

CLIENT UPDATE

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Government Moves to Regulate App-based Transportation Service Providers

As a response to large-scale protests by taxi drivers last month, the Government has issued Minister of Transportation Regulation No. PM 32 of 2016 on Unscheduled Public Transportation Services (“**MOTR 32/2016**”). The new regulation, which was issued on 1 April 2016 and comes into force on 1 October 2016, addresses, among other things, the different types of unscheduled public transportation service (*penyelenggaraan angkutan orang dengan kendaraan bermotor umum tidak dalam trayek*), the rights and obligations of public transportation companies and, very specifically, the role of app-based transportation service providers in providing transportation services.

Definition and Categories of Unscheduled Public Transportation Services

According to MOTR 32/2016, an unscheduled public transportation service is:

“a transportation service by public passenger car or bus within a certain area or from one place to another place, having a specific point of departure and specific destination but without a specific route and timetable.”

Unscheduled public transportation services are divided into 4 (four) categories, namely:

1. Public transportation service such as taxi;
2. Public transportation service for specific purposes (e.g., staff bus service, shuttle service from a housing complex to the city centre, or car rental service);
3. Public transportation service for tourism purposes; and
4. Public transportation service within a specified area.

Further, such public transportation services must be conducted by a public transportation company which has obtained an unscheduled public transportation license from the Ministry of Transportation. A public transportation company may be established in the form of a (i) state-owned company (BUMN); (ii) local-government owned company (BUMD); (iii) limited liability company; or (iv) cooperative.

In order to obtain the license, a public transportation company is required to fulfil the following requirements:

1. It must own at least 5 (five) vehicles, as evidenced by Vehicle Registration Certificates and Vehicle Ownership Certificates in the name of the company;
2. All the vehicles must pass the Periodic Vehicle Test;
3. It must provide a parking facility for its vehicles;
4. It must provide a vehicle maintenance facility (workshop), as evidenced by a certificate of ownership of the workshop, or procure such facility through collaboration with a third party, as evidenced by a collaboration agreement; and
5. Its drivers must have valid driving licenses.

App-based Transportation Service Providers

Article 41 of MOTR 32/2016 specifically regulates the role of app-based transportation service providers (“**ATSP**”). Unless an ATSP has obtained the necessary license and fulfilled the requirements to be treated as a public transportation company, it will be required to collaborate with a public transportation company in order to conduct its operations. Based on this, it is clear that MOTR 32/2016 prohibits ATSPs from partnering with individuals.

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Moreover, a transportation app service provider is **NOT** allowed to conduct the following activities, which are reserved solely for licensed unscheduled public transportation companies:

1. Determining and collecting fares from the passenger;
2. Hiring drivers; and
3. Determining the salary of drivers.

In addition, MOTR 32/2016 imposes various reporting obligations on ATSPs, including the furnishing of:

1. its company profile;
2. access for operational monitoring of its services;
3. information on all of the public transportation companies with which it collaborates;
4. information on all drivers and vehicles;
5. contact information, including but not limited to phone number, email, and office address.

Application of MOTR 32/2016 to ATSP Using Motorcycles

According to Government Regulation No. 14 of 1993 on Road Transportation (an implementing regulation for Law No. 22 of 2009 on Road Traffic and Transportation), the transportation of people using a public vehicle may only be conducted by bus or car. In a similar vein, MOTR 32/2016 also expressly provides that all categories of public transportation services may only be provided by means of bus or car. While MOTR 32/2016 is clearly consistent with the higher regulations, it leaves open the question of whether motorcycle transportation may be considered “public transportation.” This is particularly noteworthy as many ATSPs use motorcycles in their operations. However, it has been reported in the media that the government will regulate such operations by means of a separate regulation to be issued later this year.

Issues

While the approach employed by MOTR 32/2016 is consistent with what ATSPs have been arguing, i.e., that they do not provide transportation services, the imposition of various new obligations on non-taxi transportation service providers is somewhat surprising. It will be interesting to see how these requirements are complied with, given that some non-taxi transportation service providers may not have the resources at hand to make the necessary changes within the permitted period.

It will also be interesting to see how the ATSPs react to the new restrictions imposed upon them. Key among the concerns are the ability to collect fares and to share fees among ATSP drivers.

Whatever the challenges, at the very least the new rules provide more clarity on the rules of the game.

Conclusion

MOTR 32/2016 appears to create a more level playing field between conventional and app-based services by imposing equal licensing requirements on non-taxi transportation service providers. However, the definition of “transportation vehicle” is restricted to cars and buses; there remains a vacuum with regard to motorcycles, which is significant given that the ATSP industry in Indonesia has been dominated by motorcycles. As we mentioned earlier, it is expected that the government will issue a separate regulation governing motorcycles later this year.

On a more general note, the growth of the app-based transportation sector in Indonesia has been one of the great economic success stories of recent years. The sector’s extraordinary development has once again demonstrated the power of disruptive technology to spur economic growth and provide better services to the public, and how the rapid pace of technological development can potentially leave government, legislators and traditional businesses far behind. The fact that this particular business has thrived in the

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absence of government intervention clearly demonstrates the economic benefits of light-touch government regulation.

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ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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