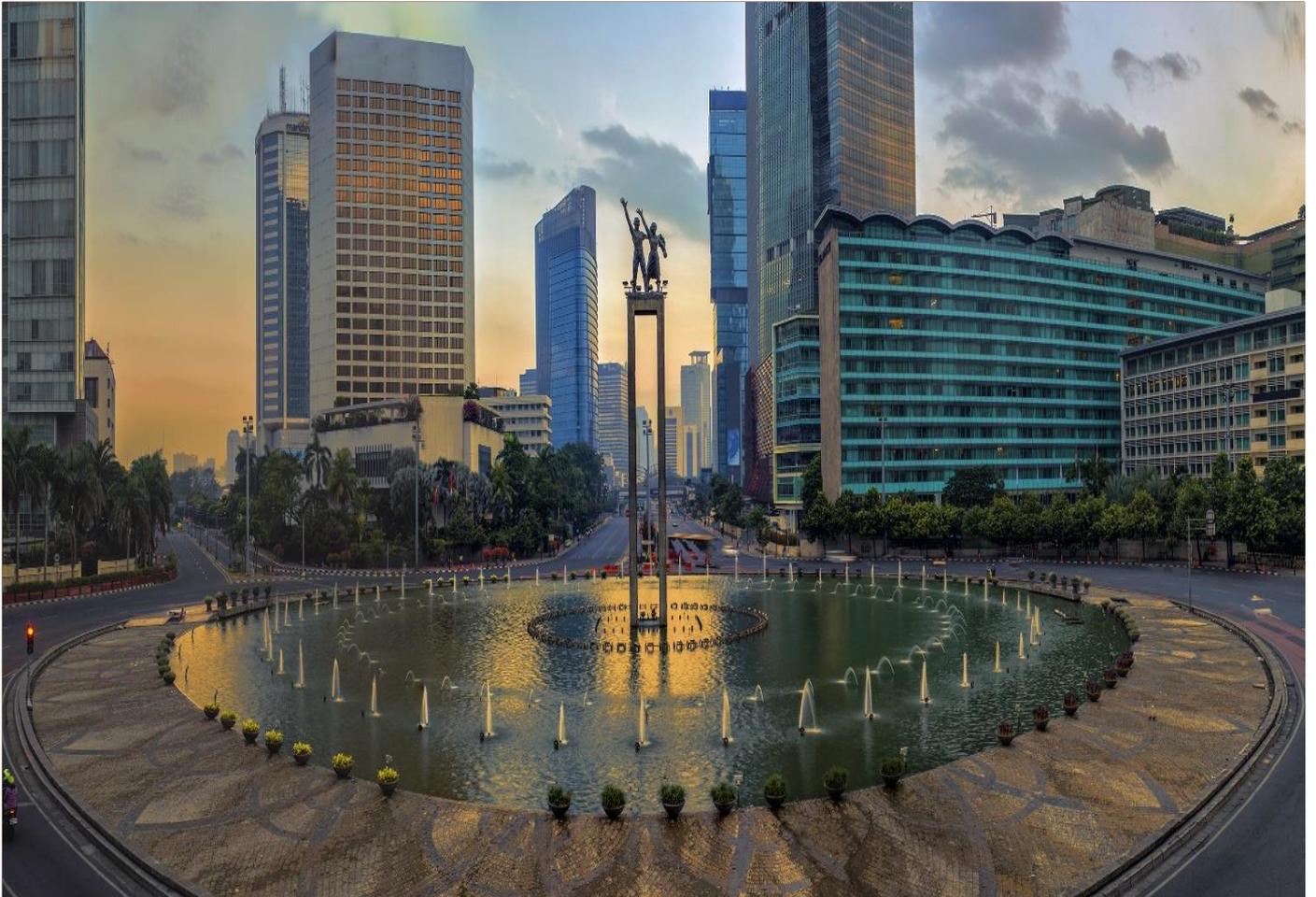




BAGUS ENRICO & PARTNERS
COUNSELLORS AT LAW



OMNIBUS LAW SERIES

CHAPTER I: EMPLOYMENT

Omnibus Series: Highlights of Employment Law Amendments

The Omnibus Law comprises of numerous provisions that cross over with laws including the labor-related Law No.13 of 2003 on Labor (“**Labor Law**”)¹, Law No. 40 of 2004 on the National Social Security System (“**Law No.40/2004**”), Law No. 24 of 2011 on the Social Security Administrating Body (BPJS) (“**Law No.24/2011**”) and Law No.18 of 2017 on the Protection of Indonesian Migrant Workers (“**Law No.18/2017**”).

Amendments are expected to develop the improvement of Indonesia’s protection of laborers and providing protections to employees. Countless labor unions throughout the country have demonstrated their distaste on the negative impacts on the local labor force.

a) Expatriate Work Permit

Through the new enactment of the Omnibus law, there is now simplification of permits to employ foreign workers for the attraction of more foreign investment and foreign knowledge.

Prior to the Omnibus Law	Omnibus Law
<ul style="list-style-type: none"> Indonesian Employers seeking to employ Expatriate Workers were obligated to obtain and apply for an Expatriate Manpower Plan (Rencana Penggunaan Tenaga Kerja Asing – “RPTKA”) approval to employ foreign workers² and a Foreign Work Permit License (Izin Mempekerjakan Tenaga Asing – “IMTA”).³ 	<ul style="list-style-type: none"> The employer now is only required to obtain an Expatriate Manpower Plan RPTKA approval to employ foreign workers as compared to the provision in the Labor Law which required the employer to obtain a permit in addition to an RPTKA approval. The permit is now simply replaced by a notification only.⁴
<ul style="list-style-type: none"> Exemption to obtain RPTKA approval is only granted for certain employers, namely government agencies, international bodies, and foreign representatives.⁵ 	<ul style="list-style-type: none"> A foreign investment company that has foreign directors and foreign commissioners who are at the same time investing by holding a certain number of shares in the company is exempted from the obligation to obtain the RPTKA approval for such foreign directors and commissioners.⁶

¹ Numerous amendments particularly under the Labor Law.

² Clause 81, Omnibus Law

³ As per Labor Law

⁴ Op.cit, Point 4

⁵ Clause 43 Paragraph (3) Labor Law and Clause 10 Paragraph (1)(a) Law No 10 of 2018 on Procedures on the Use of Expatriates

⁶ Op.cit, Clause 41

	<ul style="list-style-type: none"> • Exemption to obtain RPTKA approval is also granted to: <ol style="list-style-type: none"> I. some businesses to attract more foreign investment which includes vocational programs and technology-based start-up business (subjected to specific relevant laws and regulations⁷; II. foreign workers required by the Employer on the type of production activity that has stopped due to emergencies, vocations, start-ups technology-based, business visits, and research for a period of time.
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b) Definite Period Employment Contract (“PKWT”)

The stipulation previously in the Labor Law provided restrictions as to the length of what would be considered a ‘definite period’ within an Employment Contract. New requirements have now been introduced under the new Omnibus Law:

Prior to the Omnibus Law	Omnibus Law
<ul style="list-style-type: none"> • PKWT were only created for specific jobs with a specific area, nature, and activity which would be considered completed within a certain time period. 	<ul style="list-style-type: none"> • PKWT are still to be made for specific jobs with a specific area, nature, and activity which would be considered within a certain time period.
<ul style="list-style-type: none"> • Time Period of PKWTs are limited – for the first PKWT is set at a maximum 2 years, maximum extension for 1 year or renewal for up to 2 years after a pause of 30 days. 	<ul style="list-style-type: none"> • There will be further Government Regulations and implementing regulations in the future to provide further clarification regarding the type, nature, activities and time in non-permanent contracts.
<ul style="list-style-type: none"> • The Employers termination of a PKWT has no obligation to provide any compensation money. 	<ul style="list-style-type: none"> • Employers are now obligated to provide compensation money subsequent to every PKWT Termination as per the length of works of the worker/laborer in the Company concerned. The amount of compensation will be further regulated through governmental regulations.



c) Indefinite Period Employee Contract (“PKWTT”)

While there are next to no changes to the PKWTT stipulation within the Omnibus Law, several things can be incurred from the changes to the PKWT provision, namely regarding length of time of PKWT and type of employee contract that can be regarded as PKWT/PKWTT.

Prior to the Omnibus Law	Omnibus Law
<ul style="list-style-type: none"> The Labor law provides that PKWTs can only be made for works that are (a) done once, or temporarily; (b) estimated to finish in a timeframe that is at maximum 3 (three) years; (c) is seasonal; or (d) related to new products, new activities, or additional products that are still undergoing trial or exploration.⁸ 	<ul style="list-style-type: none"> The Omnibus Bill no longer specifies the 3 (three) years maximum timeframe for PKWT work.
<ul style="list-style-type: none"> There is no regulation which mandates that PKWTs that does not comply to the above regulation automatically becomes PKWTT. 	<ul style="list-style-type: none"> It is further regulated that any PKWTs which does not comply with Clause 59 Paragraph (1) stated above, as well as Paragraph (2), which stipulates that PKWTs cannot be made for works that are permanent, becomes PKWTT for the sake of the law.⁹
<ul style="list-style-type: none"> Clause 66 regulates conditions for, and for usage of, outsourcing agencies, but does not regulate what kind of employment contract can be used for employee – outsourcing agency work relations.¹⁰ 	<ul style="list-style-type: none"> Such clause has been changed to now regulate, among others, that outsourcing agencies and their employees can enter into both, either/or, PKWT or PKWTT.¹¹

⁸ Clause 59 Paragraph (1), Labor Law

⁹ *Ibid*

¹⁰ Clause 66, Labor Law

¹¹ Op.cit, Clause 84 Point 20

d) Outsourcing

What was previously prohibited under Labor Law has been amended to reflect the current ease of doing business within Indonesia:

Prior to the Omnibus Law	Omnibus Law
<p>Any works that is to be outsourced had to fulfill specific conditions as follows:</p> <ul style="list-style-type: none"> • Carried out separately from the main activities/ main and supporting nature of the Employer; • Not inhibit and in relation to the direct production process; • Carried out by direct/indirect order from the Employer. 	<ul style="list-style-type: none"> • Deletion of the provisions stipulating specific works that can be Outsourced, may be interpreted that most works can now be outsourced (subject to specific business that would need to be reconfirmed by sectoral regulations).

e) Working Hours and Break Hours

The Omnibus Law now accommodates the current business requirements for their respective employees:

Prior to the Omnibus Law (Labor Law)	Omnibus Law
<ul style="list-style-type: none"> • Working Hours stipulate: <ul style="list-style-type: none"> a) 7 (seven) hours in 1 (one) day and 40 (forty) hours in 1 (one) week for a 6 (six) days per week work period; or b) 8 (eight) hours in 1(one) day and 40 (forty) hours in 1 (one) week for a (five) days per week work period.¹² 	<ul style="list-style-type: none"> • No amendments in the provisions on the number of working hours.
<ul style="list-style-type: none"> • Overtime hours is at most 3 (three) hours in 1 (one) day and 14 (fourteen) hours in 1 (one) week.¹³ 	<ul style="list-style-type: none"> • Overtime hours is increased into at most 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week.

¹² Op.cit, Clause 77 Paragraph (2)(a)

¹³ Ibid, Clause 78 Paragraph (1)(b)

f) Wage

There are several changes regarding wage regulations under the Omnibus Law, prominently regarding minimum wage and wage structure.

Prior to the Omnibus Law	Omnibus Law
<ul style="list-style-type: none"> It is not mandatory to regulate minimum wage,¹⁴ but if needed and/or by recommendation of the Provincial Wage Council and/or Regent/Mayor, it is to be regulated by the Governor and may consist of: <ol style="list-style-type: none"> Minimum wage in provincial level (“UMP”); Minimum wage in regency/city level (“UMK”).¹⁵ 	<ul style="list-style-type: none"> Minimum wage is to be regulated by the Governor, and: <ol style="list-style-type: none"> UMP regulation is mandatory¹⁶; and UMK may be regulated if the requirements regarding economic growth and inflation in said regency or city are met.¹⁷
<ul style="list-style-type: none"> There is no regulation on wage above the minimum wage. 	<ul style="list-style-type: none"> Minimum wage by sector no longer exists, and above minimum wage is regulated by agreement between the employer and the employee.¹⁸
<ul style="list-style-type: none"> The formula for minimum wage is regulated under Government Regulation No. 78 Year 2015 on Wage (“GR 78/2015”), which states that it is calculated based on inflation and National Gross Domestic Product (<i>Produk Domestik Bruto</i>/"PDB").¹⁹ 	<ul style="list-style-type: none"> The formula for minimum wage will be regulated subsequent to the implementing regulations.²⁰
<ul style="list-style-type: none"> Employers must arrange wage scale structure as set out under Minister of Manpower Law No. 1 Year 2017 on Wage Scale and Structure. This arrangement is based on position, years of service, competence, and education.²¹ 	<ul style="list-style-type: none"> Employers are still obligated to arrange wage scale structure but it is now regulated in the Omnibus Law and based on company ability and productivity. It is still to be regulated further by Government Regulation.²²
<ul style="list-style-type: none"> It is regulated that fixed wage is still to be paid even if employees are absent from their work, if such absence is due to: illness, time of the month, state duties, religious worship, familial affairs, union duties, and training.²³ 	<ul style="list-style-type: none"> To be further regulated in the implementing regulation.

¹⁴ Clause 89 Paragraph (1), *Ibid*

¹⁵ *Ibid*, Paragraph (1)(a) and (1)(b)

¹⁶ Clause 81 Point 25, Omnibus Law

¹⁷ *Ibid*, Revision to Paragraph (2)

¹⁸ *Ibid*, Revision to Clause 90A

¹⁹ Clause 44 Paragraph (2), GR No. 78 of 2015

²⁰ *Ibid*, Revision Clause 88D Paragraphs 2 and 3

²¹ Clause 2 Paragraph (1), Ministry of Manpower Law No 1 of 2017

²² Clause 81 Point 30, Omnibus Law (Draft of 5 October 2020)

²³ Clause 93 Paragraph (2), Labor Law

g) Termination of Employment (“PHK”) and Severance Pay

New regulations under the Omnibus Law introduce changes regarding grounds for termination as well as severance pay.

Prior to the Omnibus Law	Omnibus Law
<ul style="list-style-type: none"> • Grounds for PHK is regulated in detail within the Labor Law and each ground is rendered different in severance amounts.²⁴ 	<ul style="list-style-type: none"> • Specific technical matters such as its procedures and amount will be regulated under implementing regulations.
<ul style="list-style-type: none"> • Terminated employees must receive compensation, with the amount set forth below: <ol style="list-style-type: none"> I. Severance is 9x wage; II. Appreciation for years of service is 10x wage at maximum; III. Reimbursement of rights is regulated in detail within the Labor Law. <p>PHK with differing grounds receive differing compensation amount (with twice the wage at maximum).</p> <p>Reimbursement of rights include, but is not limited to, housing, medication, and treatment.²⁵</p> 	<ul style="list-style-type: none"> • There is no amendment for points (I.) and (II.) • There is an amendment in point (III.) which is: Reimbursement of rights no longer include housing, medication, and treatment which is previously 15% of PHK compensation;²⁶ and amount of compensation is no longer regulated.

h) Employee Social Security (“Jamsostek”)

The Omnibus Law grants additional social security insurance to ensure viable living conditions for employees who lose their job.

Prior to the Omnibus Law	Omnibus Law
<ul style="list-style-type: none"> • Employee social security encompasses health, work injury, death, old age, and 	<ul style="list-style-type: none"> • Employee social security now also includes work loss insurance (Jaminan

²⁴ *Ibid*, Clauses 156, 158, 161 Paragraph (3), 163, 164, 165, 167 and 168

²⁵ *Ibid*, Clause 154 Paragraph (4)

²⁶ *Ibid*, Clause 81 point 45

<p>retirement insurances, but does not include work loss insurance.²⁷</p>	<p>Kehilangan Pekerjaan/"JKP") as a new programme²⁸.</p> <ul style="list-style-type: none"> • Said JKP is held based on social insurance principle aimed to ensure viable living conditions in the event that employees should lose their job.²⁹ • Sources of JKP funding include: (a) government initial capital; (b) recomposition of social security programme premium; and/or (c) Manpower BPJS operational.³⁰ • JKP Compensation is given in the form of cash, access to job market information, and work training.³¹
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i) Migrant Workers

There are changes regarding license to employ migrant workers/ wishing to become Indonesian Migrant Worker Placement Company.

Prior to the Omnibus Law	Omnibus Law
<ul style="list-style-type: none"> • Companies wishing to become Indonesian Migrant Worker Placement Company must obtain license (<i>Surat Izin Perusahaan Penempatan Pekerja Migran Indonesia</i>, "SIP3MI") as regulated under Law 18/2017³² 	<ul style="list-style-type: none"> • SIP3MI is still regulated under UU 18/2017, but such regulations must adjust to provisions on Business Licensing.³³
<ul style="list-style-type: none"> • Companies wishing to become Indonesian Migrant Worker Placement Company must obtain written permission from the Minister.³⁴ 	<ul style="list-style-type: none"> • Companies wishing to become Indonesian Migrant Worker Placement Company still must obtain written permission, but it must be that which conforms to the Business Licensing and issued by the Central Government.³⁵
<ul style="list-style-type: none"> • Indonesian Migrant Worker Placement Company branch office must be registered in the provincial Regional Government.³⁶ 	<ul style="list-style-type: none"> • Indonesian Migrant Worker Placement Company branch office must conform to the Business Licensing as issued by the regency/city Regional Government.³⁷

²⁷ Clause 18 Law 40 of 2004 and Clause 6 Paragraph (1) Law No 24 of 2011

²⁸ Clause 82 Point 1 and 83 Point 1 Omnibus Law (Draft 5 October 2020)

²⁹ *Ibid*, Clause 82 Point 2

³⁰ *Ibid*, Clause 83 Point 3

³¹ *Ibid*, Clause 82 Point 2

³² Clause 51 Law 18 of 2017

³³ *Op.cit*, Clause 84 Point 2

³⁴ *Op.cit*

³⁵ *Op.cit*

³⁶ *Op.cit*, Clause 53 Paragraph 3

³⁷ *Op.cit*, Point 3

As the above provides considerable insight in regards to the numerous specifically concerning Manpower Law changes, the Omnibus Law still requires the Government to issue implementing regulations within three months after 2 November 2020 in order to implement the relevant provisions under the Omnibus Law. The Government has created a specific website to provide drafts of implementing regulations for public dissemination, as follows: <https://uu-ciptakerja.go.id/category/draft-rpp/>. Currently, the government is preparing new implementing regulations in the form of Draft Government Regulations (*Rancangan Peraturan Pemerintah* or “RPP”) specific to the employment cluster. The Ministry of Manpower has set out four RPP drafts which are:

- RPP on the Utilization of Foreign Workers
- RPP concerning Definite Period Employment Agreement, Outsourcing, Working Hours and Break Hours, and Employment Terminations.
- RPP on Wages (which will amend Government Regulation No. 78 of 2015 on Wages)
- RPP on the Implementation of Job Loss Insurance Program (*Program Jaminan Kehilangan Pekerjaan* or “JKP”).

The Ministry of Manpower has involved the participation of the tripartite, community and academics in the preparation of RPP employment cluster. Although, the three months deadline are soon approaching, the draft of RPP on Wages and RPP on the implementation of JKP are yet to be shared to the public.

The changes in the employment cluster have stirred dissatisfaction from the workers, labor unions and other stakeholders. We hope that the development of RPP will be satisfactory and acknowledge the workers’ rights, after all the devil is in the detail.