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Omnibus Law Implementing Regulations: A Mixed Bag of Labour Reforms

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Since Law No. 11 of 2020 (the **Omnibus Law**) came into effect on 2 November 2020, the Indonesian government has issued a series of regulations to guide its implementation. The key implementing regulations covering labour are:

- Government Regulation No. 34 of 2021 on foreign manpower (**GR 34**), effective from 1 April 2021;
- Government Regulation No. 35 of 2021 on fixed-term employment, outsourcing, hours of work and termination of employment (**GR 35**), effective from 2 February 2021;
- Government Regulation No. 36 of 2021 on wages (**GR 36**), effective from 2 February 2021; and
- Government Regulation No. 37 of 2021 on unemployment insurance benefits (**GR 37**), effective from 2 February 2021.

Broadly speaking, the implementing regulations (at least labour aspects) make clear that the Omnibus Law is indeed 'a mixed bag'. On the one hand, employers would be glad to know that a fixed term contract (**FTC**) may now be entered into for a longer initial term. Additionally, payment for early termination of an FTC and severance payments for certain termination grounds are considerably reduced.

On the other hand, the Omnibus Law retains the complexities surrounding the termination process and even adds a further layer of difficulty relating to the exceptions for overtime payment. In addition, the expected relaxation of work permit requirements (ie RPTKA) for foreign employees is less significant than many had predicted.

This *Omnibus Law Insights* bulletin highlights the key issues.

Foreign Employees (GR 34)

RPTKA Approval

Under the Omnibus Law, more employers are exempted from the requirement to obtain approval from the Ministry of Manpower (**MOM**) on their Foreign Manpower Utilisation Plan (*Rencana Penggunaan Tenaga Kerja Asing* or **RPTKA**). Such exempted employers include technology-based start-ups.

GR 34 now clarifies the extent of such exemption. In particular, technology-based start-ups are only exempted from the RPTKA requirement for foreign employees if they are employed for no more than three

months. In other situations, RPTKA approval is still required. This is not as progressive as many had hoped.

Obligations in Employing Foreign Employees

In employing foreigners, employers are required to:

- appoint a local employee to shadow the foreign employee, and give the local employee training in the foreign employee's area of expertise, for knowledge and skill transfer purposes; and
- provide Indonesian language training to foreign employees, which can be done either by the employer directly or in cooperation with an educational or language training institution.

While these obligations are unchanged, GR 34 slightly expands the range of exemptions from these requirements. Previously, employers could only be exempted from these obligations if the foreign employee was a director, commissioner, patron, manager or supervisor, or was employed in "Temporary Work" or "Emergency and Urgent Work".

The exemption for "Emergency and Urgent" work has now been removed but there is a new exemption for a foreign employee who is the head of a representative office.

The requirement for Indonesian language training has been a concern for employers, since the level of proficiency required was not clear (although in our experience, conversational fluency would usually suffice). GR 34 states that a future ministerial regulation will clarify the employer's obligation to provide language training.

GR 34 also reiterates the obligation to repatriate foreign employees at the end of their contract. All foreign employees are subject to this obligation, regardless of their role. Employers therefore need to factor in the foreign employee's associated relocation costs when their employment ends.

Mandatory Insurance

Employers are currently required to register all foreign employees with more than six months' service with the Manpower Social Security Administrator (*BPJS Ketenagakerjaan*).

Under GR 34, employers are now required to also insure foreign employees with less than six months'

service with a private insurance provider, covering at least occupational accident risks.

Fixed Term Contracts (GR 35)

GR 35 recognises three types of FTCs:

- FTCs based on a time period;
- FTCs based on completion of the work;
- FTCs in relation to other non-permanent work.

FTCs Based on Time Period

This type of FTC terminates at the end of the agreed term.

Under GR 35, these FTCs may now last up to five years (including any extension). GR 35 does not limit the number of extensions as long as the total period, including the extensions, does not exceed five years.

To illustrate, an FTC based on a time period could be entered into for an initial term of three years, then extended four times, for six months each (ie a total period of five years).

This does not differ greatly from the position prior to the Omnibus Law, where the maximum duration of an FTC, including its extension and renewal, was also five years.

However, the Omnibus Law and GR 35 provide a level of flexibility to employers as there are now no specific limitations on the duration of the initial term, or on the duration and number of extensions, subject to an overall cap of five years.

FTCs Based on Completion of Work

This type of FTC terminates upon completion of the work assigned under it.

GR 35 provides that the employment contract for an FTC based on completion of work must specify:

- the scope and location of the work to be completed; and
- the expected period required to complete the work.

An FTC based on completion of work terminates when the work is completed, even if it is completed before the expected completion time.

If the work is not completed within the expected completion time, the FTC may be extended until the work is completed. That said, the extension cannot be for a prolonged period (eg 10 years). The Omnibus Law states that all FTCs (including FTCs based on a time period) can only be used for work that is temporary or can be completed within a limited time (among other things). Failing that, the FTC will be deemed a permanent employment contract.

FTCs for Other Non-permanent Work

This type of FTC applies to work that varies in terms of time or volume, and for which payment is based on the employee's attendance at work.

The FTC may be done by way of a daily work agreement (which was known as "daily working" prior to the Omnibus Law), but the employee can only work for a maximum of 20 days in one month. If the employee works for 21 days or more in one month for three consecutive months, the contract will be deemed a permanent employment contract.

Compensation

Before the Omnibus Law was implemented, any party terminating an FTC prematurely was required to pay the other party compensation equivalent to the employee's salary for the remaining term of the FTC. For instance, an employer terminating a one-year FTC after three months would have to pay the employee nine months' salary in compensation. If neither party terminated such an FTC prematurely, such that it expired after one year, then no compensation would be payable.

GR 35 significantly changes this position. Compensation will now be payable *by the employer* upon:

- expiry of the FTC;
- expiry of each extension of the FTC; and
- early termination of the contract, irrespective of who terminates the FTC.

However, compensation is not payable to foreign employees working under FTCs.

The compensation to be paid is calculated using the following formula:

Service Period	Compensation
At least 1 month but less than 12 months	working period ÷ 12 x 1 month's salary
12 months	1 month's salary
More than 12 months	working period ÷ 12 x 1 month's salary

To illustrate, if an employer terminates a one-year FTC after the third month, the employer will now have to pay the employee only 0.25 month's salary as compensation. If neither party terminates the FTC prematurely and the FTC expires after one year, the employer must pay the employee one month's salary as compensation.

The compensation structure under GR 35 is significantly lower than that prior to the implementation of the Omnibus Law. However, the burden now solely falls on the employer to compensate the employee, even where it is the employee who terminates the FTC prematurely.

Registration

All FTCs must now be registered through an online system within three business days upon signing. If the

online system is not available yet, the registration must be done at the local MOM office within seven business days of signing.

Outsourcing (GR 35)

The employment relationship between the outsourcing company and the employee may be based on a permanent contract or an FTC.

GR 35 now makes clear that if employment is based on an FTC, the terms of the FTC must expressly provide for a transfer of the employee's employment protections upon a change of outsourcing company (when the work still exists) in order to guarantee the continuity of employment protections for outsourced employees.

Overtime (GR 35)

Employees are not entitled to overtime pay if they:

- hold certain roles with responsibilities as thinkers, planners, executors and/or controllers of the employer's operations;
- have working hours that cannot be "capped" (eg employees in managerial roles); and
- are paid higher salaries.

GR 35 expressly requires that the employment agreement, company regulation or collective labour agreement should specify which roles are excluded from overtime pay entitlement. This was not required before the Omnibus Law was enacted. If not expressly stipulated, no exemption will apply, and the employee will be eligible to receive overtime pay.

It is currently unclear whether the employer is free to determine through its company regulations which roles are excluded from overtime pay, or whether that determination must be made in consultation with the MOM.

Employment Termination Process (GR 35)

GR 35 sets out the following procedure to unilaterally terminate employment (apart from terminations upon expiry of an FTC, retirement, or death):

- the employer must notify the employee in writing setting out the reason for termination, and the termination payments and other entitlements due to the employee, at least 14 business days (or at least seven business days where the employee is on probation) prior to the date of termination;
- if the employee does not object to the termination, the employment comes to an end and the employer must notify the relevant MOM office of the termination;
- if the employee objects to the termination, the employee must provide their reasons within seven business days after receiving the employer's notice of termination;

- if there is a disagreement relating to the termination, the parties must negotiate and agree on a mutual separation;
- if the negotiation fails, the termination must be conducted in accordance with the industrial dispute settlement procedure.

The new termination process set out in GR 35 raises some questions. For instance, it is unclear whether failure to provide written reasons for objecting to the termination means that the employee is deemed to have accepted the termination. If that is the case, then GR 35 may be significant, in that the employment comes to an end unless the employee expressly objects to their termination.

In practice, however, it would be unusual for an employee to accept termination without raising any objection. We would expect employees to raise objections to their termination, particularly in a jurisdiction where severance packages are ordinarily paid under a mutual separation scenario. In such situations, the parties will still have to agree to a mutual separation. Alternatively, a prior order for termination must be obtained from the Industrial Relations Court. Accordingly, the new process under GR 35 will likely not make much practical difference.

Termination Payments (GR 35)

Termination payments under Indonesian law are comprised of three components: severance payment, service payment and rights compensation payment.

As explained in [our October 2020](#) bulletin, the Omnibus Law reduces the entitlement to the rights compensation payment while the service payment component remains unchanged.

As for severance pay, GR 35 clarifies that severance pay of **2 months'** salary per year of service is only payable in two circumstances (ie the same circumstances that existed before the Omnibus Law was passed):

- where termination is due to the employee's illness or disability arising from an occupational accident that prevents the employee from working for more than 12 months; or
- where termination is due to the employee's death.

If the termination is due to the employee reaching the retirement age, severance pay of **1.75 months'** salary per year of service is generally payable (exceptions apply). Previously, if the employer did not enroll the employee in a pension program, severance payment of **2 months'** salary per year was payable.

In other situations, severance pay now ranges from **0.5** to **1 month's** salary per year of service, depending on the grounds for termination. For instance:

- termination due to merger or consolidation, regardless which party refuses to continue the employment: **1 month's** salary per year of service (previously, the amount of severance pay

depended on which party refused to continue the employment);

- termination due to efficiency reasons *to prevent* financial loss: **1 month's** salary per year of service (previously **2 months'** salary per year of service for termination upon company closure due to efficiency reasons not attributable to financial losses);
- termination due to efficiency measures *arising from* financial loss: **0.5 month's** salary per year of service (previously **1 month's** salary per year of service for termination upon company closure due to continuous financial loss for 2 years); and
- termination due to the employee breaching the employment contract, company regulations or collective labour agreement (after issuing a series of three warnings): **0.5 month's** salary per year of service (previously **1 month's** salary per year of service).

In the case of voluntary resignations, GR 35 clarifies that only a rights compensation payment is payable (plus separation pay, if provided in the employment contract, company regulations or collective labour agreement).

Minimum Wage (GR 36)

GR 36 clarifies that while the provincial minimum wage will be the main benchmark, the governor may impose a regency/city minimum wage if, among other things, the regency/city's average economic growth is higher than the province's for the last three years.

Although the Omnibus Law removes the reference to sector-specific minimum wages, GR 36 clarifies that all sectoral minimum wage decrees issued before the implementation of the Omnibus Law will continue to apply until they expire, except where the provincial or regency/city minimum wage is higher than the applicable sectoral minimum wage.

While the Omnibus Law exempts micro and small enterprises from having to pay the minimum wage, GR 36 requires the agreed wage to be at least 50% of the average provincial public consumption rate and 25% above the provincial poverty line.

Unemployment Insurance (GR 37)

The Omnibus Law introduces unemployment insurance for the first time under Indonesia's Manpower BPJS system. This insurance provides access to job openings, training, and cash payments which is capped at six months' salary, with IDR5 million (approximately USD350) as the maximum monthly salary.

Employers are required to enroll their employees in the Health and Manpower BPJS programmes. All employees already enrolled with the Manpower BPJS system are automatically registered for unemployment insurance.

The monthly premiums for unemployment insurance benefits are paid by the central government.

To be eligible for unemployment insurance benefits, GR 37 requires that the employee must:

- be an Indonesian citizen;
- not yet have reached 54 years of age when registering for the benefits;
- be employed; and
- be registered under the Manpower and Health BPJS programmes.

An employee will be able to enjoy unemployment insurance benefits upon termination of employment if they have had a minimum insurance period of 12 months over the last 24 months and have made Manpower BPJS contributions for at least six consecutive months before the termination.

Employers that fail to fulfil their legal obligations to register employees for the unemployment insurance benefits must, upon terminating their employment, provide the employees with cash payments (capped at six months' salary) and job training benefits.

Employees' entitlements will be deemed to have been waived if they do not claim the benefits within three months after termination, if they obtain new employment, or pass away.

Key Takeaways

With the issuance of the Omnibus Law implementing regulations, employers will need to conduct a comprehensive compliance audit across their employment contracts, company regulations and collective labour agreements to ensure they remain compliant.

In particular:

- contractual terms relating to severance pay upon termination of an FTC, and compensation for early termination, will need to be amended. Otherwise, employers may be stuck with contractual terms that are more generous than the statutory position; and
- terms specifying roles that are excluded from overtime pay must be included in the employment contracts, company regulations or collective labour agreements. If the employee's role is not expressly referred to as not eligible for overtime pay, the employee will be eligible for and may be able to claim overtime pay.

In addition, termination policy and practices will need to be adjusted to accommodate the employer's right to terminate employment without having to negotiate or seek the Industrial Relations Court's prior order before terminating employment (where the employee does not object to the termination).

We summarise the key changes in the table below.

Item	Prior to Omnibus Law	After issuance of Omnibus Law and implementing regulations
RPTKA Requirements	Employers did not have to seek RPTKA approval if the foreign nationals were: <ul style="list-style-type: none"> • diplomatic or consular officers employed in foreign country representative offices • directors or commissioners of an Indonesian company (as the employer) who are also shareholders of that company. 	Employers do not have to seek RPTKA approval if the foreign nationals are: <ul style="list-style-type: none"> • diplomatic or consular officers employed in foreign country representative offices • directors or commissioners who are also shareholders of the company • employed for a production activity that ceased due to an emergency • employed in a vocational activity for a certain period • employed in a start-up company “based on technology” for a certain period • on a business visit • employed in a research activity <p><i>Note: Restrictions may apply, such as on the length of employment.</i></p>
Local Employee Appointment and Language Training Requirements for Foreign Employees	Employers were exempted if the foreign employees were employed: <ul style="list-style-type: none"> • as a director or commissioner; • as a patron, manager or supervisor; • in “Temporary Work”; or • “Emergency and Urgent Work”. 	Employers are exempted if the foreign employee is a: <ul style="list-style-type: none"> • director or commissioner; • head of representative office; • patron, manager or supervisor of a foundation; or • employed for temporary work.
FTC Duration	<ul style="list-style-type: none"> • max. 2-year initial term • max. 1-year extension • max. 2-year renewal (after 30-day grace period) 	5 years in total (initial term plus extension)
FTC Compensation	<ul style="list-style-type: none"> • Payable by terminating party upon early termination of FTC • Amount: employee’s salary for remaining term of FTC 	<ul style="list-style-type: none"> • Payable by employer upon expiry or early termination of FTC • Amount: working period ÷ 12 x 1 month’s salary
Overtime Pay	No requirement to specify roles exempted from overtime pay	Roles excluded from overtime pay entitlement must be specified under the employment agreement, company regulations or collective labour agreement.

Item	Prior to Omnibus Law	After issuance of Omnibus Law and implementing regulations
Termination Process	<p>No unilateral termination. Employers have two options:</p> <ul style="list-style-type: none"> • negotiate to reach mutually agreed separation; or • obtain order from Industrial Relations Court. 	<p>No unilateral termination. Employers have three options:</p> <ul style="list-style-type: none"> • issue notice of termination and, if there is no objection, terminate the employment; • negotiate to reach mutually agreed separation; or • obtain order from Industrial Relations Court.
Termination Payments	<p>Three components:</p> <ul style="list-style-type: none"> • severance pay (1 month's salary per year of service or 2 months' salary per year of service; but in most circumstances 2 months' salary per year of service) – subject to upper limits • service pay – subject to upper limits • rights compensation (comprised of housing, medical and healthcare allowance, accrued but untaken leave, repatriation costs, other contractual entitlements) 	<p>Three components:</p> <ul style="list-style-type: none"> • severance pay (between 0.5 and 2 months' salary per year of service; but in most circumstances 1 month's salary per year of service or less) – subject to upper limits • service pay – subject to upper limits • rights compensation (comprised of accrued but untaken leave, repatriation costs, other contractual entitlements)
Minimum Wage	<ul style="list-style-type: none"> • Provincial minimum wage • Regency/city minimum wage • Sectoral minimum wage 	<ul style="list-style-type: none"> • Provincial minimum wage (main benchmark) • Regency/city minimum wage (subject to certain requirements)
Unemployment Insurance	Unavailable	Available for Indonesian citizens enrolled in Manpower and Health BPJS programmes. (Other conditions apply.)