

Job Creation Law: The Impact of the Enactment of the Job Creation Act on Businesses in the Aviation Sector

With the aim of strengthening the growth of Indonesia's national economy and promoting business investment into Indonesia, including in the aviation sector, the Job Creation Act No.11 of 2020 ("Job Creation Act"), which is also known as the Omnibus Law, has been enacted and came into effect on 2 November 2020. The Job Creation Act is a breakthrough itself, as it acts as a comprehensive law that governs and amends various provisions in various sectors, including the aviation sector, for the purpose of economic stimulation, simplification and harmonization of laws and regulations, and to provide the government, especially the Central Government, with opportunities, convenience, and flexibility, in making policies following technological developments, and the increasingly fast dynamics of globalization and society.

Centralization of Licensing

This article focuses on the aviation sector. In reviewing the principal changes to the Aviation Act No. 1 of 2009 ("Aviation Act"), we find that there has been change in authority in the aviation sector, which was initially under the authority of Regional Governments and/or the Minister of Transportation, to the authority of the Central Government. Further, the Job Creation Act has changed the terminology of sectoral permits to the following:

- a. "Business Permit"; or
- b. "Approval" from the Central Government, which can be interpreted as being a mechanism outside the system which administers Business Permits, inter alia (i) the operation of a foreign aircraft at particular times (Article 63), (ii) foreign non-scheduled commercial air transport for cargo transport which serves routes to Indonesia (Article 95 paragraph (1)), (iii) construction of special airports (Article 247), (iv) temporary special airports to serve direct flights from and/or to overseas except in particular conditions (Article 249), (v) special airports specifically used for the public interest except in particular conditions (Article 250).

The above is also in conformity with permits and authority in the aviation sector, which was previously under the authority of the Regional Government and/or the Minister of Transportation now being fully under the authority of the Central Government.

Simplification of Requirements

Prior to the issuance of the Job Creation Act, there were provisions under the Aviation Act (i) which governed technical terms or requirements that had to be satisfied



to obtain an approval, or (ii) which gave the Minister of Transportation the authority to stipulate implementation regulations against those provisions, which resulted in the absence of synchronization between the provisions under the Aviation Act and the technical provisions further regulated in the implementing regulations, whether in the form of Regulations of the Minister of Transport and/or of the Director General of Civil Aviation, which had caused legal uncertainty for business actors which had the potential to cause losses to businesses, whether materially or immaterially, in relation to the need for compliance in business activities.

The Job Creation Act has deleted several particular requirements and provisions to obtain certification or Business Permits, inter alia: (i) requirements for aircraft registration (Article 26 paragraph (1) in conjunction with Article 30), (ii) requirements for airworthiness certificate (Article 37 paragraph (2) in conjunction with Article 40), (iii) requirements for aircraft personnel (Article 58 in conjunction with Article 61), (iv) requirements for aircraft maintenance organization certificates (Article 48 in conjunction with Article 51), (v) granting of organization certificates (Article 47 in conjunction with Article 51), (vi) requirements for aircraft operation certificates (Article 43 in conjunction with Article 45), (vii) requirements for aircraft operator certificates (Article 42 in conjunction with Article 45), (viii) maximum and minimum levels of service within scheduled air transport services (Article 97 paragraphs (2), (3), and (4) in conjunction with Article 100), (viii) low operating cost-based scheduled commercial air transport (Low Cost Carriers) (Article 99 in conjunction with Article 100), (ix) requirements for a business plan as the business permit for commercial aircraft (Article 109 in conjunction with Article 114), (x) requirements for the board of directors

of air transport business activities (Article 111 in conjunction with Article 114), (xi) evaluation for business activity sustainability (Article 112 in conjunction with Article 114), (xii) airport services (Article 23 in conjunction with Article 238), (xiii) requirements for navigation personnel (Article 292 in conjunction with Article 295).

Relaxation of Business Permit and Aircraft Requirements

The Job Creation Act has relaxed the prohibition on the holder of Commercial Air Transport Business Permits transferring their Commercial Air Transport Business Permits to other parties, where, previously, Article 113 paragraph (2) of the Aviation Act required the business permit holder to operate and obtain the approval from the Minister of Transportation. However, this requirement has been deleted in the Job Creation Act. Furthermore, the obligation for the operator of the scheduled commercial, non-scheduled and cargo air transport to operate a certain number of aircraft, which had previously been stipulated in Article 118 paragraph (2) of the Aviation Law, has now been deleted. The amendment still requires the operator to own and possess a certain number of aircraft but without inserting an exact number, as provided in Article 118 paragraph (1) item b of the Job Creation Act.

Nevertheless, it is necessary to emphasize that upon the enactment of the Job Creation Act, technical provisions or implementing regulations of the provisions set forth in the Aviation Act will still have to be stipulated in Government Regulations with the expectation that this will provide the Central Government with flexibility in policy making policies following the developments in society and globalization. Therefore, the deletion of the detailed provisions and conditions in the Aviation Act through the Job Creation Act will not automatically fully eliminate the obligations of businesses in the aviation sector, but will have to wait upon the issuance of the implementation regulations.

Another relaxation which the Job Creation Act provides is the deletion of the requirement to obtain the Minister of Transportation's approval for low operating cost services (Low Cost Carriers or "LCC"). The deletion of the aforementioned requirement should benefit businesses. Any aircraft operator which desires to provide LCC services can immediately provide LCC services to its passengers provided that the criteria stipulated by the Ministry of Transportation have been met.

With regard to the air transport supporting business activities, the Job Creation Act deleted Article 131 of the Aviation Act, which governs air transport supporting business activities. Deletion of the provisions for supporting activities from the Aviation Act has resulted in air transport supporting business activities, such as activities directly related to the commercial air transport,

among others computerized reservation systems, ticket marketing and selling, ground handling and aircraft leasing no longer being regulated by the Aviation Act.

The deletion of the provision is deemed to be positive for businesses in the field of air transport supporting business activities because it can simplify the forms of permits required for this business activity. However, the Job Creation Act does not explain whether the aircraft leasing business activities can be categorized as airport related services or other business sectors which only require Trading Business Permits or Company Registration Certificates, and thus, there is legal uncertainty for businesses in the aircraft leasing business sector.

Airport Business Entities

In relation to airports, Article 237 of the Job Creation Act contains provisions that the capitalization for airport business entities will be subject to the laws and regulations in the investment sector and fully consolidated with the Investment Act Law No. 25 of 2007 ("Investment Act"). This Job Creation Act does not determine whether the airport business sector will be subject to investment ownership restrictions that are different from those in the current Aviation Act, by which all or most of the capital must be owned by an Indonesian business entity or Indonesian citizen, so that the composition of the national capital must still be larger than the entire foreign capital. Further explanation in the Investment Act is certainly required with regard to this matter, but its amendment by Article 237 of the Job Creation Act gives to businesses a positive sentiment that the Government policy is very open to investments in Indonesia.

Meanwhile, another relaxation relating to airports is the deletion of the provisions concerning Airport Building Construction Permits in Article 247 of the Aviation Act which have been amended to become Building Approvals, details of which need to be anticipated in the Buildings Act Law No. 28 of 2002.

Sanctions

In relation to sanctions, the Aviation Act stipulates several forms of sanctions in the event of any violations, i.e. administrative sanctions, penalty sanctions, and imprisonment sanctions. Administrative sanctions, which were previously governed by a regulation of the Minister of Transportation, have now been centralized and must be stipulated by a Government Regulation. Although the centralization of sanctions may make it more difficult for amendments to follow global developments and needs, we view that such centralization of sanctions will make sanctions more standardized and more nationally applicable through the issuance of Government Regulations.

Conclusion

In conclusion, despite of the relaxation provided in the Job Creation Act by the deletion of some requirements and provisions in the Aviation Act, we view it important for businesses in the aviation sector to anticipate and to look to Government Regulations as implementing regulations, as the deletion does not necessarily eliminate the businesses' obligations entirely but only transfers the regulatory authority to Government Regulations in order to provide flexibility for the Central Government in policy making following technological developments, and the increasingly fast dynamics of globalization and society.

Further, taking into account that there will be significant changes particularly relating to the assignment of the governing authority from the Ministerial Regulations to Government Regulations and the implementation of licensing from the Minister of Transportation to the Central Government, every business in the aviation sector needs to continue to carry out pro-active monitoring on the progress in the issuance of these implementing regulations.

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