



## Draft Omnibus Law: Manpower Chapter

The highly anticipated Omnibus Bill ("the **Bill**") is taking its first step as the first draft was recently submitted to the House of Representatives. The Bill will amend (or simplify) various regulations on from licensing procedures, investment requirements, manpower, immigration, export-import, land procurement to special economic zones with the main focus being creating jobs. Discussion of the Bill is aimed to be concluded within 100 working days, which should fall sometime in August or early September.

In this edition of M&T Advisory, we highlight some of the manpower aspects proposed in the draft Bill. What are the changes? Will the Bill be more balanced between employers' and employees' rights? How will it affect foreign workers? What are the formulae for determining the minimum wage?

Below are some issues that we can highlight in the draft Bill. It will be interesting to see how the following developments progress.

### Foreign Manpower

The Bill emphasizes the exception from the required RPTKA approval for several positions, including members of the Boards of Directors and Commissioners who hold a certain percentage of shares, and foreigners in start-up businesses. According to the Bill, the positions which foreign manpower can fill will be regulated under a presidential regulation (in the current Manpower Law, they are regulated under a Ministry Regulation). It will also be interesting to see whether this will affect the current implementing regulations on the positions that foreigners may fill.

### Fixed Term Employment Contracts (FTC)

The term of a FTC under the Bill depends on the agreement between the parties and removes the current limit. Therefore, the term of a FTC will be agreed to or will end upon the completion of the work. The Bill intends to expand the coverage and flexibility of FTCs as opposed to the current implementing regulation (Minister of Manpower Decree No. 100 of 2004) which limits FTCs for the following works:

- a. of a one-off (not continuing) or temporary nature;
- b. estimated to be completed within 3 years;
- c. seasonal in nature; or
- d. work which is related to a new product, activity, or ancillary product which is on trial.

The existing sanction causing FTCs which are not entered into in writing and in the Indonesian language to be deemed permanent contracts is removed under the Bill. However, as Ministry of Manpower Decree No.100 of 2004 provides for the same sanction, it is yet to be seen whether new implementing regulations will be issued to replace or supersede the existing ones.

### **Makarim & Taira S.**

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

P: (62-21) 5080 8300, 252 1272  
F: (62-21) 252 2750, 252 2751  
[www.makarim.com](http://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 [advisories@makarim.com](mailto:advisories@makarim.com)

February 2020

Compensation (the amount of which will be regulated further) in the event of the completion of the work or the expiry of the term for those who have worked for at least 1 year with the employer is also a novelty under the Bill.

## Work Hours & Overtime

The rules on normal working hours are proposed to be simplified: up to 8 hours a day and 40 hours a week (with at least 1 rest day for a 6-day work week). Certain types of work or business sectors (to be regulated further) may have longer 'normal' work hours. The maximum overtime hours are stretched under the Bill to up to 4 hours a day and 18 hours a week.

## Remuneration

Another novelty is the introduction of a new salary scheme, which may be based on the hours worked or the result. Although no further explanation is provided, it is said that an hourly based salary will only be allowed for certain types of work such as consultancy, part-time work, or work related to the digital economy, which should be regulated further.

The minimum wage scheme is also changed under the Bill, which could be controversial. The Bill proposes that the minimum wage will only apply to manpower who work for the same employer for less than 1 year. However, this will not automatically mean that they will be entitled to a higher salary afterwards, as the Bill defers to the agreement between the employer and the employee on a salary above the minimum wage.

It is also suggested that the minimum wage may not apply to certain labor-intensive industries (to be determined further and calculated using a separate formula) and micro-small businesses. The minimum wage (including in labor-intensive industries) will be province based and determined by each governor. This has attracted criticism from workers' representatives as it may increase the salary gap between provinces.

Another novelty is the one-time reward for employees who are in employment before the Bill comes into effect (except for micro-small businesses), ranging from 1 month's salary for those who have worked for less than 3 years, up to 5 months' salary for those who have worked for 12 years or more. This award must be paid within 1 year of the Bill coming into effect.

The Bill also entitles employees to the same remuneration for the same work of the same value. This is perhaps related to the obligation employers which have to determine the salary structure and scale (*struktur dan skala upah*) for their employees. It will be interesting to see how this is implemented by employers and employees.

## Termination / Layoff

The Bill specifies the allowed causes of terminations/layoffs which include among others, efficiency, a merger, acquisition, force majeure, bankruptcy and debt restructuring. Further details will be provided in a Government Regulation. Currently, efficiency following the June 2012 Constitutional Court ruling is only allowed if the employer closes down its business permanently. It has yet to be seen if the efficiency referred to in the Bill covers efficiency without the closure of the business, and if so, it may lead to future arguments and a similar request for a ruling to the Constitutional Court.

In the event of termination, the Bill only requires the employer to pay 1x (once) severance and a term of service recognition payment, instead of twice severance for certain reasons for termination under the current Manpower Law. Compensation may be paid **if** provided for under the employment contract, Company Regulations or Collective Labor Agreement (instead of the mandatory payment for (i) untaken annual leave that has not been validly forfeited and (ii) the housing, medical treatment and medication allowances equal to 15% of the severance pay and term of service payment under the current Manpower Law). Under the Bill, the amount of the term of service recognition payment is capped at 8 months' salary for those who have worked for 21 years or more. Therefore, the maximum severance and term of service recognition payment will be **16 times salary** (compared to the current Manpower Law, under which the maximum is 28 times salary).

February 2020

It is quite interesting that the Bill categorizes “voluntary resignation” as one of the reasons for termination of employment, which suggests that the resigning employee will also be entitled to severance and a term of service recognition payment, while the current Manpower Law only provides for “Compensation”. It seems that the intention is to regulate this further under a Government Regulation.

The removal of provisions requiring a decision from the Industrial Relations Court for termination due to the closing down of the company because of a force majeure event(s), bankruptcy or the employee’s violation of the employment agreement, Company Regulations or Collective Labour Agreement (after being served 3 consecutive written warnings) suggests that the Bill is trying to make terminations of employment less time consuming and costly.

## **Social Security**

A new social security program under BPJS Manpower for laid-off workers who have paid contributions (to be regulated further) is introduced in the Bill. The new program will provide training and certification, cash or placement support.

## **Outsourcing**

The Bill makes it clear that outsourcing companies will be responsible for the outsourced workers they employ (whether under a FTC or a permanent contract) including in the event of any industrial dispute. It also removes provisions on the types of work that may be outsourced (ie work/process outsourcing and manpower outsourcing). It will be interesting to see how this develops as the current implementing regulations still specify the types of work that can be outsourced .

Despite the novelties under the Bill, it remains uncertain how the Bill will affect businesses from the Manpower Law point of view. The Bill is still at an early stage and has received much feedback and criticism from various stakeholders so it is still likely to change. It will be interesting to see how the novelties develop ie the hourly based salaries, a one-time award for workers and an additional social security program in addition to other ‘familiar’ issues about the provincial minimum wage and the implementing regulations on labor-intensive industries .

The Bill is still being discussed by the House of Representatives, so we should expect more adjustments to the draft in the days ahead .

\* \* \* \* \*

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 a 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).

## **Contacts:**

Reagan Roy Teguh	- <a href="mailto:reagan.teguh@makarim.com">reagan.teguh@makarim.com</a>
Harris Syahni Toengkagie	- <a href="mailto:harris.toengkagie@makarim.com">harris.toengkagie@makarim.com</a>
Lia Alizia	- <a href="mailto:lia.alizia@makarim.com">lia.alizia@makarim.com</a>