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Indonesia's Omnibus Law: A Breakthrough

KEY HIGHLIGHTS

What you need to know

- The Indonesian House of Representative has ratified the Jobs Creation Bill (*RUU Cipta Kerja* and widely known as the “**Omnibus Law**”) on 5 October 2020, after approximately 8 months of deliberation.
- There are 76 laws being amended under the Omnibus Law which are aimed to boost investments and create more jobs in Indonesia. Among others, the Omnibus Law introduces (i) provisions to simplify business licensing procedures and (ii) changes to the existing manpower law.
- The Omnibus Law is still under its promulgation process and is still to be ratified by the President. Nevertheless, with or without the President’s signature, the Jobs Creation Bill will automatically become law on 5 November 2020.
- The Omnibus Law sets out a framework for revising the investment regulations surrounding foreign investment and ownership, but it does not in itself overrule the current policies. Details of expected substantive changes are yet to be announced and will require implementation through further rules and legislation.

Key changes brought by the Omnibus Law

Essentially the Omnibus Law provides for:

- (a) new provision of law and also amendments to 76 existing laws in order to enhance investment ecosystem and ease of doing business in Indonesia; and
- (b) changes to the existing manpower law.



New licensing and investment regime

The Omnibus Law introduces a new concept of business license that is called *Perizinan Berusaha* or “**Business Licensing**”. Moving forward, a business activity will be assessed based on the risk that it poses towards health, safety, environment, utilization of natural resources, and/or other risks. The basic requirements for a business license include (a) conformity with spatial plan, (b) environmental approval, and (c) building construction and utilization approval. The new regime is summarised in the table below.

	REQUIRED BUSINESS LICENSE	CRITERIA OF RISK
Low risk business activity	Only a Business Identification Number (<i>Nomor Induk Berusaha</i> or “ NIB ”).	Risk is determined by assessing the health, safety, environmental, and natural resource utilization effect of the business activity, as well as the sector, criteria, location, limitation of resource, volatility and likelihood of risk of the concerned business activity.
Medium risk business activity	NIB and a standard certification (<i>sertifikat standar</i>).	Implementing regulations will elaborate on determination of risk levels and risk-based business activity licensing.
High risk business activity	NIB and business license will be required. <i>Note: business license is defined as required licensing for the specific commercial activity, as issued by the relevant government institution.</i>	The Omnibus Law expressly lists six sectors, as detailed in Schedule 1 below, which are closed for any foreign and domestic private investment. This is not expected to be an exhaustive list of sectors that will be closed to foreign

The Omnibus Law also provides that the following permits are no longer required to be obtained by companies:

- Environmental license (though the concept of environmental assessment by preparation of Environmental Impact Assessment (AMDAL), Environment Management and Monitoring Effort (UKL/UPL), and Statement Letter of Environment Management Willingness (SPPL) is retained, companies are no longer required to obtain environmental license);
- Nuisance permit (mainly because the underlying regulation for the issuance of nuisance permit is revoked); and
- Company registration certificate (mainly because the underlying regulation for the issuance of company registration certificate is revoked).

The Omnibus Law expressly lists six sectors, as detailed in Schedule 1 below, which are closed for any foreign and domestic private investment. This is not expected to be an exhaustive list of sectors that will be closed to foreign

investment and any changes to current rules and negative investment list will require further implementing legislation. The Omnibus Law also stipulates that all business lines are open for investment except for those that are stipulated otherwise or activities that are reserved only for the Central Government. It however also states that a new Presidential Regulation setting out the specific changes is to be issued within three months of the Omnibus Law becoming effective, but no drafts of the regulation have yet been circulated to the public.

The Omnibus Law also provides for the centralization of the issuing authority for business license in 15 sectors (among others: maritime, agriculture, forestry, and energy and mineral resources), and other amendments with the intention to enhance investment ecosystem and ease of doing business.

Please see more detailed analysis of certain key changes brought by the Omnibus Law on the enhancement of investment ecosystem and ease of doing business in Indonesia in Schedule 1 hereunder.



Changes to the Manpower Law

Domestic and foreign business investors have long considered Indonesia's existing manpower law, to be one of the most cumbersome in the region. The changes to Law No.13 of 2003 on Manpower ("**Manpower Law**") are widely perceived by the public as controversial. Some of the key amendments to the Manpower Law proposed by the Omnibus Law include:



FIXED TERM CONTRACT

The removal of the limitation period for fixed term contracts. Currently, fixed term contracts are limited to 2 years plus 1 year with a further 2 year extension following a 30 days grace period (i.e. a maximum of five years) after which time the contract will be considered permanent. While the limitation period has been removed, there will now be a requirement to pay compensation upon the expiry of a fixed term contract. Further details regarding the changes to fixed term contracts (including the quantum of compensation) is to be included in an implementing regulation.

OUTSOURCING

The removal of the limitation on the type of work that may be outsourced. This is an extremely significant development for employers, with the current law allowing the outsourcing only of "supporting activities" (such as cleaning and security services). Until the implementing regulations are released the effects and other potential limits on outsourcing and labour supply are uncertain. In addition, provisions which were provided for deemed employment of outsourced workers by the end user in the event of a violation of the current provisions regulating outsourcing are proposed to be removed.

SEVERANCE PAYMENT FOR PERMANENT EMPLOYEE

the Omnibus Law removes from the Manpower Law the obligation to pay 15% of an employee's severance payment and long service payment as housing and medical compensation. However, this amount will still be required to be paid to an employee if it is included in the employee's employment contract, the employer's company regulations or an applicable collective labour agreement.

Further, and far more significantly, the concepts of a 2 (two) times severance payment is proposed to be deleted. At present, the Manpower Law requires an employer to pay 2 (two) times severance upon termination in certain circumstances (such as where the closure of the company is a result of efficiency). Save for any changes in Government Regulation, it can be assumed that employment termination now only requires the payment of 1 (one) time severance payment. Depending on the reason for the termination, this may represent a significant cost saving for employers in the event of termination.

Finally, the Omnibus law introduces a total cap of 25 months' salary (plus any unused leave and repatriation costs) in the event of termination. Of the 25 months' salary, the equivalent of 19 months will be paid by the employer and 6 will be paid by a new social security program introduced in the Omnibus Law (BPJS on job loss security/*BPJS Jaminan Kehilangan Pekerjaan*). As it currently stands, the Manpower Law provides for a maximum cap of 28 months' salary (plus any unpaid leave, repatriation cost and 15% of the said 28 months' salary) as total severance payment to be paid by the company.

Significantly for employers (particularly those who have complained that termination of employment in Indonesia is too difficult) while the Omnibus Law makes some amendment to the approved bases for termination (see Schedule 2) it does not provide employers with a unilateral right to terminate. Employers will continue to be required to either (a) seek the approval of the Industrial Relations Court for the termination; or (b) reach agreement with the employee regarding the termination.

Please see more detailed discussion on the changes to the Manpower Law set out in Schedule 2.

Conclusion

- As a general view, many would agree that the promulgation of the Omnibus Law should further improve the ease of doing business in Indonesia although a lot of questions remain open due to the need for substantial additional regulatory efforts by way of implementing regulations. The success of this ambitious reform will very much depend on the quality of the numerous implementing regulations which will now have to be prepared and enacted by the Government and line ministries and the pace at which these additional measures are taken.
- We also view that the changes to the Manpower Law (which is currently considered as one of the most cumbersome to investors in the region) would be appreciated by investors and should encourage greater willingness to engage in business activities that involve Indonesian labour.
- With respect to the new business licensing process, the transitional provisions of the Omnibus Law provides that: (a) all licenses that have been issued will be valid until the date of expiry, and (b) all licenses currently in process of application must follow the new process under the Omnibus Law, including as a result of centralization of authority to issue the relevant licenses.
- Almost all of the changes made to the 76 laws would require adjustment to, or issuance of new implementing regulation(s). The closing provisions of the Omnibus Law require the implementing regulations to be issued by no longer than 3 months after the enactment of the Omnibus Law. This is an aggressive timeline, particularly considering the current COVID-19 situation. We also view the Government must be cautious in preparing these myriad sets of implementing regulations otherwise these may work against the intention to reduce the amount of legislations that must be faced by investors and create confusions as regard the implementation of the new laws.
- Considering public reaction on the ratification of the Omnibus Law by the House of Representative, it seems likely that there will be party(ies) filing for judicial reviews after the enactment of the Omnibus Law. If that occurs, the fate of the Omnibus Law will be in the hands of the panel of judges at the Constitutional Court.



SCHEDULE 1

ENHANCEMENT OF INVESTMENT ECOSYSTEM AND BUSINESS ACTIVITIES UNDER THE OMNIBUS LAW

TOPIC	PREVIOUS LAW	OMNIBUS LAW	IMPLICATIONS
1. New business license scheme based on risk	The concept of business license and related requirements are regulated by each of the law of each underlying specific business sector.	<p>Chapter III Part Two of the Omnibus Law introduces a new business license scheme based on the level of risk it poses. Business license is a specific technical license required to commence commercial operation.</p> <p>A business activity will be assessed based on the risk that it poses towards health, safety, environment, utilization of natural resources, and/or other risks.</p> <ul style="list-style-type: none"> For low risk business activity, only Business Identification Number (<i>Nomor Induk Berusaha</i> or “NIB”) is required; For medium-low risk business activity, a NIB and a statement letter from company confirming the fulfilment of certain applicable standards will be required (the elucidation of the Omnibus Law provides two examples of medium-low risk business activities namely agriculture tourism and hotel management service); For medium-high risk business activity, NIB and a business standard certificate issued by relevant government authority are required (the elucidation provides two examples of medium-high risk business activities namely cooling machine industry and heavy steel for construction industry); and For high risk business activity, a NIB and a business license will be required. <p>The basic requirements to obtain a specific business license include (a) conformity with spatial plan, (b) environmental approval, and (c) building construction and utilization approval.</p>	<p>The new business licensing process should accelerate the process of establishing business activities, particularly business with low or medium risk.</p> <p>However, the Omnibus Law is silent on the specific thresholds or the parameters which will classify a business as a low, medium, or high risk business activity. More detail is expected in the implementing governmental regulation as stipulated in the Omnibus Law.</p>
2. Spatial plan – location permit is replaced with a confirmation of spatial plan conformity issued by central government	Previously the Law No. 26 of 2007 on Spatial Planning (“ Spatial Planning Law ”) required the obtainment of spatial use permit (which is commonly referred to as the location permit).	<p>The Omnibus Law amends the Spatial Planning Law and replaces the need to obtain location permit with the confirmation of conformity of an activity to the relevant regional spatial planning.</p> <p>The Omnibus Law requires the regional governments to issue digital and standardized version of regional spatial plan which will be accessible to public and integrated by the central government into the online electronic licensing system.</p> <p>When a company has obtained information that its business activity is in line with the relevant regional spatial plan, it can apply for the spatial plan conformity via the existing online electronic licensing system.</p>	<p>The Omnibus Law intends to centralize the control over regional spatial plan to prevent misuse of power at regional level, as there are often cases of bribery in relation to spatial use.</p>

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3. An environmental license is no longer needed	Previously the Law No. 32 of 2009 on Environmental Protection and Management (“ Environmental Law ”) requires the obtainment of Environmental Permit, in addition to the Environmental Worthiness Decree or UKL UPL Recommendation.	The Omnibus Law retains the concept of environmental assessment by requiring the preparation of AMDAL, UKL/UPL, or SPPL, but no longer requires the obtainment of environmental license. The process for completion of AMDAL, UKL/UPL, and SPPL is now integrated into the online electronic licensing system.	One less document to process in order for each business to meet its environmental licensing requirement.
4. New name for building construction permit	Law No. 28 of 2002 on Building (“ Building Law ”) sets out for detailed requirements for buildings and requires the obtainment of building construction permit prior to construction and certificate of function (<i>sertifikat laik fungsi</i>) worthiness on completion.	The term “building construction permit” (<i>Izin Mendirikan Bangunan/ IMB</i>) will no longer be used, and the Omnibus Law now refers to a “Building Structure Approval” (<i>Persejukan Bangunan Gedung</i>) which must be obtained prior to construction. There is no change to the term “function worthiness certificate” (<i>sertifikat laik fungsi</i>) which must be obtained prior to building utilization. The function worthiness certificate will be issued concurrently with the building ownership certificate (<i>surat bukti kepemilikan bangunan gedung</i>). The Omnibus Law also revokes several requirements (e.g. land ownership, building ownership, reliability, safety, fire protection, air circulation, etc.) and a building structure approval now only requires the fulfilment of certain building technical standards which will be set out in a government regulation.	The change to the Building Law seems to address concern from investors over building ownership. Land ownership can easily be evidenced by a land certificate issued by the land office. However there was no centralized standard of evidencing building ownership and each region would usually issue its own rules. This is a good development for investors in sectors that deal with real estate. The Omnibus Law has not elaborated on the procedures to obtain the Building Structure Approval, details will need to be set out in an implementing regulation. The removal of several articles regarding building requirements, may seem to suggest an intention for a more centralized regime for the issuance of Building Structure Approval.
5. Unifying the concept of business license in 15 business sectors with the Omnibus Law	Previously, the business license for each of these 15 different sectors was regulated under separate laws.	Article 26 of the Omnibus Law states that the new <i>Perizinan Berusaha</i> (Business Licensing) will apply to the following business sectors: (a) maritime affairs and fisheries, (b) agriculture, (c) forestry, (d) energy and mineral resources, (e) nuclear energy, (f) industry; (g) trade, (h) public works and public housing, (i) transportation, (j) healthcare, drugs, and food, (k) education and culture, (l) tourism, (m) religious affair, (n) postal service, telecommunication, and broadcasting, and (o) security and defence. The Omnibus Law amends the approach to business licensing in these 15 sectors to follow the concept of <i>Perizinan Berusaha</i> by implementing a risk-based approach for the requirements, also centralizing the license issuing power from regional governments to the central government, and adjusting the articles which govern on administrative and criminal sanctions.	The wording of Article 26 suggests that the concept of <i>Perizinan Berusaha</i> will only apply to these 15 sectors. This may not be the case as the intention of the Omnibus Law is generally to ease doing business in Indonesia. Regarding the change to provisions on sanctions, now a criminal sanction will only be imposed if a violation inflicts a loss of/danger to public health, safety, environment, and natural resources.
6. Changes to lines of business that are closed for investment	Law No. 25 of 2007 on Investment (“ Investment Law ”) stipulates certain business sectors that are closed for foreign investment, namely: production of weapons, ammunition, explosive devices, and war equipment; and business sectors that are explicitly declared to be closed by the prevailing law.	In this case, the Omnibus Law does not differentiate local or foreign investment and simply lists down business sectors that are closed for investment (i.e. both local and foreign investors), namely: (i) narcotics cultivation and manufacturing, (ii) casinos and gambling activities, (iii) fishery of certain species of endangered fish, (iv) coral exploitation, (v) chemical weapons industry, and (vi) chemical substance and ozone depleting material industry. The Omnibus Law also states that all business lines are open for investment except for those that are stipulated otherwise or “activities that are reserved only for the Central Government”.	The Omnibus Law is intended to open new business sectors for foreign investment. Similar to the previous approach, there will be a presidential regulation which will govern business sectors that are open for investment and the applicable requirements. Therefore, the lines of business that are not expressly mentioned in the Omnibus Law as being closed for investment, are open for investment or open but subject to certain requirements set out in the presidential regulation.

TOPIC	PREVIOUS LAW	OMNIBUS LAW	IMPLICATIONS
7. New visa and sponsor exemption for investors	Law No. 6 of 2011 on Immigration ("Law 6/2011") provides the requirements for visa and stay permits for investors.	<p>The Omnibus Law adds pre-investment activity as a new category for issuance of a visiting visa.</p> <p>A foreign citizen who is investing in Indonesia according to the applicable laws and regulations now will be exempted from the obligation to have a sponsor during his/her stay in Indonesia.</p> <p>However, similar with other provisions in the Omnibus Law, this is subject to the issuance of a government regulation which will provide for further details about visa procedures and requirements.</p>	This will significantly ease the relevant visa processes for investors.
8. Competition Law	<p>Based on Law No. 5 of 1999 on the Prohibition of Monopolistic and Unfair Business Competition Practices ("Competition Law"), KPPU is authorized to impose administrative sanctions in relation to several types of wrongful business conduct which trigger unfair competition.</p> <p>The monetary fines which can be imposed as administrative sanctions for anti-competitive conduct, range from a minimum of IDR 1 billion (approximately USD 68 thousand) up to a maximum of IDR 25 billion (approximately USD 1.7 million).</p>	<p>The Omnibus Law retains the minimum monetary fine amount of IDR 1 billion but there are no longer maximum administrative sanctions.</p> <p>In addition, previously a violation of substantive laws and/or obstruction of a KPPU examination or investigation are subject to criminal sanctions.</p> <p>Under the Omnibus Law, criminal sanctions only apply for obstruction of KPPU examination or investigation. However the sanctions are now more severe with imprisonment of up to one year (from previously imprisonment of up to three months) for substituting criminal fines of up to IDR 5 billion.</p> <p>In addition, the courts will no longer have the right to impose the revocation of licences and director disqualification orders.</p> <p>The Omnibus Law also changes the appeals procedure against a KPPU decision from the district court to the commercial court.</p>	The removal of the cap on administrative sanctions means that KPPU may impose fines for anti-competitive conduct exceeding the previous cap of IDR 25 billion.
9. Research and Innovation	<ul style="list-style-type: none"> • Law No.19 of 2003 on State-Owned Enterprises ("Law 19/2003"); and • Law No. 11 of 2019 on National System of Knowledge and Technology ("Law 11/2019"). 	<p>The Omnibus Law revises provisions in Law 19/2003 which are aimed to empower the government to assign particular tasks in relation to the public interest, research and development, and innovation to specified state-owned enterprises.</p> <p>Law 11/2019 is amended to establish a new government body to handle research and innovation affairs at central and regional government level.</p>	This development may attract investors in the research and innovation sector.
10. Taxation related laws	<p>Income Tax – Law No. 7 of 1983 on Income Tax, which has been amended several times previously, most recently by Law No. 36 of 2008 ("Law 7/1983") currently sets an income tax tariff of 25% for domestic corporate taxpayers and permanent establishment.</p> <p>VAT Law – Law No. 8 of 1983 on Value-Added Tax and Luxury Goods Sales Tax, as lastly amended by Law No. 42 of 2009 ("Law 8/1983") provides that tax deductions must be made during the same fiscal year.</p>	<p>Income Tax – The Omnibus Law provides for an adjustment of corporate income-tax rate for domestic taxpayers and permanent establishment in the amount of 22% for the 2021 and 2022 fiscal years and 20% for the 2023 fiscal year. The Omnibus Law also introduces an additional reduction of 3% which applies to any domestic corporate taxpayers that (i) are in the form of a limited-liability company, (ii) have 40% of their total paid-up capital traded via the stock exchange, and (iii) fulfil other requirements which are to be determined through the issuance of a forthcoming government regulation.</p> <p>VAT Law – The duration of deduction is extended. The deductions may still be implemented up to three tax years following the relevant tax year in which the tax invoice is issued, provided that: (i) the amount has not been charged as a cost or has not been capitalized as an acquisition cost for the taxable goods and/or services; and (ii) the deduction meets the requirements set under Law 8/1983.</p>	We expect the reduction of CIT rate and extension of period for deduction of VAT would assist the business operations in Indonesia. However, a more elaborate discussion on tax implications is best to be advised and addressed by tax advisors.

TOPIC	PREVIOUS LAW	OMNIBUS LAW	IMPLICATIONS
11. Land Procurement	Based on Law No. 2 of 2012 on Land Procurement for Developments in the Public Interest (“ Law 2/2012 ”), land procurement which is undertaken for public interest can be implemented for the development of 18 types of public facilities (e.g. dams, roads, sea ports, hospitals, etc). Location determinations for the development of public interest facilities will remain valid for periods of two years and are extendable for a further year.	<p>The Omnibus Law broadens the number of types of public facilities that may be developed with public land procurement scheme to 23. These include: special economic zones, industrial zones, tourism zones, food security zones and technological development zones, all of which are initiated and/or managed by the central/regional government, as well as by state-/regionally-owned enterprises.</p> <p>The Omnibus Law extends the validity period of location determination from two years to three years and preserves the extendibility, provided that extension applications are submitted at least six months prior to the relevant expiration date.</p>	The expansion of the types of public facility that can benefit from state-assisted land procurement will help to attract investors. Land acquisition is a tricky process in Indonesia and it is helpful to have the land procurement assisted by a government entity.
12. Government Administration	Law No. 30 of 2014 on Government Administration (“ Law 30/2014 ”) contains rules and procedures for the implementation of government administration.	<p>The Omnibus Law provides that a government official or body may issue a decree (e.g. when issuing a particular decision or license) in electronic format, and, if an electronic decree is issued, then a hard copy is not required to be issued.</p> <p>The Omnibus Law further stipulates that a decree of a government official or body must be issued within 10 working days after the receipt of a complete and correct application (unless governed otherwise in a technical regulation).</p>	This new flexibility for government decrees in electronic format will streamline the licensing process, as business licenses can be issued via the existing online electronic licensing system.

SCHEDULE 2

CHANGES MADE TO THE MANPOWER LAW

TOPIC	MANPOWER LAW	OMNIBUS LAW	IMPLICATIONS
1. Foreign Workers <i>(Tenaga Kerja Asing/TKA)</i>	<p>The Manpower Law requires the employer to possess a written permit to utilize a foreign worker issued by the Minister of Manpower. Such permit will be issued only after the Foreign Worker Utilization Plan is approved by the Minister of Manpower.</p> <p>Exemptions from the requirement to possess such a permit apply only to diplomatic and consular foreign workers.</p> <p>The Manpower Law only exempts the appointment of local employee understudy for foreign worker who sits as BOD/BOC.</p>	<p>The Omnibus Law revokes or amends the following provisions under the Manpower Law:</p> <ol style="list-style-type: none"> 1) the obligation requiring an employer to possess a written permit (<i>Izin Menggunakan Tenaga Kerja Asing/IMTA</i>) from the Minister of Manpower to employ a foreign worker. Under the Omnibus Law, the employer is only required to present a Foreign Worker Utilization Plan (<i>Rencana Penggunaan Tenaga Kerja/RPTKA</i>) which will be validated by the Central Government; 2) the Minister of Manpower's authority to issue Ministerial Regulations regarding a specific positions and period of work that can be assigned to a foreign worker. The Omnibus Law gives such mandate to the President/Central Government; 3) the provision regarding the replacement of a foreign worker whose working period has expired and cannot be extended; and 4) the requirement to appoint a local employee understudy for each foreign workers will not apply to certain positions. We expect details of the exempted positions to be set out in the implementing regulation. <p>This Omnibus Law also introduces additional exemptions from the employer's obligation to produce an RPTKA for directors, and commissioners, as well as foreign workers required by employers in production activities that are stopped due to emergencies, vocational (<i>vokasi</i>), start-ups, business visits and research for a fixed period of time.</p> <p>The prohibition on foreigners holding positions in the personnel (i.e. HR) department is not affected by the Omnibus Law and will continue to apply.</p>	<ul style="list-style-type: none"> • The requirement to only produce a validated RPTKA before employing a foreign worker may simplify the hiring process for expatriates, subject to the terms of the implementing regulation. • As the Omnibus Law also removes limits on the maximum length of fixed term contracts, unless it is regulated otherwise in the implementing regulations, it appears that foreign worker contracts can now be renewed indefinitely by the employer. • One of the interesting provisions is an exemption to producing an RPTKA for start-up companies to employ foreign worker. Given such ease, we may see an increase in the number of expatriates working in this area. • In addition, an exemption to producing an RPTKA also applies to foreign workers to attend business meetings and research works. It was previously debatable whether business meetings and research works required company to produce RPTKA given its one-time nature. With this change, it is expected that company will no longer have to deal with manpower officials every time there is a business meetings attended by its foreign workers. • The Omnibus Law also removes the blanket provision which prohibits foreign workers holding certain roles. The Omnibus Law only expressly states that foreign workers cannot hold positions in the human resource department. However, we expect a new Government Regulation to further regulate the roles that can be filled by foreign workers.

TOPIC	MANPOWER LAW	OMNIBUS LAW	IMPLICATIONS
2. Fixed Term Employment Contract (<i>Perjanjian Kerja Waktu Tertentu/PKWT</i>)	<p>The Manpower Law currently limits the period of fixed term contracts to 5 years (2 years of initial contract, 1 year of extension, a break period of 30 days, and/or 2 years of renewal after the break period).</p> <p>However, Omnibus Law makes no changes to the type of work for which company can engage employees on a fixed term basis.</p>	<p>This Omnibus Law revokes the following provisions under the Manpower Law:</p> <ol style="list-style-type: none"> 1) the maximum time limits on fixed term contracts; 2) the requirement to issue a written notification regarding the intention of the Employer to extend the fixed term contract; 3) the ability to renew a fixed term contract only, 30 days after the deadline of the agreement and for no longer than 2 years; and 4) the deeming of a fixed term contract which is not written in Bahasa Indonesia and in latin alphabet letters (<i>huruf latin</i>) into a permanent employment contract (<i>Perjanjian Kerja Waktu Tidak Tertentu/PKWT</i>). <p>The Omnibus Law provides the mandate to the Government to regulate the type and nature or activity of work, the period of time, and the deadline for the extension of fixed term contracts via a Government Regulation.</p> <p>The Omnibus Law prohibits the use of probationary periods for fixed term employees. Where a probationary period is applied to such an employee, that period will be counted towards the employee's total employment for all purposes.</p> <p>The Omnibus Law introduces a new requirement to pay compensation to a fixed term employee upon expiry of the fixed term contract. Further details regarding compensation will be set out in a Government Regulation.</p>	<ul style="list-style-type: none"> • The deletion of a maximum limit on fixed term contracts is one of the amendments most focussed on by protestors, as it may allow for the use of "rolling" fixed term contracts. • The amendment is positive for employers, who will have greater flexibility regarding the make-up of their workforce. • It remains to be seen whether the Government Regulation will provide a maximum period fixed term contracts. From our research with manpower officials, before a Government Regulation is issued, they may have to refer to the provisions of the Manpower Law and relevant implementing regulation on PKWT in determining whether a PKWT can be extended beyond the 5 years limit.
3. Outsourcing	<p>Article 64 and 65 of the Manpower Law currently regulate subcontracting to a third party company.</p> <p>Such subcontracting is permitted for activities which are not considered the main business of the party subcontracting, but rather is limited only to supporting activities.</p> <p>Such wording for the type of activities that can be outsourced is also repeated on Article 66 of the Manpower Law which regulates outsourcing.</p> <p>The Manpower Law currently operates such that the receiver of outsourced work or labour will be deemed to be the employer of outsourced workers in the event that the arrangement is non-compliant with the rules regulating the type of business activities that can be outsourced.</p>	<p>The Omnibus Law redefines the employment relationship between an outsourcing company and its employees by deleting Article 64 and 65 of the Manpower Law and amending Article 66 of the Manpower Law.</p> <p>The Omnibus Law revokes the following provisions and obligations:</p> <ol style="list-style-type: none"> 1) removes the prohibition on employers using outsourced workers to carry out their main business activities or activities directly related to the production process; and 2) removes the automatic deeming of an employment relationship between the end user and outsourced employees in the event that the arrangement is non-compliant with the rules regulating the type of business activities that can be outsourced. <p>This Omnibus Law introduces a new obligation requiring outsourcing companies to protect the rights of fixed term employees. Details of such protections will be set out in a separate Government Regulation.</p>	<ul style="list-style-type: none"> • This is another significant and controversial change to the Manpower Law which was challenged by the labour union. • The removal of the limits on the type of work which can be outsourced means that companies will have option to conduct their core work activities using workers from outsourcing companies (i.e. labour hire). This will provide significant additional flexibility to employers. • Additionally, the removal of the deemed employment provisions lowers the risk for companies using labour hire staff, as they can rely on the outsourcing company to handle labour issues including any issues of violation of the Manpower Law. • Given that outsourcing is one of the most sensitive labour issues in Indonesia, it remains to be seen whether the separate Government Regulation will provide stricter protections to workers.

TOPIC	MANPOWER LAW	OMNIBUS LAW	IMPLICATIONS
4. Working Hours	Working hours as currently set out in the Manpower Law are: <ul style="list-style-type: none">• 8 hours per day for 5 working days; and• 7 hours per day for 6 working days.	The Omnibus Law does not change the current working hours set out in the Manpower Law. However, it is emphasized within the Omnibus Law that the implementation of work hours may be stipulated and agreed within the employment contract, company regulation, or Collective Labour Agreement/ <i>Perjanjian Kerja Bersama</i> .	The changes introduced in the Omnibus Law also imply that working hours can deviate from the prescribed working hours if agreed by the employer and employee in an employment contract, or stated in the company regulation/collective labour agreement.
5. Overtime	Maximum overtime hours are set at 3 hours per day and 14 hours per week.	Maximum overtime hours are increased to 4 hours per day and 18 hours per week. Nevertheless, the company still needs to pay for the overtime..	Employer still requires employee agreement regarding overtime..
6. Rest days	The Manpower Law stipulates the minimum requirement for rest days: <ul style="list-style-type: none">• Weekly period of rest is a minimum 1 day for those on a 6 day working week and 2 days for those on a 5 day working week.• Long period of rest minimum 2 months in the 7th and 8th year of service in certain companies.	The Omnibus Law only states that the minimum weekly period of rest is 1 day for those working on a 6 day working week. It is noted that the long period of rest (also known as long service leave) is no longer available unless agreed within the employment contract, company's regulation, or Collective Labour Agreement/ <i>Perjanjian Kerja Bersama</i> .	Because the Omnibus Law is silent on the applicable rest period for those working on a 5 day working week, it may be possible for an employer to propose that workers undertake one day of overtime (subject to payment of required compensation).
7. Wages	The Manpower Law states that wages will be regulated by a separate Government Regulation. Under Government Regulation No. 78 of 2015, wages are set using the following elements: <ul style="list-style-type: none">• There are tiers in wage (minimum provincial wage/UMP, minimum regency wage/UMK, minimum sectoral wage/UMSK).• The regulation sets out a minimum wage calculation formula includes inflation and GDP growth.	The Omnibus Law simplifies the regulation of wages and provides that tiers of wages are limited to: <ul style="list-style-type: none">• minimum provincial wage/UMP; and• minimum regency wage/UMK. That is, the provisions on minimum sectoral wage/UMSK are revoked. Further micro and small business are exempted from the wage tiers (UMP and UMK). Accordingly, wages for those businesses will be a matter for agreement between the employer and employee(s). The minimum wage calculation formula will be updated to include: <ol style="list-style-type: none">1) inflation;2) economic growth of the region; and3) GDP growth.	<ul style="list-style-type: none"> • Employers are requested to periodically adjust and review wages by taking into account the capability and productivity of employees. • Fines that may be issued to employees in the event of wilful misconduct or negligence, that cause a violation relating to wage payment may be agreed within a separate agreement (employment contract, company's regulation, or <i>Perjanjian Kerja Bersama</i>). • Upon promulgation of the Omnibus Law employers may not reduce the wage that has been previously agreed with its employees if it was above the new applicable minimum wage.

TOPIC	MANPOWER LAW	OMNIBUS LAW	IMPLICATIONS
8. Termination	<p>The Manpower Law provides for the following mechanisms for employment termination:</p> <ol style="list-style-type: none"> 1) negotiation between the employer and labour union or directly with the employee (bipartite negotiation); and 2) through mediation/consiliation working with regional manpower office (tripartite). 	<p>The Omnibus Law introduces a new notification requirement, which requires the employer to issue a notification to employees regarding the reasoning and grounds of termination. This notification must be issued before the employer and employee enter bipartite negotiation.</p> <p>The notification requirement does not apply where:</p> <ul style="list-style-type: none"> • The employee has resigned from the company on the employee's own initiative; • The employee is a fixed term employee whose fixed term employment has expired; • The employee has reached pension age; or • The employee has died. <p>The Omnibus Law provides an extensive list on the grounds of termination of employment which was not included in the Manpower Law. Significant additions to that list, among others, are:</p> <ol style="list-style-type: none"> 1) That the employer is permitted to terminate the employment of an employee on the grounds of efficiency that is not followed by closure of company if the employer has incurred losses in operation. This is a significant development for employers, though it does not allow for unilateral termination; 2) Termination is permitted if the employer has entered into suspension of debt payment obligation state (PKPU) (similar to administration); 3) Termination is permitted if an employee violates the employment agreement, company regulation or collective labour agreement without the need for warning letter, if such termination for such reason is specified in the relevant document. <p>The above is interesting because the Manpower Law does not provide a clear list and there is an ongoing debate on employment termination based on efficiency or violation of employment agreement, company regulation and/or collective labour agreement without warning letter.</p> <p>Additionally the Omnibus Law deletes the employment termination on the grounds of violation of law (however it still can be regulated under the employment agreement, company regulation and/or collective labour agreement).</p>	<ul style="list-style-type: none"> • In principle the Omnibus Law and the Manpower are similar in the way they approach termination. The employer has not gained a right to terminate employment unilaterally, though the clarification regarding termination for efficiency will likely be useful during negotiations with employees. • The Omnibus Law stipulates that in the event that termination has not occurred consistently with the procedures set out in Omnibus Law, termination is null and void. • Companies are likely to benefit from the clearer list of approved bases for termination, provided they are set out in the company's employment regulation, company regulation and/or collective labour agreement.

TOPIC	MANPOWER LAW	OMNIBUS LAW	IMPLICATIONS
9. Severance Packages	The Manpower law also regulates the calculation of 1 or 2 times severance payment on certain grounds of employment termination.	<p>The Omnibus Law largely leaves unchanged the calculation of severance pay, other than removal of the obligation to pay 15% of the severance and long service pay in the form of housing and medication compensation.</p> <p>The Omnibus Law also removes the concepts of 1 and 2 times severance. Accordingly, it appears that an employer need only pay 1 times severance, regardless of the reason for the termination.</p> <p>Finally, the Omnibus law also deletes provisions regarding pension fund programs which can be used for severance payment for employees who enter retirement age.</p>	<p>Under the Omnibus Law, the maximum severance package for workers who works more than 24 years is a total of 19 months' salary (plus unused leave and repatriation cost). With the following calculation:</p> <ul style="list-style-type: none"> • 1 x maximum severance payment (1×9) = 9 • 1 x service pay (1×10) = 10 • Unused leave; and • Repatriation cost (if any). <p>This amount must be paid by the employer.</p> <p>However, as set out in point 16 below, the employee will also be entitled to an additional 6 months' salary as a benefit of a new social security program introduced in this Omnibus Law, i.e. job loss security/BPJS <i>Jaminan Kehilangan Pekerjaan</i>.</p> <p>It is unclear the length of service an employee must have in order to qualify for the full six month payment from the new social security program.</p> <p>In comparison, under the current Manpower Law workers are entitled to 28 months' salary (plus any unused leave, repatriation cost and 15% of the said 28 months') as total severance payment with the following calculation:</p> <ul style="list-style-type: none"> • 2 x maximum severance payment (2×9) = 18 • 1 x service pay (1×10) = 10 • Unused leave; • Repatriation cost (if any); and • 15% of the 28 months' salary (as compensation payment). <p>The current Manpower Law provisions require the total severance payment to be paid by the employer.</p>
10. Criminal sanction reference	Article 184 of the Manpower Law provides for criminal liability for companies which do not enrol and administer its employees on the national pension program.	Article 184 of the Manpower Law is revoked.	No significant effect, as in the past, the obligation to have a pension program can be replaced with payment of severance package.
11. Criminal sanction reference	Article 185 provides for criminal sanction against violation of, among others, Article 42 paragraph (1) an obligation to obtain a written permit/IMTA requirement for company to hire foreign worker.	The Omnibus Law removes the criminal sanction references under Article 185 of the Manpower Law to Article 42 on foreign worker permit.	As a foreign worker no longer needs a written permit/IMTA, there is no criminal sanction for company not procuring such written permit for their foreign worker.
12. Criminal sanction reference	Article 186 of the Manpower Law provides for a sanction if Article 35 (2) and (3) (which relate to migrant work placement outside Indonesia) are violated.	<p>The Omnibus Law amends the cross-reference clause for criminal offences set out under Article 186 of the Manpower Law.</p> <p>The Omnibus Law only requires Article 35 (2) or (3) to be violated for the criminal sanction to be applicable.</p>	Due to such change, both the employer and migrant worker placement company can be criminalised if they fail to provide adequate protection on health, safety and welfare for the workers.

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13. Criminal sanction reference	Article 187 of the Manpower Law provides for criminal sanction to private worker placement institution (<i>lembaga penempatan tenaga kerja</i>) who does not have the relevant licenses.	The Omnibus Law amends the cross-reference clause for criminal offences set out under Article 187 of the Manpower Law so that the criminal sanctions no longer apply to private worker placement institution. In addition, now companies which do not provide annual leave to their workers may be subject to criminal sanction.	Such changes create an authority to the relevant Indonesian institution to prosecute company which does not provide annual leave to its workers (currently such failure does not constitute a criminal offence).
14. Criminal sanction reference	Article 188 of the Manpower Law provides for criminal sanction for violation of Article 14 i.e. for a private work training institution (<i>lembaga pelatihan kerja swasta</i>) who does not hold relevant licenses.	The Omnibus Law deletes the reference to Article 14.	This change removes a current criminal sanction for private work training companies who do not hold relevant licenses.
15. Job Loss Security (coordinated under BPJS) and Recognition award	The Manpower Law does not contain reference to a job loss social security program (<i>jaminan kehilangan pekerjaan</i>). Rather, social security schemes are detailed under Law 40 of 2004 on National Social Security System ("Social Security Law").	The Omnibus Law will introduce a new social security program, dealing with job loss security (<i>jaminan kehilangan pekerjaan</i>). 1) The job loss security (<i>jaminan kehilangan pekerjaan</i>) program: a) will be made available for all terminated employees (who fulfill certain terms and conditions such as the making of contributions for a certain period of time); b) will be administered by the Social Security Agency (<i>Badan Penyelenggara Jaminan Sosial Ketenagakerjaan</i> of Manpower or " BPJS of Manpower "); c) will be administered in order to allow terminated employees to maintain a decent standard of living; d) will provide benefits in the form of cash, access to labour market information and trainings; e) receive funds, subject to the relevant Government Regulation, from: – capital from the government; – re-composition of social security program contribution; and/or – operational fund of the BPJS of Manpower. 2) The Omnibus Law includes a new mandate for the Government to issue a Government Regulation on the job loss security (<i>jaminan kehilangan pekerjaan</i>) program.	The implementation of the new social security program will add to the administrative burden of employers as they will be required to apply for the job loss security (<i>jaminan kehilangan pekerjaan</i>) program in addition to the other social security obligation (e.g. pension social security programme, old age social security programme, work accident programme, health social security program).

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