

Omnibus Law

Legal Insight

The Impact of the Enactment of Omnibus Law's Implementing Regulation on Businesses in the Aviation Sector

2nd Series: Unmanned Aircraft Operations

One anticipated coverage by the enactment of Government Regulation No. 32 of 2021 concerning the Operation of the Aviation Sector (“**GR 32/2021**”) is that of unmanned aircraft, more commonly known as drones, in Indonesia. GR 32/2021 briefly mentions on unmanned aircraft, but the requirements for their operation are currently covered by Minister of Transportation (“**MOT**”) Regulation No. PM 37 of 2020 concerning Operation of Unmanned Aircraft Systems in Indonesian Air Space (“**PM 37/2020**”). PM 37/2020 regulates, among others, the limits of air space, operating standards, procedures and mechanisms for granting approval as well as compliance requirements for the operation of drones in the air space served by Indonesia.

Certification and Operational Requirements

GR 32/2021, particularly in its Articles 23 and 26, provides that the operator of a drone for both commercial and non-commercial air carrier activities which fall within certain criteria set forth by the MOT must have a Remotely Piloted Aircraft Systems (“RPAS”) operator certificate. The following requirements must be fulfilled to obtain an RPAS operator certificate:

1. to have a commercial or non-commercial air carrier activities license;
2. to own and/or possess a certain number of drones as stated in the schedule of air carrier activities license or business license;
3. to own and/or possess operational and/or maintenance expert personnel;
4. to have operational and maintenance standards; and
5. to have an air carrier security program.

The procedures and requirements for obtaining the RPAS operation certificate are regulated in a Ministerial Regulation, PM 37/2020.

Air Space Served

In the PM 37/2020, the requirements for the operation of drones depends on the air space concerned, as categorized into the following:

Category	Description	Requirements
Controlled Air Space	Air space that utilizes air traffic control services, flight information services and alerting services.	Requires approval from the Director General of Civil Aviation (“DGCA”).
Uncontrolled Air Space and flying beyond 400 feet	Air space that utilizes flight information services, alerting services and advisory services.	
Limits of Air Space	Aviation Operations Safety Area of an Airport/ Kawasan Keselamatan Operasi Penerbangan (“KKOP”).	
	Areas within a radius of 3 Nautical Miles from a helipad coordinate point located outside the KKOP of an airport.	

Restricted Area	Areas that are reserved for governmental aviation activities and which may be opened for civil aviation activities temporarily.	Requires approval from the authorized institution in the area.
Prohibited Area	Areas that are permanently and entirely prohibited from all aviation activities.	

It is worth noting that one of the requirements in obtaining approval for drone operation is insurance for losses to third parties caused by failures in the drones' operation.

Procedures for Operation

In the PM 37/2020, the procedure for operation of drones must also abide by regulations depending on the weight and the purpose it serves.

Categories	Purpose	Requirements
Small Drones (up to 55 lbs)	Hobby or Recreation.	Civil Aviation Safety Regulations/ <i>Peraturan Keselamatan Penerbangan Sipil ("CASR")</i> Part 107.
	Purposes other than hobby or recreation.	
	Commercial.	Safety Assessment from the DGCA
Drones (over 55 lbs)	Research and development, crew training and market surveys.	Experimental Certificate based on CASR Part 21 and operated based on CASR Part 91 and other key CASRs.
	Production flight testing new production aircraft.	Special Flight Permit based on CASR Part 21 and operated based on CASR Part 91 other key CASRs.
	For purposes set in CASR 21.	Type certificate for an aircraft in the restricted category and complies with CASR Part 21 and other key CASRs.

Time and Area of Operation

In PM 37/2020, the operation of drones can principally only be carried out in daylight, however the operation of drones can also be carried out at night time given that the DGCA gives approval through the implementation of a safety assessment.

Further, the operation of drones can be conducted in both the populated and non-populated areas, which must generally fulfill the following requirements:

- operating height must fulfill safety aspects and not endanger people and/or property in the operating area;
- party must be willing to bear guarantees for third party losses caused by the operation of drones;
- an area for emergency landing must be available;
- there must be procedures to stop the operation of drones for safety and security purposes; and
- the flight path must have been approved by the DGCA.

Foreign Ownership Limitation for Drone Operators

Foreign ownership limitation for drone operators would depend on the purpose of the use of the drone itself. In this regard, the drone operator must determine the business activity to be carried out by referring to the Indonesian Standard Industrial Classification (*Klasifikasi Baku Lapangan Usaha Indonesia* – "KBLI"). They should also consult the so-called "Positive List" that is currently provided in Presidential Regulation No. 10 of 2021 concerning Investment Business Fields. It provides that all sectors are considered open for investment, except for business sectors that are (i) open with certain requirements and sectors that are declared strictly closed to investment and (ii) open only for the Central Government.

For example, drone operation for commercial and non-commercial air carrier activities can be carried out by foreign investment limited liability companies with a maximum of 49% foreign share ownership and subject to single majority requirement.



Conclusion

In conclusion, although GR 32/2021 only briefly mentions unmanned aircraft/drones, the government has provided businesses in the aviation sector more of a legal umbrella in relation to the operation of drones over the course of the past year, especially with the enactment of PM 37/2020. However, businesses must anticipate that PM 37/2020 could be amended or replaced by a new MOT regulation to align with the provisions provided in GR 32/2021, which amendment could change our analysis as outlined above.

DENTONS

The article above was prepared by [Andre Rahadian](#) (Partner), [Hendra Ong](#) (Partner), [Ken Atyk Nastiti](#) (Associate) and [Inaya Safa Nadira](#) (Associate).

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