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Non-Commercial Air Transport by Foreign Civil Aircraft in Domestic Flight



In the context of development of globalization and international trade, air transport makes a significant contribution as proven by a rapid growth in the aviation industry in recent years. Air transport is also expected to offer a greater support to economic growth than the other types of transportation since it can make cross border activities easier. The aviation industry is directly related to the non-cabotage principle, as stated in Article 7 of the Chicago Convention of 1944, which provides that each member

country has the right to refuse to grant a permit to an aircraft owned by another member country, which intends to take passengers, mails and cargos, for pay or rented, from one place to another within its territory.

The implementation of the non-cabotage principle is reflected in Law No. 1 Year 2009 on Aviation ("**Aviation Law**"), explicitly in Article 84 of the Aviation Law which provides that the activities of domestic commercial air transport can only be conducted by national air transport business entities after obtaining a commercial air transport business license. As for non-commercial air transport activities, Article 101 of the Aviation Law provides that non-commercial air transport activities can be conducted by the government, local authorities, certain institutions, individuals, and/or other Indonesian business entities.

Non-scheduled commercial and international non-commercial air transport with foreign civil aircraft which arrives in or departs from the territory of Indonesia has the potency to give rise to a violation of (i) the non-cabotage principle, (ii) the territorial sovereignty of the country, and could also give raise to risks to aviation safety and security in the region of Indonesia. On this basis, the Government of Indonesia has enacted Regulation of the Minister of Transportation No. PM 66 of 2015 concerning Non-Commercial Air Transport and International Non-Scheduled Commercial Air Transport by Foreign Civil Aircraft to and from Indonesian Territory ("**PM 66/2015**"), as an implementing regulation of the provisions concerning non-commercial transportation and non-scheduled commercial transportation with foreign civil aircraft.

Under PM 66/2015, international non-commercial air transport and international non-scheduled commercial air transport can take the following forms:

International Non-Commercial Air Transport (Article 4 of PM 66/2015)	International Non-Scheduled Commercial Air Transport (Article 5 of PM 66/2015)
a. Air transport to transport state officials or employees or persons employed by a company having non-commercial air transport activities; b. Air transport for private flights;	a. A particular group that has the same intent and purpose that is not for vacation (affinity group); b. A group of passengers who bought some or all of the aircraft capacity to undertake travel

<ul style="list-style-type: none"> c. Air transport for sports; d. Other non-commercial air transport where the main activity is not the commercial air transport business. 	<ul style="list-style-type: none"> packages including accommodation and local transportation arrangements (inclusive tour charter); c. Anyone who buys the entire capacity of the aircraft for its own account (own use charter); d. Air taxi; e. Non-scheduled commercial air transport specific for overseas cargo; f. Indonesian low-traffic airspace (overflying); g. Technical landings which are not for commercial purposes; h. Other non-scheduled commercial air transport activities such as, among others, in a single aircraft consisting of various groups and with different destinations (split charter), for the sick, humanitarian activities, and parachuting.
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Basically, under Article 6 and Article 7 of PM 66/2015, international non-commercial air transport and international non-scheduled commercial air transport as mentioned above can be conducted by a foreign legal entity or individual foreign nationals using foreign civil aircraft after obtaining a fly permit (flight clearance), which includes (i) a diplomatic clearance from the Ministry of Foreign Affairs, (ii) security clearance from the Indonesian National Armed Forces Headquarters, and (iii) flight approval from the Ministry of Transportation. Nevertheless, Article 15 PM 66/2015 provides that international non-commercial air transport and international non-scheduled commercial air transport with foreign civil aircraft can only land or take off from international airports and will only be allowed to provide air transport from airports outside Indonesian territory to an international airport in the territory of Indonesia and vice versa. However, this limitation can be excluded in certain events as provided in Article 16 of PM 66/2015.

The limitation on landing or take off and international services provided in Article 16 of PM 66/2015 are no longer perceived as relevant when facing the needs of fast and easy transportation. Therefore, the Government of Indonesia amended PM 66/2015 through Regulation of the Minister of Transportation of the Republic of Indonesia No. PM 109 of 2016 ("**PM 109/2016**") by amending provisions that are considered no longer relevant to current conditions, and simplifying the implementation of non-commercial air transport and non-scheduled commercial air transport by foreign civil aircraft. One of the amendments is the exemption on the limitation on landing or take off and international services using foreign civil aircraft. A comparison of the exemption is as follows:

Exemption Under PM 66/2015	Exemption Under PM 109/2016
<ul style="list-style-type: none"> a. Landing due to technical reasons; b. VVIP flights; c. Humanitarian aid flights; d. Medical evacuation flights; and 	<ul style="list-style-type: none"> a. Landing due to technical reasons (technical landing) for refueling or due to damage having occurred; b. Landing due to emergency conditions

<p>e. Flight for strategic national purpose which are based on a special permit from the Ministry of Transportation.</p>	<p>such as bad weather;</p> <p>c. Landing due to acts of unlawful interference including bomb threats or hijacking that could jeopardize flight and air transport safety;</p> <p>d. VVIP flights which are conducted by the president, vice-president, guest countries at heads of state/heads of government level and heads of international organizations;</p> <p>e. VIP flights which are conducted by the former president and vice-president;</p> <p>f. Humanitarian aid flight to provide assistance/help needed by the victims of natural disaster/humanitarian tragedy; and</p> <p>g. Special permit of the director general for strategic national purposes which are for the purpose of the state sovereignty, national territorial integrity, national economic interest, investment or non-commercial travel to certain destinations, given for a maximum period of 180 calendar days.</p>
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Amendments in Article 16 of PM 109/2016 provide for broader exception than previous exceptions in PM 66/2015 by adding the new conditions set out in point (b), (c), (e) and provide an explanation regarding the types of flight included in the national strategic interests as provided in point (g).

Article 16 of PM 109/2016, opens up opportunities for foreign civil aircraft to conduct air transport activities in Indonesia, but it must be noted that the exemption only applies to the activities of non-commercial air transport. Accordingly, with the enactment of PM 109/2016, foreign civil aircraft can now conduct non-commercial air transport in the territory of Indonesia provided that they have a special permit from the Director General of Civil Aviation. For example, a foreign-owned private jet can fly for investment purposes or non-commercial travel from one airport to another airport in the territory of Indonesia.

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