

GR 46/2021 AS IMPLEMENTING REGULATION OF THE OMNIBUS LAW ON JOB CREATION IN THE TELECOMMUNICATION AND INFORMATION TECHNOLOGIES SECTOR

The Government of the Republic Indonesia issued Government Regulation No. 46 of 2021 on Posts, Telecommunications and Broadcasting (“GR 46/2021”) to support the implementation of Indonesia’s digital transformation policy by enhancing the telecommunications infrastructure regime, while it also discussed, although briefly, the digital economy landscape and its cooperation with telecommunications companies. This GR 46/2021 was issued as a response to the Omnibus Law. The following are the highlighted provisions of GR 46/2021:

Telecommunications Providers

Telecommunications providers consist of telecommunications network providers, telecommunication services providers, and special telecommunications providers. Below are the telecommunications providers covered by GR 46/2021.

| Telecommunications Network Providers | Telecommunication Services Providers | Special Telecommunications Providers |
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| <p>a. fixed network providers:</p> <ul style="list-style-type: none"> (i) local fixed network providers; (ii) long-distance fixed line providers; (iii) international fixed line network providers; (iv) fixed closed network operators; and (v) other permanent network providers determined by the Ministry. <p>b. mobile network providers:</p> <ul style="list-style-type: none"> (i) providers of terrestrial mobile networks; (ii) providers of cellular mobile networks; (iii) providers of satellite mobile networks; and (iv) other mobile network providers determined by the Ministry. | <p>a. operators of basic telephone services;</p> <ul style="list-style-type: none"> (i) providers of local fixed networks based on switched circuits; (ii) fixed long distance line network providers; (iii) international direct dial fixed network providers; (iv) cellular mobile network providers; (v) satellite mobile network providers; and (vi) providers of a terrestrial mobile network. <p>Apart from the above telecommunication service providers, basic telephony service providers may only be engaged after the telecommunication service providers obtain landing rights from the Ministry.</p> <p>b. providers of value added telephony services; and</p> <p>c. providers of multimedia services.</p> | <ul style="list-style-type: none"> a. for personal use; b. for state defense and security. |

Below are other highlighted provisions of GR 46/2021 related to telecommunications providers.

a. The Facilitation of Telecommunications Infrastructure

The facilitation of telecommunications infrastructure is newly introduced under GR 46/2021. The Central and Regional Governments are granting facilitation or ease of doing business by participating in providing land, buildings, and passive telecommunications infrastructure to be used jointly with the telecommunications providers. The Central and Regional Governments will also grant facilitation and ease for telecommunications providers to develop telecommunications infrastructure.

b. Leasing and Using Telecommunications Networks

Telecommunications network providers may lease their telecommunications networks to other telecommunications operators and non-telecommunications operators. This lease arrangement must be drawn up in a written agreement.

c. Utilizing Telecommunications Operating Infrastructure

GR 46/2021 requires business actors which have passive infrastructure that can be used for telecommunications purposes (such as culverts (ducts), towers, poles, cable holes, and other passive infrastructure) to provide access to the use of passive infrastructure to telecommunications operators.

d. Tariffs for Operating Telecommunications Networks and Telecommunications Services

GR 46/2021 differentiates between the tariffs for telecommunications networks and those for telecommunications services. The amount of tariffs will be determined by the Ministry and the Ministry may set certain upper rate limits or low rate limits considering the public interest and fair business competition.

e. Resale of Telecommunications Services

Under GR 46/2021, it is now possible for telecommunications services providers to do the resale of telecommunication services. However, it is limited to basic telephony, value added telephony, and multimedia services.

f. Interconnections

GR 46/2021 contains no detailed provision on interconnections like previously. It only requires telecommunications network providers to ensure the availability of interconnections. Interconnections are to be provided using the technology agreed to by the telecommunications providers.

g. The Universal Service Obligation

In order to support the national digital transformation, through this Government Regulation, the Ministry will provide the telecommunication infrastructure to be used by telecommunications network providers and telecommunications service providers and fund the operation of telecommunications services provided by telecommunications network providers and telecommunications service providers in universal service areas.

However, telecommunications network and telecommunications network providers, are still required to contribute to the universal service obligations in money calculated as a certain percentage of the gross revenue from their telecommunications operations or other contributions.

h. Technical Standards of Telecommunications Equipment and Devices

All telecommunications equipment and equipment made, assembled and imported for trading or use in the Republic of Indonesia must meet the technical standards. Meeting the technical standards is evidenced by certificates.

This requirement to meet the technical standards does not apply to equipment or devices which are:

- a. for personal use, not for commercial purposes;
- b. for research and development purposes, natural disaster management purposes, or technology testing of telecommunications and informatics purposes;
- c. used as a test samples to test telecommunications equipment or devices;
- d. used for defense and security purposes by the relevant ministry;
- e. used for diplomatic representatives with due regard to the principle of reciprocity under the prevailing regulations;
- f. used as a means to measure telecommunications equipment or devices; or
- g. telecommunications equipment or devices determined by the Ministry.

Certified telecommunications equipment and devices must be labelled. Their labelling must comply with the relevant laws and regulations

OTT Service Providers Cooperating with Telecommunication Providers

GR 46/2021 also introduces new provisions whereby both national and foreign OTT companies engaging in the business of (i) telecommunications service substitutes, e.g. WhatsApp, Zoom, Teams, Telegram et al, (ii) audio and visual content service platforms, e.g. Spotify and other music on demand platforms, Netflix and other video on demand platforms, YouTube, games platform, and (iii) other services determined by the Minister in Indonesia, which has a cooperation with telecommunications network or telecommunications service providers, is required to carry out businesses based on fair, just and non-discriminatory principles, and maintain service quality.

This is one of the hot topics raised and discussed in the telecommunication sector following to the newly issued GR 46/2021. Previously, the draft government regulations contained the term “must” rather than “may” which means that based on the draft regulation, the OTT services would have to cooperate with the telecommunication services. GR 46/2021 finally provides that the OTT services may cooperate with the telecommunication service providers by considering the equality, non-discriminative principles and maintaining the services in accordance with the prevailing laws and regulations. Kindly note that this provision only applies to those OTT services in a cooperation with telecommunication service providers, and does not serve as an obligation for OTT services to cooperate with telecommunication service providers in order to operate its business in Indonesia.

The above provision regarding cooperation with telecommunications network or telecommunications service providers does not apply to business actors which are the owners or users of accounts on social media channels, content platform channels, marketplace channels and other types of channels.

The form and materials of the cooperation between business actors and telecommunications networks or telecommunications service providers is to be agreed to by the parties.

Use of a Radio Frequency Spectrum

The use of a Radio Frequency Spectrum requires a license to use a radio frequency spectrum from the Minister. Holders of a license to use a radio frequency spectrum must pay a radio frequency spectrum use fee, which will be imposed upon the issuance of the license and the fee must be paid annually in the first month of the year.

One of the features under the Job Creation Law is the amendments ie, to Article 33 of the Telecommunications Law, which allows the holders of a business license for a radio frequency spectrum (i) to cooperate with other telecommunications operators in the use of a radio frequency spectrum for the implementation of new technologies; or (ii) to assign the use of a radio frequency spectrum to other telecommunications operators, with prior approval from the central government. In other words, telecommunication services operators that hold a spectrum frequency license may share their spectrum with other operators through cooperation arrangements. This is a new concept introduced under the Job Creation Law.

Similarly, this spectrum-sharing concept is also recognized under GR 46/2021. GR 46/2021 allows telecommunications network operators that hold a radio frequency spectrum license to enter into a cooperation in the use of the radio frequency spectrum with another telecommunications network operator for the application of new technologies. The new technologies are telecommunications technologies which implementation is performed only since the enactment of the Job Creation Law.

Along with the introduction of spectrum-sharing, network-sharing has been introduced. The regulation on network-sharing is a new regulation under Article 34B (2) of the Telecommunications Law (as amended by the Job Creation Law),

under which business actors with telecommunication infrastructure other than passive infrastructure, may open access to the use of the infrastructure to other telecommunications operators. According to Article 26 (1) of GR 46/2021 and its elucidation, the infrastructure referred to in Article 34B (2) of the Telecommunications Law is “active infrastructure” which is an active telecommunications device used in telecommunication services, such as for instance, a Radio Access Network (RAN). With the possibility of establishing cooperation on network-sharing, it is believed that the interpretation of this network-sharing regulation may lead to the applicability of the Mobile Virtual Network Operator (MVNO) business model in Indonesia.

Broadcasting Service Providers

Broadcasting service providers are providers of television and radio broadcasting services, which can be broadcast through terrestrial media, satellite, and cable. Broadcasting services can be provided by public broadcasting agencies, private broadcasting agencies, community broadcasting agencies and subscription broadcasting agencies.

Broadcasting service providers must comply with the business licensing requirement in order to obtain an agency operating license and are subject to the business licensing fee determined under the prevailing laws and regulations. Broadcasting operations can cover all of Indonesia, regions, or local areas with prior approval from the Minister.

Private broadcasting agencies which engage in digital broadcasting through terrestrial media covering all of Indonesia and regions must comply with the requirement that the broadcasting services contain local content constituting at least 10% of the total daily broadcast time.

GR 46/2021 also requires subscription broadcasting agencies providing service in Indonesia to internally censor all broadcast content to be broadcast or distributed, devote at least 10% channel capacity to distributing programs from the public and private broadcasting agencies, and provide 1 domestic production broadcast channel for every 10 foreign production broadcast channels.

For failure to comply with GR 46/2021, broadcasting service providers will have the following progressive administrative sanctions imposed on them:

- a. written warnings,
- b. an administrative fine,
- c. a temporary suspension of business operations;
- d. a forceful action by the police; and
- e. the revocation of the business license.

This advisory is not intended to serve as and should not be relied on as legal advice or as a substitute for legal advice in individual cases. If you have any questions or concerns about any of the above issues, please reach out to Yohanes Masengi at yohanes.masengi@lawghp.com or Naufal Fileindi at naufal.fileindi@lawghp.com to obtain specific advice.

Lawyers in charge



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Naufal is a Partner at Guido Hidayanto & Partners and leads the firm's digital, personal data, privacy, and media group.

Naufal handles general corporate, advisory, and mergers and acquisition matters. He has acted for leading global and multinational companies on their corporate restructuring, transactions and advisory relating to e-commerce, technology and media, data protection and privacy. He also handles plantation and forestry, renewable energy, real estate, and employment matters, and have represented several real estate and major plantation companies.

Naufal is known as an advocate of creative legal writing and promoting the law to the masses. Since 2010, he has been a partner of HukumOnline, Indonesia's largest law media, while also being active as guest speakers in off-air forums and radios.

Naufal graduated from Universitas Indonesia and was honored as the Best Outstanding Student in 2010. He is an Indonesian licensed lawyer and a member of Peradi. He is a certified Data Protection Officer and is also certified as a Qualified Risk Governance Professional (QRGP).

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Yohanes Masengi is a Partner with extensive experience in investment, infrastructure, power projects, ports, mergers and acquisitions, joint ventures, employment and corporate restructuring.

He has represented prominent companies in a variety of proceedings and transactions, including merger and acquisitions, land acquisitions, project financing, healthcare and lifesciences, and natural resources and energy. These include, among others, representing independent power producers in the development of various large-scale power projects in Indonesia, representing the employer in the settlement of labor disputes and mass terminations due to redundancy and closure, representing a state owned enterprise in the arbitration disputes, providing legal assistance in the renegotiation of concessions and contracts with state owned enterprises, providing legal assistance in the acquisition of land with an area of more than 85 hectares for infrastructure projects, providing legal assistance in various joint ventures and the establishment of companies in Indonesia, and advising on various matters related to their concession and business activities.

He was nominated as the finalist of 2018 Indonesian Young Lawyer of the Year and ranked as the Indonesian Rising Star Lawyer of 2019 and 2020 by the Asian Legal Business. He is recognized by the ILFR 1000 review that he is "Detailed, practical and flexible in offering solutions as the landscape changes. Responsive to client's needs and concerns. Direct, succinct and clear advice without compromising details." He is also recognized by the Legal500 as the Next Generation Partner in the Projects and Energy with the review that "Yohanes Masengi also has significant experience in power projects and M&A."

He is also a contributor of the Energy Projects for Practitioners (ISBN: 978-4-502-31861-0) published by Atsumi Sakai Law Office / Foreign Law Joint Project and contributor to The Commercial Laws of Indonesia Chapter in Digest of the Commercial Laws of the World, Thomson Reuters, from 2017 to 2021.

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