

**Client Update: 20 July 2020**

*(English Version)*

**GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA      NUMBER  
22 OF 2020 CONCERNING IMPLEMENTATION OF  
LAW NUMBER 2 OF 2017 CONCERNING CONSTRUCTION SERVICES:  
IMPLICATION FOR FOREIGN CONSTRUCTION SERVICE BUSINESS ACTORS**

**General Description:**

On April 23, 2020, the Government of Indonesia through the Minister of Law and Human Rights of the Republic of Indonesia ("**Government**") issued Government Regulation Number 22 of 2020 concerning Regulations of the Implementation of Construction Services ("**GR 22/2020**") which is the implementing regulation of the Law Number 2 of 2017 ("**Construction Services Law**"). Prior to the issuance of PP 22/2020, implementing regulations for the Construction Services Law were Government Regulation No. 29 of 2000 ("**GR 29/2000**") which was no longer appropriate for the implementation of the Construction Services Law.

Before the issuance of GR 22/2020, construction service business operators were faced with uncertainty in the implementation of construction service businesses, one of which was the imposition of penalty on foreign construction service businesses. In addition, GR 22/2020 also regulates more comprehensive ways to resolve construction disputes.

**What kind of penalty imposed by foreign construction service business actors in GR 22/2020?**

Based on GR 22/2020, here are some provisions regarding penalty for foreign construction service business actors:

- a) For foreign construction service companies with Indonesian legal entities who do not have a Business License<sup>1</sup>, the Minister of Public Works may impose an administrative penalty of 10% of all contract values<sup>2</sup> (Article 154 paragraph (2) GR 22/2020). Foreign construction service businesses that violate said provision will be given a written warning and given 30 working days to obtain a Business License as intended. In addition to administrative penalty, violators of this provision are also subject to temporary suspension of work on construction services (Article 154 paragraph (3) GR 22/2020);
- b) For foreign construction services businesses incorporated in Indonesia and representative offices of foreign construction services companies that do not have Business Entity Certificates<sup>3</sup>, they will be subjected to an administrative penalty of 20% of the total contract value for the foreign construction service business representative offices and 10% of all contract value for foreign construction service business incorporated in Indonesia (Article 156 paragraph (2) GR 22/2020). The provisions in this paragraph also apply a written warning process for 30 working days as well

---

<sup>1</sup> The business license referred to herein is the license granted to the business of individuals or business entities to carry out construction service activities based on Article 1 paragraph 16, PP 22/2020

<sup>2</sup> All contract values include the entire transaction value of the company's construction services contract with all parties who are construction services users

<sup>3</sup> Based on Article 1 paragraph 13 of GR 22/2020 what is meant by Business Entity Certificate is proof recognition of the classification and qualifications of the ability of Construction Service business entity including the results of equalization of the capabilities of a Foreign Construction Service business entity.



as sanctions for the suspension of construction service work. However, in contrast to violations of business licenses referred to in Article 154 GR 22/2020, for violators who do not get a Business Entity Certificate and do not pay administrative penalty will be included in the Government's blacklist.

- c) For foreign construction service businesses that do not form representative offices or form Indonesian legal entities through capital cooperation, the foreign construction service business will be subject to an administrative fine of 20% of all contract values (Article 158 paragraph (2) GR 22/2020. Minister of Work General in this case only gives 5 working days from the written warning and the imposition of administrative penalty to form a representative office or form an Indonesian legal entity through capital cooperation, sanctions for temporary suspension of construction service activities are also included for violators in this category.
- d) While for representative offices of foreign construction business entities, they must fulfill the following requirements:
  - i. In the form of a business entity with large qualifications<sup>4</sup> based on the Regulation of the National Construction Services Development Agency Number 3 of 2017 concerning Certification and Registration of Construction Executing Services Business ("NCSDA 3/2017");
  - ii. Have a license for a representative of a foreign construction service business entity;
  - iii. Collaborate with large qualified national construction service business entities;
  - iv. Employ more Indonesian workers as the top executive of the representative office;
  - v. Prioritizing the use of domestic materials and technology;
  - vi. Having high technology, cutting-edge, efficient, environmentally friendly, and paying attention to local wisdom; and
  - vii. Carry out the process of technology transfer.

Non-Fulfillment of obligations number i, ii, iii, above will be subject to penalty of 20% of all contact values while non-fulfillment of obligations number iv, v, vi, vii above will be subject to a penalty of 10% of the contract value.

### **What is the process of the stages of resolving construction disputes in GR 22/2020?**

GR 22/2020 offers more concrete dispute resolution as regulated in Article 93 paragraph (1) GR 22/2020, before the parties in a construction dispute enter a lawsuit through Arbitration, the disputing parties must first take the Mediation and Conciliation process. In the case of dispute resolution in the Mediation stage or in the Conciliation stage already resolved, there is no need to proceed to the next stage. Apart from the method of resolving disputes through the stages of Mediation, Conciliation and Arbitration, GR 22/2020 also offers other alternative forms of dispute resolution through the establishment of a Dispute Board.

In Article 93 paragraph (3) GR 22/2020 the parties can appoint a Dispute Board that has a dual function, among others: (i) as an effort to prevent construction disputes; and (ii) as a construction dispute resolution. The Dispute Board is jointly appointed by the parties by making a tripartite agreement between the employer, the contractor and the party appointed as the Dispute Board. The tripartite agreement with the Dispute Board must be an inseparable part and is a derivative of the construction services agreement. However, the method for forming a Dispute Board including funding related to the

---

<sup>4</sup> What is meant by a large qualification based on NCSDA 3/2017 Article 11 is a construction service company that has a paid-up capital of at most Rp. 10,000,000,000 for B1 sub-qualifications and as much as Rp. 50,000,000,000 for B2 sub-qualifications. It also must have a cumulative experience value of at least Rp. 50,000,000,000 (for B1) and at least Rp. 250,000,000,000 (for B2) during the past 10 years from the date of the official handover report



use of the Dispute Board must be stated in a separate clause in the construction services agreement. In addition, the appointed Dispute Board must be in an odd number. The outcome of the decision of the Dispute Board shall be final and binding if there are no objections from the dispute parties during the 28-calendar day period since the decision.

Please contact Aryo Baskoro ([aryo.baskoro@arma-law.com](mailto:aryo.baskoro@arma-law.com)) and Merari Sabati ([merari.sabati@arma-law.com](mailto:merari.sabati@arma-law.com)) for further information.

***Disclaimer:***

*This client update is the property of ARMA Law and intended for providing general information and should not be treated as legal advice, nor shall it be relied upon by any party for any circumstance. ARMA Law has no intention to provide a specific legal advice with regard to this client update.*