



## ARMA Update 28 May 2021

(English Version)

### Implementation Regulation of Omnibus Law

#### Fixed Term Employment Agreement under the New Era of Omnibus Law

##### Overview

The government of Indonesia has recently passed several implementing regulations of Law Number 11 of 2020 on Job Creation (“**Omnibus Law**”) for Employment cluster. This ARMA Update particularly discusses Government Regulation Number 35 of 2021 on Fixed Term Employment Agreement, Outsourcing, Working Hours and Rest Hours, and Termination of Employment Relationship (“**GR 35/2021**”).

In this ARMA Update, we elaborated further one of the key points in GR 35/2021 limited to new arrangement for fixed-term employment agreement (*perjanjian kerja waktu tertentu* – “**PKWT**”) notably the requirement for PKWT and the new mandatory compensation money.

##### How is the new arrangement for PKWT?

As we have discussed in our previous [ARMA Update](#), Omnibus Law in essence still prohibits a PKWT from being made for the type of works that are permanent in nature. Also, PKWT is still based on two types, i.e., (a) time-period and (b) completion of certain work.

The criteria for works based on “time period” are as follows:<sup>1</sup>

1. works that could be accomplished in a short period of time;
2. seasonal works; or
3. works that are related to new products, new business, or additional products that are under trial process.

Meanwhile, the type of works that are based on “completion of certain work” are:<sup>2</sup>

1. a one-time work; or
2. works that are temporary in nature.

Type of works other than the above mentioned can also be made for PKWT, so long as the types and nature of those works are not permanent which lasted no more than 5 (five) years.<sup>3</sup> This type of PKWT can be made for work that the period and the volume might change over the time also the wage is paid based on attendance. It can be made under a daily employment agreement for the employee that works less than 21 (twenty-one) days in a month.<sup>4</sup>

Especially for seasonal works, these are the type of works that rely on the season or weather and certain conditions. Season or weather means that it is only could be done in a certain season or weather. Meanwhile, certain conditions work is the type of work that specified as additional work conducted to fulfil orders or certain targets.<sup>5</sup>

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<sup>1</sup> Article 5 (1) of GR 35/2021.

<sup>2</sup> Article 5 (2) of GR 35/2021.

<sup>3</sup> Article 5 (3) of GR 35/2021.

<sup>4</sup> Article 10 of GR 35/2021

<sup>5</sup> Article 7 of GR 35/2021.



The time-period-based type of PKWT is limited to a maximum of 5 (five) years.<sup>6</sup> However, the regulation allows this type of PKWT to be extended, provided that the total period does not exceed the 5 (five) years period, if the work is not completed by the time of the contract is close to expiration.<sup>7</sup>

Meanwhile, the period for the work-completion-based type of PKWT is based on the agreement of the employer and the employee as written in the relevant employment agreement. Such agreement shall stipulate the scope of work and limitation for the work to be deemed complete and the period of the contract is to be adjusted upon the completion of work. If the work is completed sooner than the agreed time, the PKWT will be automatically terminated by the time the work is completed. Nevertheless, if the completion of the work lapses the agreed period, the PKWT can be extended until a certain period of time until the work is completed. In this regard, the regulation does not stipulate the limitation for the extended period.<sup>8</sup>

PKWT is still subject to registration by the employer to the manpower authority and this is now available for online submission, which for a maximum of 3 (three) working days after the signatory. However, during this transition, in the event that the online submission is yet available, the employer may submit its PKWT to the manpower office within 7 (seven) working days.<sup>9</sup>

### **How are the terms and conditions of compensation money for PKWT?**

Now the employer is obliged to give compensation money to their employee who is under PKWT by the end of their term. Whereas the compensation money only for the employee who has been working for 1 (one) month continuously. Further, if there is an extension to the PKWT, the compensation money shall be given by the end of the previous PKWT and, the next compensation money will be given by the end of the extension period as well. The compensation money, however, does not apply to foreign workers.<sup>10</sup>

The amount of compensation money is calculated based on the below conditions:

- a. PKWT for 12 (twelve) months consecutively, subject to 1 (one) month salary;
- b. PKWT for 1 (one) month or more but below 12 (twelve) months, shall be calculated proportionately as follow:

$$\frac{\text{Working period} \times 1 \text{ (one) month salary}}{12}$$

- c. PKWT for more than 12 (twelve) months, shall be calculated proportionately as follow:

$$\frac{\text{Working period} \times 1 \text{ (one) month salary}}{12}$$

For PKWT based on the completion of work, which the work is completed prior to the agreed period, the compensation money shall be calculated till the time where the work has completed. Further, the compensation money for micro and small enterprises is subject to the agreement between the employer and the employee.<sup>11</sup>

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<sup>6</sup> Article 6, 8 (1) of GR 35/2021.

<sup>7</sup> Article 8 (2) of GR 35/2021.

<sup>8</sup> Article 9 of GR 35/2021

<sup>9</sup> Article 14 of GR 35/2021.

<sup>10</sup> Article 15 of GR 35/2021.

<sup>11</sup> Article 16 (6) of GR 35/2021.



If one party to the employment agreement terminates prior to the end of the term period of PKWT, the employer shall give the compensation money and the calculation is determined by the time period of PKWT that has been done by the employee.<sup>12</sup> This mandatory payment is applicable regardless of which party initiate the termination.

### **Transitional period**

The PKWT that already exists before the enactment of GR 35/2021 and the term still valid, is still effective.<sup>13</sup> Further, compensation money for existing PKWT shall follow the provision under GR 35/2021 and the compensation money shall be calculated proportionally as of the effective date of Omnibus Law, which is since 2 November 2020.<sup>14</sup>

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<sup>12</sup> Article 17 of GR 35/2021.

<sup>13</sup> Article 63 of GR 35/2021.

<sup>14</sup> Article 64 of GR 35/2021.