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It informs 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 in general, please contact us at the emails provided at the end of this article.

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Issuance of the Implementing Regulations of the Omnibus Law on Job Creation – The Employment Sector

The Indonesian Government has finally issued various implementing regulations of the Omnibus Law on Job Creation. Four implementing regulations have been issued on the employment sector:

1. Government Regulation No. 34 of 2021 on The Utilization of Foreign Manpower (“**GR 34/2021**”)
2. Government Regulation No. 35 of 2021 on Fixed Term Employment, Outsourcing, Working Hours and Rest Times and Termination (“**GR 35/2021**”)
3. Government Regulation No. 36 of 2021 on Wages (“**GR 36/2021**”)
4. Government Regulation No. 37 of 2021 on The Job Loss Security Program (“**GR 37/2021**”)

In this series of advisories, we highlight the main features of these regulations.

Regulations	Highlighted Provisions
<p>GR 34/2021</p>	<p>a. Employers can hire foreign manpower who are still employed by other employers in the same position as (i) a director or commissioner or (ii) in the vocational education and training, digital economy and oil and gas sectors (for the contractor under a cooperation agreement). The first employer must give its consent to the second hiring.</p> <p>b. All employers hiring foreigners must have an approved Foreign Manpower Utilization Plan (“RPTKA”), except for:</p> <ul style="list-style-type: none"> • members of the Board of Directors or Board of Commissioners who own a certain percentage of shares in the company; • diplomatic and consular staff of a foreign state mission; and • foreign manpower required for a production process which has halted due to an emergency situation, vocational programs, technology-based start-up companies, business meetings or research for a certain time. <p>c. Foreign employees working for more than 6 months must be registered in the social security programs. Those working for less than 6 months must be registered in an insurance program covering at least occupational accident risks.</p> <p>d. Employers must appoint understudies for their foreign employees, except for foreigners who are (i) a director or commissioner, (ii) head of a representative office, (iii) in the management, a patron or a supervisor of a foundation, or (iv) employed in a temporary position.</p> <p>e. For failing to have an approved RPTKA, administrative sanctions may be imposed including a fine, a temporary suspension of the RPTKA approval, and the revocation of the RPTKA approval. The amount of fine will be calculated per person per position per month. The fine will range from IDR6 million up to IDR36 million.</p> <p>f. GR 34/2021 will come into effect on 1 April 2021.</p>
<p>GR 35/2021</p>	<p><u>Fixed Term Contracts (“FTC”)</u></p> <p>a. FTCs are entered into:</p> <ul style="list-style-type: none"> • for work the completion of which will not take very long, seasonal work, or work related to a new product, new activity or an additional product that is on trial; or

Regulations	Highlighted Provisions
	<ul style="list-style-type: none"> • until the completion of certain work (work that is temporary in nature or one-off work). <p>b. FTCs may be entered into for up to 5 years. FTC is extendable as long as the total term of the initial contract and its extension(s) will not exceed 5 years.</p> <p>c. FTCs must be registered through the online system within 3 working days of signing. If the online system is not available yet, FTCs must be registered within 7 working days of signing.</p> <p>d. Compensation must be provided to fixed term employees when their contracts end if they have worked for at least one month continuously. If an FTC is extended, the compensation will be payable upon the termination or expiry of the extension of the FTC.</p> <p>e. The formula for calculating the compensation depends on the term of the FTC, as follows:</p> <ul style="list-style-type: none"> • 12 months continuously: 1 x the monthly salary • 1 month but less than 12 months: the service period/12 x the monthly salary • more than 12 months: the service period/12 x the monthly salary <p>If one of the parties terminate the contract before the FTC expires, the employer must pay compensation calculated as above and the service period is calculated as the period for which the employee has worked.</p> <p>f. This compensation is not payable to foreign employees hired for a fixed term.</p> <p><u>Outsourcing</u></p> <p>a. The employment relationship between an outsourcing company and its employees is based on a written fixed term or permanent employment agreement.</p> <p>b. The outsourcing company is responsible for the protection of its employees including their salaries, terms of work and any dispute arising out of the employment agreement, company regulations, or collective labor agreement of the outsourcing company. This protection is provided for under the employment agreement, company regulations or collective labor agreement.</p> <p>c. FTCs between an outsourcing company and its employees must include a condition under which the employee's continued employment is guaranteed in the event of a change of outsourcing company so long as the outsourced work is still available. Otherwise, the outsourcing company will be responsible for providing the employees' entitlements, ie. compensation upon termination.</p>

Regulations	Highlighted Provisions
	<p>However, it remains unclear which outsourcing company will be responsible for providing the employees' entitlement in the event of a change of outsourcing company (ie. the original outsourcing company or the new outsourcing company even though it should be the employer).</p> <p>d. An outsourcing company must be a legal entity and hold the relevant business license. The Indonesian government will set the requirements for the business license under a further regulation.</p> <p><u>Working Hours and Rest Periods</u></p> <p>a. Working hours are 7 hours/day or 40 hours/week for a 6 working-day week or 8 hours/day or 40 hours/week for a 5 working-day week.</p> <p>b. Companies in certain sectors may apply fewer working hours than the above, provided that:</p> <ul style="list-style-type: none"> • the work is completed within less than 7 hours/day or less than 35 hours/week; • the working hours are flexible; or • the work can be performed outside the work location. <p>The Ministry of Manpower (“MOM”) will issue further regulations on the above.</p> <p>c. Overtime on normal working days can be performed for up to 4 hours/day or up to 18 hours/week. This does not apply to companies in certain sectors (eg. oil and gas, mining companies).</p> <p><u>Termination of Employment</u></p> <p>a. Employers must make every effort to prevent termination, but if it is unavoidable, the intention and grounds for the termination must be conveyed to the employee and/or to the labor union (if he/she is a member).</p> <p>b. The notification of the termination and grounds must be delivered in writing at least 14 working days before the date of the termination of employment. If an employee is terminated during his/her probationary period, the notification must be delivered at least 7 working days before the date of termination.</p> <p>c. Upon receipt of the notification, if the employee accepts the termination, the employer must notify the relevant MOM office.</p> <p>d. If the employee does not accept his/her termination, he/she must convey his/her reasons in writing within 7 working days of receipt of the notification.</p>

Regulations	Highlighted Provisions												
	<p>e. If a dispute between the parties ensues, the industrial dispute settlement procedure must be followed.</p> <p>f. Notification is not mandatory for employees terminated for urgent reasons.</p> <p><u>Permanent Employees' Entitlements upon Termination</u></p> <p>The following is the severance package due depending on the grounds for termination:</p> <table border="1" data-bbox="386 657 1336 1837"> <tbody> <tr> <td data-bbox="386 657 870 905">The company is conducting a merger, consolidation or spin-off and the employee is not willing to continue the employment relationship or the employer is not willing to accept the employee</td> <td data-bbox="870 657 1336 905"> <ul style="list-style-type: none"> • 1x the severance pay due • 1x the term of service recognition payment • Compensation </td> </tr> <tr> <td data-bbox="386 905 870 1087">The company is being acquired</td> <td data-bbox="870 905 1336 1087"> <ul style="list-style-type: none"> • 1x the severance pay due • 1x the term of service recognition payment • Compensation </td> </tr> <tr> <td data-bbox="386 1087 870 1270">The company is being acquired but the employee refuses to continue the employment due to changes to the terms of employment</td> <td data-bbox="870 1087 1336 1270"> <ul style="list-style-type: none"> • 0.5x the severance pay due • 1x the term of service recognition payment • Compensation </td> </tr> <tr> <td data-bbox="386 1270 870 1476"> <p>The company is taking efficiency measures due to losses it has suffered.</p> <p>The "losses" can be based on the employer's internal or external audit</p> </td> <td data-bbox="870 1270 1336 1476"> <ul style="list-style-type: none"> • 0.5x the severance pay due • 1x term of service recognition payment • Compensation </td> </tr> <tr> <td data-bbox="386 1476 870 1659">The company is taking efficiency measures to prevent further losses</td> <td data-bbox="870 1476 1336 1659"> <ul style="list-style-type: none"> • 1x the severance pay due • 1x the term of service recognition payment • Compensation </td> </tr> <tr> <td data-bbox="386 1659 870 1837">The company is closing down due to losses suffered for 2 years whether consecutively or not</td> <td data-bbox="870 1659 1336 1837"> <ul style="list-style-type: none"> • 0.5x the severance pay due • 1x the term of service recognition payment • Compensation </td> </tr> </tbody> </table>	The company is conducting a merger, consolidation or spin-off and the employee is not willing to continue the employment relationship or the employer is not willing to accept the employee	<ul style="list-style-type: none"> • 1x the severance pay due • 1x the term of service recognition payment • Compensation 	The company is being acquired	<ul style="list-style-type: none"> • 1x the severance pay due • 1x the term of service recognition payment • Compensation 	The company is being acquired but the employee refuses to continue the employment due to changes to the terms of employment	<ul style="list-style-type: none"> • 0.5x the severance pay due • 1x the term of service recognition payment • Compensation 	<p>The company is taking efficiency measures due to losses it has suffered.</p> <p>The "losses" can be based on the employer's internal or external audit</p>	<ul style="list-style-type: none"> • 0.5x the severance pay due • 1x term of service recognition payment • Compensation 	The company is taking efficiency measures to prevent further losses	<ul style="list-style-type: none"> • 1x the severance pay due • 1x the term of service recognition payment • Compensation 	The company is closing down due to losses suffered for 2 years whether consecutively or not	<ul style="list-style-type: none"> • 0.5x the severance pay due • 1x the term of service recognition payment • Compensation
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Regulations	Highlighted Provisions	
	The company is closing down not due to losses	<ul style="list-style-type: none"> • 1x the severance pay due • 1x the term of service recognition payment • Compensation
	The company is closing down due to force majeure	<ul style="list-style-type: none"> • 0.5x the severance pay due • 1x the term of service recognition payment • Compensation
	A force majeure event has occurred, but the company is not closing down	<ul style="list-style-type: none"> • 0.75x the severance pay due • 1x the term of service recognition payment • Compensation
	The company is undergoing a delay of payment due to losses it has suffered	<ul style="list-style-type: none"> • 0.5x the severance pay due • 1x the term of service recognition payment • Compensation
	The company is undergoing a delay of payment but not due to losses it has suffered	<ul style="list-style-type: none"> • 1x the severance pay due • 1x the term of service recognition payment • Compensation
	The company has been declared bankrupt	<ul style="list-style-type: none"> • 0.5x the severance pay due • 1x the term of service recognition payment • Compensation
	The employee has submitted an application to terminate the employment relationship (eg. due to the employer has assaulted, insulted in a rude manner or threatened the employee)	<ul style="list-style-type: none"> • 1x the severance pay • 1x the term of service recognition payment • Compensation
	A decision has been issued by the industrial relations dispute settlement agency (Industrial Relations Court) declaring that the employer is not guilty of the violation alleged by the employee, and the employer has decided to terminate the employment relationship	<ul style="list-style-type: none"> • Compensation • separation pay according to the employment agreement, company regulations, or collective labor agreement

Regulations	Highlighted Provisions	
	Voluntary resignation	<ul style="list-style-type: none"> • Compensation • separation pay as according to the employment agreement, company regulations, or collective labor agreement
	The employee has been absent for five or more business days without serving written notice supported by valid evidence and the employer has duly summonsed the employee twice in writing	<ul style="list-style-type: none"> • compensation • separation pay according to the employment agreement, company regulations, or collective labor agreement
	The employee has violated the employment agreement, company regulations, or collective labor agreement and has been served a first, second, and third successive warning	<ul style="list-style-type: none"> • 0.5x the severance pay due • 1x the term of service recognition payment • Compensation
	The employee is terminated for urgent reasons provided for under the employment agreement, company regulation, or collective labor agreement	<ul style="list-style-type: none"> • Compensation • separation pay as regulated under the employment agreement, company regulations, or collective labor agreement
	The employee is unable to work for six months because of being detained for an alleged crime that has caused the company to suffer a loss	<ul style="list-style-type: none"> • Compensation • separation pay according to the employment agreement, company regulations, or collective labor agreement
	The employee is unable to work for six months because the employee has been detained due to an alleged crime that has not caused the company to suffer a loss	<ul style="list-style-type: none"> • 1x the term of service recognition payment • Compensation
	A court has convicted the employee proven of a crime that has caused the company to suffer a loss before the six months period of detainment has lapsed	<ul style="list-style-type: none"> • Compensation • separation pay according to the employment agreement, company regulations, or collective labor agreement

Regulations	Highlighted Provisions	
	<p>A court has convicted the employee of a crime that has not caused the company to suffer a loss before the six months period of detainment has lapsed</p>	<ul style="list-style-type: none"> • 1x the term of service recognition payment • Compensation
	<p>The employee is suffering from a prolonged illness or disability due to an occupational accident and is unable to work after more than 12 months</p>	<ul style="list-style-type: none"> • 2x the severance pay due • 1x the term of service recognition payment • Compensation
	<p>Retirement</p>	<ul style="list-style-type: none"> • 1.75x the severance pay due • 1x the term of service recognition payment • Compensation
	<p>The employee passes away</p>	<ul style="list-style-type: none"> • 2x the severance pay due • 1x the term of service recognition payment • Compensation
	<p>Compensation comprises of:</p> <ol style="list-style-type: none"> a. any untaken annual leave not yet forfeited; b. repatriation costs to the employee's point of hire; and c. any other compensation agreed to under the employment agreement, company regulations or collective labor agreement. 	
<p>GR 36/2021</p>	<ol style="list-style-type: none"> a. Salaries for part time employees can be paid by the hour. The formula for calculating the minimum hourly rate is: the monthly salary/126. GR 36/2021 is silent on how the monthly salary is calculated. b. If the salary is calculated per day, the formula is the following: <ul style="list-style-type: none"> • if the employee works for 6 days a week: the monthly salary/25 • if the employee works for 5 days a week: the monthly salary/21 c. The minimum wage only applies to employees who work less than a year. The salaries of employees who work for a year or more should be determined according to the wage scale and structure applicable in the company. d. There are two types of minimum wage, the provincial minimum wage and the regional/municipal minimum wage. The regional/municipal minimum wage may be determined with certain conditions, in which regional/municipal minimum wage 	

Regulations	Highlighted Provisions
	<p>may be higher than the provincial minimum wage. Further, the sectoral minimum wage is no longer recognized.</p> <p>e. Deductions may be made from an employee's salary for: (i) the payment of fines, (ii) damages, (iii) salaries paid upfront, (iv) house/property rent rented by the employer for the employee, (v) the employee's debt/ debt payment installments, or (vi) salary overpayment. A deduction may be made for a salary overpayment without the employee's agreement, while for other deductions the employee's written agreement is mandatory.</p>
<p>GR 37/2021</p>	<p>a. Employers must register their employees in the Job Loss Security Program.</p> <p>b. Employees who are registered in the existing social security programs (eg. the occupational accident and old age security programs) are automatically registered as of the issuance of GR 37/2021 on 2 February 2021. Employers must register new employees in the Job Loss Security Program as well as other existing social security programs.</p> <p>c. To be registered in the Job Loss Security Program employees must (i) be Indonesian citizens (ii) not have reached the age of 54 when registered, and (iii) have an employment relationship with the employer.</p> <p>d. The contribution to the Job Loss Security Program is 0.46% of the monthly salary paid by the Indonesian Government and the Job Loss Security Program funding resources (sourced from recompositing the occupational accident and death security contribution which are paid by the employers).</p> <p>The current maximum amount of the salary for calculating the contribution is IDR5 million.</p> <p>e. The benefits of the program comprise hard cash, access to job market information, and job training.</p> <p>f. The benefits of the program will be provided when the employee is terminated, provided that the benefits have been paid for at least 12 months in the last 24 months and the contributions have been paid for at least 6 months into the BPJS Manpower security programs before the termination of employment.</p> <p>g. Employers who have failed to register their employees in the Job Loss Security Program when the employees are terminated must provide the employees the hard cash benefits (ie 6x the monthly salary, with IDR5 million as the current capped salary) and the job training benefits.</p>

Regulations	Highlighted Provisions
	<ul style="list-style-type: none"> <li data-bbox="378 275 1468 348">h. Employees who are terminated due to their resignation, permanent disability, retirement or passing away cannot access the benefits. <li data-bbox="378 390 1468 499">i. Employees' entitlement to the access the benefits will dissolve if the employees (i) do not claim the benefits within 3 months of termination, (ii) have new employment, or (iii) pass away.

In light of the issuance of these regulations, companies will need to adjust their manpower policies, employment agreements and company regulations to the Job Creation Law and the implementing regulations.

If you have any questions or concerns about any of the above issues, please reach out to your usual contacts at Makarim & Taira S. to obtain specific advice. This advisory is not intended to serve as and should not be relied on as legal advice or as a substitute for legal advice in individual cases.

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