



## ARMA Update October 21, 2020

(English Version)

### Omnibus Law (Volume 3)

#### Employment

##### Overview

In this ARMA Update Volume 3, we discuss further related to laws concerning Employment which one of the crucial substances in the Omnibus Law. In the Employment cluster, Omnibus Law amended 3 (three) laws, namely (i) Law No. 13 of 2003 on Employment (“**Employment Law**”), (ii) Law No. 40 of 2004 on National Social Security System, (iii) Law No. 24 of 2011 on Social Security Institution; and (iv) Law No. 18 of 2017 on Protection of Indonesian Migrant Workers.

Some of those amendments that we discuss among others, job training, use of foreign workers, employment agreements, outsourcing companies, working hours and leave, wages, termination of employment or layoffs, and the imposition of sanctions.

##### **How are the arrangements regarding the utilization of foreign workers?**

Based on the Employment Law, the companies that use foreign workers in Indonesia are obliged to obtain ratification of the Foreign Workers Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing* or “**RPTKA**”) and a permit from the Ministry of Manpower (“**MOM**”) or the appointed officials, that is known as Foreign Workers Utilization Permit (*Izin Menggunakan Tenaga Kerja Asing* or “**IMTA**”). However, since the enactment of Presidential Regulation No. 20 of 2018 on Procedure for Foreign Workers Utilization (“**PR 20/2018**”) and MOM Regulation No. 10 of 2018 on Guidelines for Foreign Workers Utilization (“**MOM Reg 10/2018**”), IMTA was no longer applicable and what is considered to be a permit for the use of foreign workers is only the RPTKA. In the amendments under the Omnibus Law, this provision is emphasized by amending Article 42 of Employment Law on the obligation for a permit and replaced it with an obligation for the RPTKA which is approved by the Central Government.

There are certain exceptions from the obligation for the RPTKA, whereas, under the Employment Law, an exception is made for diplomatic and consular staff. Subsequently, under PR 20/2018 and MOM Reg 10/2018, an additional exception for the shareholders who are also members of directors or commissioners is added. In the Omnibus Law, additional exceptions are made, therefore the RPTKA to be exempted for (1) directors or commissioners with certain share ownership or shareholders in accordance with the provisions of laws and regulations, (2) diplomatic and consular officers at representative offices of foreign countries, and (3) foreign workers needed by the employers in type of production activity that have stopped due to emergencies, vocational, start-up companies, business visits, and research for a certain period of time.

Certain provisions are still maintained in the Omnibus Law, namely as follows:

1. Prohibitions of using foreign workers by individuals; and
2. Prohibition of using foreign workers who occupy personnel positions.



Further, the exceptions for the appointment of Indonesian assistant for foreign workers and provision of training are not only for directors and/or commissioners but generally for certain positions. Therefore, there is a possibility that certain positions will be regulated in implementing regulations will also be exempted from this obligation.

### **How are the arrangements of employment contract?**

In essence, in the Omnibus Law, a fixed-term employment agreement (*perjanjian kerja waktu tertentu* or “PKWT”) is still prohibited for a job that is permanent in nature. Whereas, if PKWT is made for permanent type of work, such PKWT will be constituted as an indefinite term employment agreement (*perjanjian kerja waktu tidak tertentu* or “PKWTT”). There are also additional arrangements related to PKWT, whereas the period and completion of certain jobs will be subject to the relevant employment agreement. In other words, there is no longer a maximum limit for PKWT under the law, rather it will be based on the employment agreement only. Further provisions on PKWT will be governed in the implementing regulations.

Under the Employment Law, it stipulates that the employment agreement shall be made in writing, using the Indonesian language and Latin letters. Whereas, if it is made in bilingual, the Indonesian version shall prevail in the event of differences in interpretation. Furthermore, previously if such PKWT does not fulfil the above-mentioned requirements it would be automatically converted into a PKWTT. However, the provision on the automatic conversion into a PKWTT is removed in the Omnibus Law. Further, the Omnibus Law stipulates that if PKWT requires a probation period, consequently this probation period shall be considered as a working period, which previously only constituted as null and void.

There is a new provision concerning employment agreement, whereas in the event of an employment agreement is terminated due to the expiration period or the completion of the work, the company is obliged to provide a compensation payment. Further provisions will be regulated in the implementing regulations.

### **What are the arrangements for outsourcing activities?**

The provisions regarding outsourcing still exist in the Omnibus Law. However, the provisions on two types of outsourcing which were acknowledged by the Employment Law are eliminated, namely, work outsourcing (*pemborongan pekerjaan*) and work service providers (*penyedia jasa tenaga kerja*). Omnibus Law only mentions one type of outsourcing which is called *perusahaan alih daya* or outsourcing company.

Employment Law stipulates that outsourcing could only be done for the type of works that are outside of the main activities (non-core activities or supporting activities) of the user company. However, by looking at the new provisions in the Omnibus Law, it can be said that there will no longer be restrictions on the form or type of works that are restricted to be outsourced.



### **How are the arrangements regarding working hours, overtime, and leave?**

In general, the working hours remain the same. Except for certain sectors where the working hours are stipulated in the employment agreement. As for the provisions of the particular sector or business, it will be further regulated in government regulation.

There is an increase in the limit for overtime hours, from a maximum of 14 (fourteen) hours per week to a maximum of 18 (eighteen) hours per week.

The provision regarding leave has not been changed substantially. A provision on a long break which previously regulated in Employment Law and applied for certain companies, under Omnibus Law, it is still regulated that will be further regulated by government regulation. Nevertheless, the provision of menstrual leave and maternal leave for women has remained.

### **How are the arrangements for wages?**

The government continues to emphasize the prohibition on giving wages below minimum wage. Where this minimum wage must be determined by the Governor. Apart from that, the Governor can also determine the district/city wage, which must be higher than the provincial minimum wage.

However, it is worth noting that the provisions above are exempted for Micro<sup>1</sup> and Small<sup>2</sup> Enterprises, whereas the amount of wage could be based on an agreement between the employers and employees, which shall be stipulated in the employment agreement. Hence, the agreed wage shall at least equal to a certain percentage from the average consumption of the community, which based on the data provided by the institution that authorizes for statistics.

It is also important to note that the provision on expiry of the demand for wage payment by the employees is removed in the Omnibus Law.

### **How are the arrangements for termination?**

Provisions regarding the obligation to prevent termination or layoffs between employees and employers are still in the Omnibus law. Hence, in the event of such termination cannot be avoided, then the termination can be carried out with a notification made by the employer to the employee concerned. In the event that the employees refuse to terminate the agreement, the termination shall be carried out in accordance with the mechanism based on Law No. 2 of 2004 concerning Industrial Relations Dispute Resolution.

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<sup>1</sup> Based on Article 6 (1) of Law No. 20 of 2008 on Micro, Small, and Medium Enterprises (“UKKM Law”), Micro Enterprises have a net asset worth not more than Rp 50 million excluding land and buildings or have annual sales proceeds of at most Rp 300 million.

<sup>2</sup> Meanwhile, according to Article 6 (2) of the UMKM Law, Small Enterprises have a net asset worth of more than Rp 50 million up to a maximum of Rp 500 million excluding land and buildings or have annual sales proceeds of more than Rp 300 million.



The Omnibus Law removes articles regarding the grounds for termination which also includes the calculation of the component for termination benefit and incorporates the said ground for termination in an additional article, namely Article 154A.

For several grounds of terminations, such as terminations by the employers due to changes in status, merger, or consolidation of companies or efficiency, based on the Employment Law, employees are entitled to, among other things, 2 (two) times the calculation of severance pay. It should be noted that the formula for calculating the compensation component for terminations is no longer in the Omnibus Law. The word “most” in the calculation of severance pay is removed and based on the draft of Omnibus Law previously circulating in public, it is changed to “at least). This has led to the interpretation that the law does not differentiate the calculation of severance pay for certain grounds of termination. However, based on the latest draft of Omnibus Law, the word “at least” was also omitted. Hence, the provisions regarding the calculation of compensation for termination are likely to be seen more clearly in the implementing regulations.

### **What are the provisions regarding sanctions in employment?**

Based on the changes in the Omnibus law, there is an additional criminal provision for employers who fails to pay the termination benefit to employees in accordance with the applicable laws, namely imprisonment of 1-4 years and/or a fine of Rp 100 million – Rp 400 million.

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### **Disclaimer:**

*Even though the House of Representative has passed the Omnibus Law on 5 October 2020, we have not received the final text of the Omnibus Law. We prepared this ARMA Update based on the draft Omnibus Law that received from various sources and we assume that the draft that we have received reflects the final version of the Omnibus Law. ARMA Law is waiting for the official document of Omnibus Law; therefore, this ARMA Update is subject to such amendment and will be updated accordingly.*

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