021

A. Simplification of Business License Requirements

Previously under Article 306 of GR 6/2017, in order to be established as a business entity that will organize a public railway infrastructure and to obtain business licenses, a business entity had to obtain a Public Railway Infrastructure Organizer Designation from the Ministry of Transport (“**MOT**”), a relevant governor, or a relevant mayor or regent, depending on their respective competencies.

In line with the amendment of Law 23/2007 under the Job Creation Act, a business entity which intends to organize a public railway is required under Article 6 of GR 33/2021 only to obtain a License to Do Business such as business license, development license, or operational license.

By deleting this Railway Infrastructure Organizer Designation as a requirement to obtain a business license, the process to be established as a business entity organizing public railway infrastructure requires fewer steps and a shorter period of time.

Although Article 3 of GR 33/2021 also has a provision with regard to the designation of a railway infrastructure organizer, there is no timeline provided under GR 33/2021 for the designation process.

Article 306 of GR 6/2017	Articles 3, 4 and 5 of GR 33/2021
<p>A Public Railway Organizer Designation can be obtained in the following manners:</p> <p>a. tender or direct appointment, in the event a part or the whole of the investment is sourced from the State Budget and Revenue (<i>Anggaran Pendapatan dan Belanja Negara</i> or "APBN") or Local Budget and Revenue (<i>Anggaran Pendapatan dan Belanja Daerah</i> or "APBD");</p> <p>b. without tender, in the event the whole investment is sourced from APBN or APBD, and there is no government guarantee; or</p> <p>c. assignment, in the event there is no business entity which intends to participate due to it not being financially feasible.</p>	<p>The designation of a Public Railway Organizer can be done through the following manners:</p> <p>a. tender, in the event a part of or the whole of the investment is sourced from APBN or APBD (Article 3 paragraph (2));</p> <p>b. direct appointment, in the event the whole investment is sourced from APBN or APBD, and there is no government guarantee (Article 3 paragraph (3)); and</p> <p>c. assignment, in the event there is no business entity which intends to participate due to it not being financially feasible (Article 4).</p>

Further, previously under Article 307 of GR 6/2017, upon establishment as a public railway infrastructure organizer and prior to obtaining a business license, the business entity had to obtain a right to organize the public railway infrastructure and was obliged to execute a public railway infrastructure agreement with the MOT, governor, or mayor/regent depending on their respective competencies.

Under Article 6 of GR 33/2021, a business entity that has been determined as a winning bidder, appointed or receives an assignment must execute a public railway infrastructure agreement (in the form of concession agreement or cooperation agreement) with the MOT, governor, or mayor/regent depending on their respective competencies. The public railway infrastructure agreement must contain at least the matters specified in GR 33/2021. This change, understandably, is to ensure that the public railway infrastructure organizer implements a railway operation which is safe and comfortable, and is operated smoothly and in good order.

B. Simplification of Development License Requirements

The technical requirements to obtain a Development License for Railway Infrastructure Organizer are also simplified in GR 33/2021 as follows:

- a. a Building Construction Permit is no longer required; and
- b. previously, a Railway Infrastructure Organizer had to have acquired a minimum of 10% (ten percent) of the total amount of the land required; under GR 33/2021 the minimum land to be acquired is only 5% (five percent).

We view that these new technical requirements could encourage more domestic business actors to participate in the development of the railway infrastructure in Indonesia.

C. Land Lease as a Requirement for Operational License for Railway Facilities Organizer

One of the requirements to obtain an Operational License is to provide a maintenance facility for railway facility organizers. Previously under the elucidation of Article 346 paragraph (2) point f of GR 6/2017, the maintenance facility could be owned by the license holder or in cooperation with another business entity.

Under the elucidation of Article 13 of GR 33/2021, a maintenance facility can be owned or leased by the license holder or in cooperation with another business entity, which provides more flexibility for business actors in its business activities.

D. Requirements for Private Railway Organizer

The requirements to obtain a Development License for Private Railway Organizer that were previously applicable under Article 356 paragraph (2) of GR 6/2017 have also been simplified under Article 14 paragraph (2) of GR 33/2021 whereby:

- a. the need for a building permit, other licenses required under the laws and regulations, and a recommendation from the local government whose region is crossed by the railway has been deleted; and
- b. previously, the Private Railway Organizer must have acquired a minimum of 10% (ten percent) of the total amount of the land required; under GR 33/2021 the minimum land to be acquired is only 5% (five percent).

The above provision is a further effort to support business actors and we believe this could help develop the railway sector in Indonesia.

Conclusion

By the issuance of this GR 33/2021:

- a. Business Licensing in the railway sector will be implemented as referred to in the regulations related to the risk-based approach;
- b. the previous regulations related to the railway sector will continue in effect provided that they do not conflict with the provisions in GR 33/2021.

The simplification of the existing framework by amending Law 23/2007 under Job Creation Act and by the issuance of this GR 33/2021 such as simplification of business and development license requirements (including private railway organizer requirements) and flexibility in the land utilization requirement for maintenance facilities is aimed at increasing investment in the railway sector.

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