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The Implementing Regulation of the Omnibus Law on Job Creation in the Construction Sector: Government Regulation No. 14 of 2021

The Indonesian Government has issued Government Regulation No. 14 of 2021 (“**GR 14/2021**”), as one of the implementing regulations of Law No. 11 of 2021 on Job Creation (the “**Omnibus Law**”), which amends Government Regulation No. 22 of 2020 on the Implementing Regulation of Law No. 2 of 2017 on Construction Services (“**GR 22/2020**”).

GR 14/2021 introduces more detailed provisions than GR 22/2020 and this advisory highlights the key provisions.

I. Key Provisions of GR 14/2021

Topic	Highlighted Provisions
Business Entity and Construction Worker Registration	Business Entity Registration GR 14/2021 provides that every construction services business entity must register its experience with the Central Government through the Construction Services Development Agency (<i>Lembaga Pengembangan Jasa Konstruksi</i> – “ LPJK ”). The information to register consists of the following:

Topic	Highlighted Provisions
	<ul style="list-style-type: none"> a. the work package name; b. the name of the employer; c. the name and portion of the capital distribution when conducting a joint operation; d. the duration and year of the implementation of the work; e. the work value; f. the minutes of the handover of the work; and g. the annual performance of the contractor. <p>Construction Worker Registration</p> <p>Every construction worker (defined as any person who has skills or knowledge and experience in construction work as evidenced by a Construction Work Competence Certificate) must register their professional experience with the Central Government through the LPJK, which must consist of at least the following:</p> <ul style="list-style-type: none"> a. the types of professional services provided; b. the value of construction work related to the results of the professional services; c. the duration and year of the implementation of the work; and d. the name of the employer. <p>Foreign Construction Workers</p> <p>Foreign construction workers, who may only be those with an expert's qualification, must go through a competence equivalency process (matching and integrating the competence they have achieved through education, experience and the expertise they have developed) followed by registration to the Minister of Public Works and Public Housing through the LPJK through the integrated Construction Services Information System.</p> <p>For the registration following the competence equivalency process which meets the criteria and conformity requirements, the employer will be issued a determination of the foreign construction worker's competence equivalency which meets the suitability criteria and requirements using the format under GR 14/2021.</p>
<p>Specialist Construction Works</p>	<p>If contractors do not have a specialist sub-classification for:</p> <ul style="list-style-type: none"> a. a special construction and/or pre-fabricated construction

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	<p>classification, they must form a joint operation; or</p> <p>b. classifications other than those in a. above, they must have the works performed by specialist sub-contractors.</p> <p>Moreover, specialist construction works must be performed by a specialist business entity contractor.</p>
<p>The Classification of Construction Workers</p>	<p>The determination of the classification of construction workers is based on the scientific fields related to construction services.</p> <p>The classifications of construction workers qualified as operators, technicians, analysts or experts include:</p> <ul style="list-style-type: none"> a. architecture; b. civil works; c. mechanical works; d. environmental governance; e. landscape architecture, illumination, and interior design; f. urban and regional planning; g. science and technical engineering; or h. management implementation.
<p>The Transfer of Technology</p>	<p>The transfer of technology (which must be provided by qualified foreign construction workers) must be conducted by:</p> <ul style="list-style-type: none"> a. preparing a profile of the use, utilization and development of the technology to be provided to the cooperation partner(s) and/or work owner(s) in Indonesian and English; b. providing skills and management training for Indonesian understudies and skilled Indonesian manpower at least once for each work project; and c. facilitating Indonesian citizens to obtain training, perform practical work and/or academic research in work projects that the business entities are undertaking. <p>For every construction project, a clause on the transfer of technology specified in a. to c. above must be included in the contract.</p> <p>More Indonesian workers must also be utilized than foreign workers at the expert level.</p>

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<p>The Implementation of Joint Operations by Contractors</p>	<p>A business entity contractor may conduct a joint operation (<i>kerja sama operasi</i> - defined as a business cooperation between businesses each having clear rights, obligations and responsibilities under a written agreement), on the condition that the joint operation is conducted between:</p> <ol style="list-style-type: none"> a. a contractor with a large-scale qualification and another contractor with a large-scale qualification; b. a contractor with a medium-scale qualification and another contractor with a medium-scale qualification; c. a contractor with a large-scale qualification and a contractor with a medium-scale qualification; d. a contractor with a medium-scale qualification and a contractor with a small-scale qualification; or e. a contractor with a small-scale qualification and another contractor with small-scale qualification. <p>The following may not conduct a joint operation:</p> <ol style="list-style-type: none"> a. a contractor with a large-scale business and a small-scale business qualification; or b. a contractor with a small-scale business and a small-scale business qualification for construction work. <p>In conducting a joint operation, one of the members of the joint operation must be the leader of the joint operation (<i>leadfirm</i>). The leader of the joint operation must satisfy the following requirements:</p> <ul style="list-style-type: none"> - its qualification level must be the same as, or higher than, the other member(s) of the joint operation; and - it must hold a majority of the capital, which can be up to 70% of the capital. <p>The maximum number of members in a joint operation is:</p> <ol style="list-style-type: none"> a. up to 3 (three) companies in 1 (one) joint operation, for work that is not complex in nature; and b. up to 5 (five) companies in 1 (one) joint operation, for work that is complex in nature.

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	<p>Further, under GR 14/2021, a <u>joint operation between a national construction company and a foreign construction company representative office must be conducted according to the principles of:</u></p> <ol style="list-style-type: none"> 1. having equivalent large-scale qualifications; 2. having similar sub-classifications; and 3. joint liability. <p>A joint operation relationship (<i>ikatan Kerja Sama Operas</i>) starts from the joint operation's participation in the selection process and continues until the completion of the construction work.</p>
<p>The Technical Specifications for Construction Works</p>	<p>The technical specifications for construction works include:</p> <ol style="list-style-type: none"> a. the specifications of the construction materials; b. the specifications of the construction equipment and building equipment; c. the specifications of the process or activity; d. the specifications of the construction method/ implementation method / work method; and e. the specifications of the construction works' position. <p>The following conditions apply to the technical specifications:</p> <ol style="list-style-type: none"> a. including the scope of the required construction works; b. the specifications of the building materials may state the brand and type of the materials, and wherever possible, requiring domestically produced materials; c. applying, as much as possible, the Indonesian national standards; d. the construction method/implementation method/work method must be logical, realistic, secure, safe and implementable; e. determining the implementation period according to the implementation method; f. listing the types, capacity and minimum amount of main equipment required for the works; g. specifying the requirements for the materials used in the works; h. specifying the requirements for testing the materials and product results;

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	<p>i. listing the product performance criteria (the output performance desired);</p> <p>j. including the measurement procedure and payment method; and</p> <p>k. providing the job descriptions, hazards identification, and risk determination related to construction safety in the construction works.</p> <p>The terms of reference for the construction consultancy services include:</p> <p>a. a description of the works to be performed;</p> <p>b. the timing and stages needed to complete the works with due observance of the effective deadline for the fiscal year;</p> <p>c. the competence and number of experts needed;</p> <p>d. the ability of the business entity construction consultancy contractor;</p> <p>e. the source of funding and the total estimated cost of the work; and</p> <p>f. job descriptions, hazards identification and risks determination related to construction safety in construction work, specifically for construction consultancy services, the supervision and management of the construction services operations.</p> <p>The job descriptions must provide (i) the background; (ii) the purpose and objectives; (iii) the location of work; and (iv) the resulting product (output).</p> <p>The design and building work must include the following requirements:</p> <p>a. the determination of the initial design document (basic design);</p> <p>b. the determination of the employer provisions, which must include at least:</p> <ul style="list-style-type: none"> • the background; • the purposes and objectives; • the required implementation time; • the scope and output of the work and the criteria for testing and the acceptance of the outputs;

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	<ul style="list-style-type: none"> • the minimum number of design experts and managerial personnel required; • permit, environmental requirements or certificate that must be obtained when preparing the design and performing the construction; and • a list of the rates and/or prices for the components of the work (the schedule of rates); <p>c. the preparation and determination of the work ceilings;</p> <p>d. the drafting and determination of the draft contract; and</p> <p>e. the determination of the advances, down payment guarantees, performance guarantees, maintenance guarantees, and/or price adjustments only for the provision of construction services through contractors using state finances.</p> <p>The list of rates and/or prices for work components (the schedule of rates) is intended for design and build work part of which may have unforeseen conditions.</p>
Contractor Procurement	<p><u>Now</u>, under GR 14/2021, if the employer will use the construction services of a contractor affiliated with construction works for the public interest, it must do so through a tender, selection, or <u>an electronic catalog</u>.</p> <p>A Presidential Regulation will be issued on the selection of construction contractors for work using state finances.</p>
Construction Work Contracts	<p>The draft construction work contract must be based on the standard contract taking into account at least the following characteristics of the work (which must be included in the draft contract):</p> <ul style="list-style-type: none"> a. the type of contract; b. the scope of the works; c. the work output results; d. the job's difficulties and risks; e. the implementation time; f. the maintenance period for the construction work; g. the payment method; h. the work results calculation system; i. the amount of the down payment; j. the form and terms of the guarantee;

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	<p>k. the amounts of fines; and l. the contract dispute resolution options.</p> <p>Further, under GR 14/2021, a construction work contract can be financed from:</p> <p>a. state finances; or b. non-state finances.</p> <p><u>Previously</u>, under GR 22/2020, a construction work contract could be financed from:</p> <p>a. state expenditure budget funds/regional expenditure revenue budgets using standardized documents; or b. non-state expenditure budgets/regional expenditure revenue budgets using the documents the parties had agreed to.</p> <p>As GR 14/2021 use the term “state finances”, the source of the financing of a construction work contract is open to a broader interpretation. Therefore, it remains to be seen what can be classified as ‘state finances’ and ‘non-state finances’.</p> <p>Contracts financed by state finances must use standardized documents, while contracts financed by non-states finances can use standardized documents as agreed to by the parties.</p> <p>The Ministry of Public Works and Public Housing (“MPW”) will issue a regulation on standardized contact documents.</p>
<p>Security, Safety, Health and Sustainability Standards</p>	<p>The employer and contractor (including subcontractors) in the provision of construction services must meet the security, safety, health and sustainability standards.</p> <p>Moreover, construction services used to build buildings or civil buildings must comply with the principles of sustainability, (utilization of) resources (which include land, energy, water, materials, human resources and the ecosystem) and the life cycle of buildings and civil buildings (“Sustainable Construction”), which include <u>among others</u>, the following:</p> <p>a. the security, safety, health and sustainability standards; b. a reduction in waste generation (both physical and non-physical);</p>

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	<ul style="list-style-type: none"> c. the use of reused and recycled resources; d. the protection and management of the environment through conservation efforts; e. the mitigation of safety, health, climate change and disaster risks. <p>GR 14/2021 also requires the operation, maintenance and demolition of a building to consider the security, safety, health and sustainability standard aspects.</p>
<p>Construction Safety Management System (Sistem Manajemen Keselamatan Konstruksi – “SMKK”)</p>	<p>In providing construction services every employer and contractor must apply an SMKK.</p> <p>An SMKK is defined as a part of the management system of the performance of the Construction Work aimed at ensuring the realization of Construction Safety. Meanwhile, Construction Safety is all engineering activities which support the construction work in meeting the Security, Safety, Health and Sustainability Standards which ensure the safety of construction engineering, the safety and health of workers, public safety and environmental safety.</p> <p>Contractors which provide the following services must implement the SMKK:</p> <ul style="list-style-type: none"> a. construction management consultancy; b. construction consultancy supervision; c. construction work; and d. integrated construction work, <p>through the following:</p> <ul style="list-style-type: none"> a. hazard identification; b. assessment and control of risks or the chances of risks based on the work breakdown structure; and c. construction safety targets and programs. <p>The procedures for guaranteeing quality and quality control will be provided in an MPW regulation.</p>

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	<p>The Conceptual Draft SMKK</p> <p>A Conceptual Draft SMKK is a study document on Construction Safety which is prepared at the assessment, planning and/or design stage. The work description of the assessment, planning and design work should include <u>the preparation of the Conceptual Draft SMKK</u> as a resulting product.</p> <p>In the preparation of the conceptual draft SMKK, the consultancy work contractor for assessment, planning and design must involve a construction occupational safety and health expert, or a construction safety expert, whose competence should be evidenced by a construction work competence certificate.</p> <p>A MPW regulation will be issued on the Conceptual Draft SMKK.</p> <p>An SMKK is implemented in the following stages of construction work:</p> <ol style="list-style-type: none"> a. the selection of contractors; b. implementation of the construction work; and c. the handover of the work.
<p>Building Failure</p>	<p>Under GR 14/2021, building failure is determined by an expert assessor who can be:</p> <ol style="list-style-type: none"> a. an individual person; b. a group; or c. an institution with the authority to conduct an assessment in the event of a building failure. <p>The employer and/or contractor is responsible for a building failure resulting from non-compliance with the security, safety, health and sustainability standards in the implementation of construction services. The determination of a building's classification in the decision on building failure must be made in accordance with the prevailing laws and regulations.</p> <p>Building failure includes (i) a building's collapse; and (ii) the malfunctioning of a building. In a building's collapse, most or all of the building's components have been damaged and cannot be operated. The malfunctioning of a building means that it is (i) not</p>

Topic	Highlighted Provisions
	<p>functioning as planned; and/or (ii) the security, safety, health and sustainability aspects have not been complied with.</p> <p>The criteria and benchmarks for building failure are the conditions or measurements that form the basis for the assessment and determination of building failure.</p> <p>The following are the steps in the building failure assessment procedure:</p> <ol style="list-style-type: none"> a. the reporting of the building failure incident; b. the assignment of expert assessor; c. the drawing up of a work agreement; d. the building failure assessment; and e. the reporting of the results of the assessment. <p>A building failure assessment is conducted through:</p> <ol style="list-style-type: none"> a. examination of the legal documents and/or permits for the building; b. identification of the building failure; c. investigation of the building failure; d. analysis of the causes of the building failure; e. assessment of the amount of the compensation to be paid; f. determination of the person responsible for the building failure; and f. preparation and submission of report.

II. Transitional Provisions

The transitional provisions of GR 14/2021 provide among other things, that when GR 14/2021 comes into effect:

- a. construction services which have reached the planning or preparation stage, must comply with GR 14/2021;
- b. construction services which have reached the implementation stage under GR 22/2020, must continue until the completion of all the construction services activities;
- c. design and building work which has reached the planning or preparation stage under GR 22/2020, must be adjusted to GR 14/2021; and
- d. design and building work which has reached the implementation stage under GR 22/2020, must continue until the completion of all the construction services activities.

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 your usual contacts at Makarim & Taira S. to obtain specific advice.



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