

## Summary

Outsourcing of both work and employees has become increasingly popular in recent years in Indonesia as businesses feel the effect of high severance and retirement payments and the potential problems and difficulties in employment termination. With companies engaged in outsourcing sometimes not supporting their employees once outsourcing assignments expire, the Government has for some time been under pressure to impose further restrictions on outsourcing practices.

Regulation of the Minister of Manpower and Transmigration No. 19 of 2012 on Requirements for Outsourcing makes significant and widespread changes to the outsourcing regulatory regime. Whilst businesses have one year to adjust to the regulation, many businesses have both complained about the regulation's broad scope and the cost in implementing the required changes. This Advisory discusses the new regulation and the changes made to the previous situation and details some of the concerns that have been raised.

### Makarim & Taira S.

Summitmas I, 16th & 17th Fls.  
Jl. Jend. Sudirman Kav. 61-62  
Jakarta 12190  
Indonesia

P: (62-21) 252 1272, 520 0001  
F: (62-21) 252 2750, 252 2751  
E: makarim&tairas@makarim.com  
www.makarim.com

M&T Advisory is an email publication prepared by the Indonesian law firm, Makarim & Taira S. It is only intended to inform generally on the topics covered and should not be treated as legal advice or relied upon when making investment or business decisions. Should you have any questions on any matter contained in M&T Advisory, or other comments generally, please contact your usual M&T contact or [advisories@makarim.com](mailto:advisories@makarim.com)

# Indonesia's New Outsourcing Requirements

## Introduction

Regulation of the Minister of Manpower and Transmigration No. 19 of 2012 on Requirements for Outsourcing ("**Regulation 19**") was promulgated on 14 November 2012 and revokes two earlier decrees, namely Minister of Manpower and Transmigration Decree No. KEP.101/MEN/VI/2004 on Licensing Procedures for Outsourcing Companies ("**Decree 101/2004**") and Minister of Manpower and Transmigration Decree No. KEP.220/MEN/X/2004 on Requirements to Partly Outsource Work ("**Decree 220/2004**").

Regulation 19 covers two types of outsourcing: business activities outsourcing (*pemborongan pekerjaan*) and manpower outsourcing (*penyediaan tenaga kerja*), both of which require a written agreement which must be registered with the local manpower and transmigration office. Regulation 19 also provides more details on the requirements for each of the above.

## Business Activities Outsourcing

For business activities outsourcing, the outsourced work must meet the following criteria:

- be conducted separately from the user company's core business in terms of management and activities;
- be conducted under a direct or indirect order from the user company (*perusahaan pemberi pekerjaan*);
- be categorized as business support activities (according to the flow chart issued by the relevant business sector association); and
- not have a direct impact on the production process if the business process were to stop.

As stated in point c. above, Regulation 19 also mandates the relevant business sector association to produce a flowchart for the entire production process and determine which are 'core' and which are 'support' activities in its particular business sector. This will then be used by the user company as a guideline when outsourcing. This is different to the previous approach under Decree 220/2004 where the flowchart was produced by the user company itself. While Decree 220/2004 created confusion about what could be considered support activities, Regulation 19 **does not provide** or elaborate further on which business sector association is competent or to be referred to as there might be several associations within the same business sector. Further, Regulation 19 does not state whether the flowchart produced by the association needs to be filed with the local manpower and transmigration office or any other authority or requires supervision or any assessment by the authorities.

The user company must report the type of work to be outsourced (and its amendments) to the local manpower and transmigration office where the work is to be outsourced and a receipt for the report (*bukti pelaporan*) will be issued within 1 week of the reporting date. The user company may not engage the outsourcing company without the receipt for the report otherwise the employment of all outsourced personnel will be deemed transferred from the outsourcing company to the user company.

The written business activity outsourcing agreement between the user company and the outsourcing company must contain certain provisions and be registered at least 30 working days before the outsourced work commences. A registration certificate should be issued within 5 working days of receipt of the complete application.

A Business Activity Outsourcing company must satisfy the following requirements:

- a. be a legal entity;
- b. have a company registration certificate;
- c. have a business license; and
- d. have evidence of filing its compulsory manpower reports (WLTK).

Regulation 19 states that the written employment agreement between the business activity outsourcing company and its employees may be for either temporary or permanent employment. However, Regulation 19 does not state that the employment agreement needs to be registered with or reported to the authority.

### **Manpower Outsourcing**

Under Regulation 19, the following types of work can be outsourced by way of manpower supply services as support activities which do not directly relate to the production process:

- a. janitor/cleaning services;
- b. catering services for employees;
- c. security services;
- d. oil and mining support activities; and
- e. manpower transport services for employees.

It can be interpreted that Regulation 19 therefore prohibits the outsourcing of other business activities. While Decree 220/2004 allowed work assignment, Regulation 19 expressly emphasizes that manpower outsourcing companies may not assign or sub-contract part or all of the work to another manpower outsourcing company.

The manpower outsourcing agreement between the user company and the outsourcing company must contain certain provisions and be registered to the local manpower and transmigration office where the work is to be carried out within 30 working days of signing with the valid operating permit of the outsourcing company and a draft employment agreement must be enclosed. The registration certificate should be issued within 7 working days of receipt of the complete application, otherwise, it will be rejected with the reasons given in the letter of rejection.

The outsourcing company may not commence work before the issuance of the registration certificate by the local authority where the work is to be performed. The operating license will be revoked if the outsourcing agreement is not registered and the outsourcing company still commences the work, and the outsourcing company will remain liable for providing the employees/workers with their entitlements.

Manpower Outsourcing Companies must satisfy the following requirements:

- a. be a Perseroan Terbatas (Limited Liability Company);
- b. have a company registration certificate;
- c. have a business license;
- d. have evidence of filing of the compulsory manpower reports (WLTK);
- e. have an operating license;
- f. have a permanent office and address; and

g. have a Tax Payer Registration Number (NPWP) under the name of the company.

All employment agreements (which must be in writing) between a manpower outsourcing company and its employees/workers must be registered with the local manpower agency where the work is to be performed; otherwise the operating license of the company may be revoked. The employment agreement may be for either temporary or permanent employment. If the agreement is for temporary employment, it must include certain requirements stipulated in Regulation 19; otherwise, it will be deemed to be for permanent employment as of the agreement being signed.

### **Transitional Provision**

All user companies, business process outsourcing companies and manpower outsourcing companies must adjust to Regulation 19 within 12 months of its effective date (19 November 2012). If the outsourcing company fails to comply with Regulation 19 by 19 November 2013, it will remain responsible for providing the employees/workers with their entitlements under their respective employment agreements.

\*\*\*\*\*

**MAKARIM & TAIRA S.**  
28 November 2012