

Indonesia - Impacts of the Omnibus Law on Labor Law

Transversal reform initiated by Law 11/2020 on job creation, or Omnibus Law. The Indonesian government promulgated on February 2, 2021, several implementing regulations, outlining new applicable rules to Indonesian employees (the “Corpus Omnibus”).

The Corpus Omnibus aims to provide greater flexibility to the labor market, attractiveness of the Indonesian market for investors, while maintaining the protection of workers' rights. This body of regulations reaffirms certain social gains, attempts to fill in the vagueness of Labor Law 13/2003 and provides new rules relating to employment agreements. Our article focuses on the substantial changes brought by the reform, compared to the previous regulation.

1. Establishment of compulsory unemployment insurance: JKP

Major provision brought by Regulation 37/2021, a new unemployment insurance scheme is set, the *Jaminan Kehilangan Pekerjaan* (“JKP”). The JKP is part of other compulsory social security (“BPJS”), alongside with health social security (“JKN”), work accident social security (“JKK”), death social security (“JKM”), old age social security (“JHT”) and pension social security (“JP”).

The registration of all new employees is mandatory for Indonesian employees under the age of 54 and must be completed within 30 days of hiring.

Employees previously registered to BPJS, will be automatically registered. Registration is therefore only necessary for new hires. Failure to register will be sanctioned by the obligation for the defaulting employer to pay the amounts that should have been covered by JKP (ie. JKP cash benefit) and shall fulfil the right of employee for the work training (as detailed below).

The amount of contributions is set at 0.46% of the amount of the monthly salary, with a maximum basis of an amount of IDR5,000,000.

These contributions are financed by (i) the central government for amount of 0.22% and (ii) a reallocation of other compulsory social charges paid by the employer which are 0.14% from JKK and 0.10% from JKM. This method of financing allows, for the moment, not to increase social charges for both employers and employees.

In the event of termination of the employment agreement, the JKP system will allow employees to obtain JKP cash benefit, for the six months following the termination date, as follows:

- cash benefit equivalent to 45% of the salary for the first three months; and,
- cash benefit equivalent to 25% of the salary for the following three months.

In addition, employees will have the right to access labor market information and vocational training.

The calculation of the amount is based on the last monthly salary and limited to an amount of IDR5,000,000.

The eligibility criteria for the benefits of the JKP are as follows:

- the minimum JKP contributions has been paid in accordance with the laws and regulations;

- the occurrence of termination can be evidenced as follows: (i) evidence that the employee has accepted the termination of the employment agreement and receipt of the mandatory report to the relevant authorities has been obtained; or (ii) mutual agreement for termination has been agreed and signed by the employer and employee and registered with the relevant Industrial Relation Court; or (iii) final and binding decision of the relevant Industrial Relation Court concerning such termination;
- the termination of the employment agreement is not motivated by a resignation, total disability, retirement or death of the employee, or the expiration of a definite period employment agreement;
- the employee is still willing to work; and
- the request for the opening of rights must be made by the employee within at least 3 months of the termination of the employment agreement, with condition that the employee has not entered into a new employment agreement during this period.

Benefits of the JKP scheme will be limited to three times during the career of employees:

- (i) the 1st request can take place if the contributions have been paid in the last 12 months over a 24-month period of registration with the JKP and after payment of contributions more than six months prior to the termination;
- (ii) the 2nd request can take place 5 years after the 1st request; and;
- (iii) the 3rd request can take place 5 years after the 2nd request.

2. Wages

Regulation 36/2021 imposes on the employer an obligation to establish common rules for determining the wages applicable within the company. These rules must be shown to the labor inspectorate from the Ministry of Manpower (*Kementerian Ketenagakerjaan*).

Regulation 36/2021 also specifies the components of wages, the calculation of the amount according to working time (hourly and daily) and the amounts and conditions of application of minimum wages.

It should be noted on this last point that sectoral minimum wages have been repealed in favor of geographic minimum wages, which are also specified by regulation 36/2021.

3. Weekly working time, overtime and holidays

Regulation 35/2021 specifies the weekly working time and extends allowed overtime to 4 hours per day and 18 hours per week, increasing the latter by respectively 1 and 4 hours and specifying the treatment conditions, except for certain specific sectors (oil & gas, mining etc.).

Sabbatical leave conditions (formerly greater than 2 months, per six-year period of service) are now dealt with by internal company regulations or the employment agreement.

4. Fixed-term agreement ("FTA")

Regulation 35/2021 changes the maximum duration of the FTA to 5 years, compared to the previous regulations which stipulates 2 years maximum duration, with maximum 1 year extension and maximum 2 years for renewal (2 + 1 + 2 years). This maximum duration includes all extensions or renewals.

Another update is that employees on FTA will be able to benefit from compensation at the end of their fixed-term agreement, set at one month per year of work, or prorated monthly if the working time is not equal to the calendar year.

In the event of early termination of the FTA, this compensation remains due, regardless of the reason for termination.

It should be noted that regulation 35/2021 does not modify positions available for fixed-term agreements, which remain temporary or seasonal positions by nature.

5. Outsourcing

Regulation 35/2021 clarifies the conditions for employing temporary workers, and removes some doubts about their use by employers.

The regulation lifts the restrictions on the nature of the position available to be held by temporary workers, which was previously restricted to positions unrelated to the employer's main activity.

In return, the regulation specifies the rights of temporary workers, in particular against the outsourcing company and in the event of a change of the outsourced employer.

However, a doubt remains as to the responsibility for the payment of rights acquired by the employee in the event of a change of employer.

It should also be remembered that the regulation reaffirms the need for the outsourcing company to hold *ad hoc* licenses to conduct outsourcing of employees within another company.

6. Termination of the employment agreement

The Corpus Omnibus, while reaffirming certain principles applicable in the procedures for termination of employment agreements, modifies the following elements:

(i) Termination notice

The Corpus Omnibus revokes two main components of the termination procedure. Previously, the termination could occur according to a negotiation between the employer and the employee. In addition, the termination was valid and effective only after determination by the industrial relation dispute settlement.

From now on, the employer may terminate the employment agreement by issuing a termination notice, which shall be further reported to the relevant ministry or manpower services, unless the employee challenges the termination.

The termination notice of the employment agreement must be issued in writing and motivated within 14 working days before the termination date. This period can be reduced to 7 working days, if the employee is still in his probationary period. In the event the employee challenges the termination, the latter has 7 working days to send the employer the reasons of such a challenge. It should be noted that the termination notice is not required for the termination due to employee's violation which is urgent in nature according to the relevant employment contract, company regulation or collective labor agreement.

(ii) Grounds for termination

In addition to reaffirming the authorised grounds for termination of employment agreements, Regulation 35/2021 adds the following occurrences:

- by separating the termination due to acquisition and other corporate actions (merger, amalgamation and separation), the right of the employee to request for termination in the occurrence of merger, amalgamation and separation of the employer is revoked. However, the right of the employee to request for termination in the occurrence of acquisition has been maintained;
- The termination for reasons of efficiency has been divided into (i) efficiency due to losses of the employer; and (ii) efficiency to prevent losses of the employer. It also removes the requirement to cease the activity (company closure) for the employment termination due to efficiency, while termination due to the company closure remains valid, separated from termination due to efficiency (lifting the confusion which was previously noted due to the imprecision of the letter of art. 164 of the Labor Law);
- The employer may dismiss employees in the event of force majeure, which is now distinct from specific ground of termination, and is also divided into: (i) force majeure which caused the closure of the company; and (ii) force majeure not causing the closure of the company. However, the specific definition of “force majeure” has not been provided yet;
- The employer may dismiss employees if the company is placed in suspension of debts payment procedure (PKPU), which is also divided into (i) PKPU due to company’s losses; and (ii) PKPU not due to company’s losses;
- The employer may also terminate the employee due to employee’s violation which is “urgent in nature” toward the provision of employment contract, company regulation or collective labor agreement.

(iii) Modifications to the calculation methods for termination compensation

Regulation 35/2021 does not modify the basic rules for calculating compensation for termination of employment agreements related to severance pay and the long service pay.

However, it does changes the rights of compensation pay, in which compensation of housing, medication and treatment in the amount of 15% of the severance pay and long service pay has been removed.

In addition, the severance pay coefficient of several termination reasons have been significantly reduced (halved and further) and new coefficient are allocated to match the creation of the new termination reasons.

It should be noted that these rules are no longer applicable for micro-enterprises and individual entrepreneurs, whose compensation rules must be agreed by the parties.

In addition, save for termination for the reason of the employee has been detained due to criminal sanctions, the employer’s social contribution for the pension social security can be calculated as part of the severance pay, long service pay and separation pay.

7. Foreign workers

Foreign workers, for their part, see some of their employment conditions clarified and reaffirmed, and in particular certain positions are exempted from submitting an application for the creation of an expatriate or RPTKA: for positions of vocational training and technological start-ups (for a maximum

period of employment of 3 months) , expatriate who is needed in case of the production process has been interrupted due to emergency, business visit and research.

These new rules took effect on April 1, 2021.

Despite this reform, application of Indonesian labor law to foreign workers remains unclear, and the Corpus Omnibus reinforces the argument that only labor law obligations apply to foreign workers, without granting them the same rights as Indonesians workers.

Indeed, the Corpus Omnibus excludes foreign workers from unemployment insurance rights to any compensation in the event of termination of the employment agreement (a foreign worker must be hired for a fixed term agreement, regulation 35/2021 excludes foreign workers from all compensation for termination of fixed-term agreement).

Pour toute autre information, contactez [Lucas Mascarade](#).

Pour vous désinscrire, [cliquez-ici](#)