

Enforcement Date

1 November 2017

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Government Affirms Supreme-Court Decision on Application-Based Transportation

Vehicle Registration Certificates (STNK) may now be issued either on behalf of companies or on behalf of the drivers themselves. However, the name of the relevant company concerned is currently required to be displayed in both the front and rear windows of any vehicles which are used.

In order to affirm Supreme Court (*Mahkamah Agung* – “MA”) Decision [No. 37 P/HUM/2017](#) (“MA Decision”),¹ the Ministry of Transportation has issued Regulation [No. PM 108 of 2017](#) on the Organization of Non-Fixed-Route Public-Transportation Services (“Regulation 108/2017”). This new regulation revises Ministry Regulation [No. PM 26 of 2017](#) on the same matter (“Regulation 26/2017”), which was partially annulled through the issuance of the MA Decision and which thus required revision.

In its analysis of the revisions which have now been made to the legal framework through the issuance of Regulation 108/2017, this edition of Indonesian Legal Brief will confine its discussion to matters reviewed in the MA Decision which relate to application-based transportation services, including:

1. Restrictions on operational areas and vehicle numbers;
2. Base and ceiling tariffs;
3. Registration of Vehicle Registration Certificates (*Surat Tanda Nomor Kendaraan* – “STNK”);

¹ Recitals, Regulation 108/2017. For more information on the MA Decision, see ILB [No. 3195](#).

4. Prohibitions on online-application providers;
5. Requirement to obtain Type-Test Registration Certificates (*Sertifikat Registrasi Uji Tipe* – “SRUT”);
6. Tariffs which are imposed through the use of taxi meters or online applications; and
7. Limitations placed upon vehicle-registration plates.

Restriction of Operational Areas and Vehicle Numbers

The MA Decision stipulates that any restrictions which are placed upon operational areas and vehicle numbers for special rental drivers will ultimately result in limitations in terms of both consumer accesses and job opportunities for special rental drivers.²

However, this restriction has been retained in Regulation 108/2017 and thus operational areas are to continue to be established through a consideration of the following factors:³

1. Estimation of the demand for special rental-vehicle services;
2. Area development;
3. Characteristics of areas/regions; and
4. Availability of adequate road networks.

Moreover, operational areas are to be determined by three authorities (“**Authorities**”), specifically:⁴

Authority	Scope of Authority
Director General of Road Transportation (“Director General”)	For operational areas which are located across multiple provinces.
Head of the Transportation Management Body for the Jakarta, Bogor, Depok, Tangerang and Bekasi (“Jabodetabek”) areas (“Head of Body”)	For operational areas which are located across multiple provinces within the Jabodetabek area.
Governor	For operational areas which are located within single provinces.

Previously, under the now obsolete Regulation 26/2017, the Director General was not involved in the determination of any operational areas.⁵

Finally, vehicle numbers will still involve planned quotas, meaning that no revisions have been made to Regulation 26/2017. Said quotas are to be based on the following considerations:⁶

1. Travel potency; and
2. Estimation of the need for transportation services.

² P. 37, MA Decision.

³ Art. 29 (1), Regulation 108/2017. Compare this provision with Art. 20 (2), Regulation 26/2017.

⁴ Art. 29 (2), Regulation 108/2017.

⁵ Art. 20 (3), Regulation 26/2017.

⁶ Art. 30 (2), Regulation 108/2017.

Ultimately then, the various restrictions which were originally placed upon both operational areas and vehicle numbers still prevail under Regulation 108/2017.

Base and Ceiling Tariffs

As argued in the MA Decision, tariffs for special rental vehicles should be determined based on agreements which are made between consumers and public-transportation companies, and not through the imposition of any base and ceiling tariffs.⁷

Under Regulation 108/2017 however, base and ceiling tariffs have been retained. Specifically, it has now been mandated that tariffs for transportation services which utilize online applications should be based upon agreements which are made between consumers and public-transportation companies, but that eventually, said tariffs should revert to a set of base and ceiling tariffs which are to be determined by the Director General.⁸

Therefore, in the context of this particular issue, Regulation 108/2017 does not comply with the MA Decision, as it still incorporates base and ceiling tariffs.

Registration of STNK

Regulation 26/2017 previously asserted that STNK should be issued on behalf of companies, however it was claimed in the MA Decision that this obligation hinders the business development of special rental vehicles.⁹

Therefore, this condition has now been revoked through the issuance of Regulation 108/2017 and STNK now may be issued either on behalf of companies or on behalf of the drivers themselves, in terms of the relevant administrative requirements that have to be met.¹⁰ However, the name of the relevant company concerned is currently required to be displayed in both the front and rear windows of any vehicles which are used.¹¹

Prohibitions on Online Application Providers

Regulation 26/2017 previously prohibited online application providers from:¹²

1. Determining tariffs and offering tariff promotions which fell below the level of the established base tariff;
2. Recruiting drivers;
3. Providing online application service access to: 1) Individuals working as transportation providers; and 2) Public-transportation companies which have not yet secured non-fixed-route transportation licenses.

⁷ P. 40, MA Decision. See Art. 19 (2.f), Regulation 26/2017.

⁸ Art. 28, Regulation 108/2017.

⁹ Pp. 42-44, MA Decision. See Arts. 19 (3.e), 27 (a), 36 (4.c), 37 (4.c) and 66 (4), Regulation 26/2017.

¹⁰ Arts. 27 (1.f), 39 (1), 49 (4.c) and 50 (4.c), Regulation 108/2017. The definition of valid travel documents includes STNK which are issued either on behalf of companies or individuals. See Art. 1 (21), Regulation 108/2017.

¹¹ Art. 27 (1d), Regulation 108/2017.

¹² Art. 51 (3), Regulation 26/2017.

However, the MA Decision claimed that this prohibition was limiting the opportunities enjoyed by individual drivers, who use their own vehicles in order to gain access to transportation application services.¹³ Thus, such prohibitions have now been revoked through the issuance of Regulation 108/2017.

Requirement to Obtain SRUT

The recent MA Decision upheld the complaint raised by claimants that the obtaining of SRUT would result in a waste of financial resources, as SRUT are not usually issued by Single Holding Trademark Agents (*Agen Tunggal Pemilik Merek / ATPM*) for vehicles which are purchased by individuals.¹⁴ Thus, the MA Decision ordered that this provision be revoked.¹⁵

However, the requirement to obtain SRUT is still an integral part of Regulation 108/2017, including registrations of new vehicle purposes.¹⁶

Tariffs Which Are Imposed through the Use of Taxi Meters or Online Applications

Under Regulation 26/2017, conventional taxis had the possibility of choosing between two types of tariff: taxi meters or online application-based tariffs.¹⁷ However, this alternative provision was widely considered to be unfair and to violate the equality principle set out under Government Regulation No. 74 of 2014 on Road Transportation.¹⁸

Thus, in a bid to uphold the principle of equality, Regulation 108/2017 sets out provisions on service tariffs for taxis as follows:¹⁹

1. For conventional taxis, tariffs should be set in accordance with the use of taxi meters and base/ceiling tariffs as have been determined; and
2. For taxi services which are arranged via online applications, payment should be based on tariffs which are set through the relevant online application, and not through the use of taxi meters.

Thus, taxis are still allowed to utilize both taxi meters and online applications when determining tariffs, but this is to be dependent on the method whereby passengers are picked up (i.e., if passengers are picked up through the use of an online application, then the tariff must be determined through the relevant application, and not through the use of a taxi meter).

¹³ P. 45, MA Decision.

¹⁴ P. 48, MA Decision.

¹⁵ Pp. 46-48, MA Decision.

¹⁶ Arts. 48 (10.a.2), 48 (11.a.3), 51 (10.a.3), 56 (3.b.1.b), 57 (10.a.2) and 57 (11.a.2), Regulation 108/2017.

¹⁷ Art. 5 (1.e), Regulation 26/2017.

¹⁸ P. 48, MA Decision.

¹⁹ Art. 6 (2-3), Regulation 108/2017.

Limitations Placed upon Vehicle-Registration Plates

Regulation 26/2017 required all vehicle-registration plates to be in accordance with the domiciles of the branches of the public-transportation service companies where the vehicles are registered.²⁰ However, according to the MA Decision, this provision should now be revoked, as it is seen as having the potential to hamper drivers of special rental vehicles who are operating across several areas simultaneously and could also lead to unnecessary excess vehicle capacity.²¹

In response to this criticism, Regulation 108/2017 states that vehicle-registration plates should now be in accordance with operational areas which have been determined by the relevant Authorities.²² However, this provision may not settle the problem of drivers who are operating across several locations simultaneously.

Regulation 108/2017 has been in force since 1 November 2017. ^{RP}

²⁰ Art. 30 (b), Regulation 26/2017.

²¹ P. 50, MA Decision.

²² Art. 43 (b), Regulation 108/2017.

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