

## PROPOSED MANPOWER LAW CHANGES - IMPORTANT IMPLICATIONS FOR INDUSTRY<sup>12345</sup>

### INTRODUCTION

The Indonesian Government is proposing major changes to the regulatory regime for manpower.

If the proposed changes become law, they will make it easier for expatriates to work in Indonesia as well as give employers greater flexibility to adjust their workforces to reflect changing economic circumstances and at reduced cost. The proposed changes will also simplify various aspects of the presently complicated rules regarding working hours, overtime and rest periods.

Overhauling the regulatory regime for manpower is a key element of the Government's ongoing endeavours to make Indonesia more competitive with other South East Asian nations and thereby attract more foreign investment to Indonesia.

It remains to be seen whether or not the ongoing Covid-19 crisis, with the attendant prospect of large increases in unemployment, will make it politically impossible for the Government to convert, into law, the proposed changes to the regulatory regime for manpower. The Government has recently agreed with the Indonesian Parliament to delay further consideration of the proposed changes until the Covid-19 crisis has been resolved.

As the energy, infrastructure and mining industries employ large numbers of workers, including low-skilled workers, companies operating in these industries stand to derive considerable benefit from the proposed changes to the regulatory regime for manpower if they ever become law. Accordingly, energy, infrastructure and mining companies should be following closely the proposed changes and the prospects for the same becoming law once the Covid-19 crisis has been resolved.

In this article, the writer will review the major changes proposed to the regulatory regime for manpower as well as the likelihood of these proposed changes becoming law any time soon.

### BACKGROUND

Indonesia's existing manpower regulatory regime is set out in (i) Law No. 13 of 2003 re Manpower ("**Manpower Law**"), (ii) Law No. 40 of 2004 re National Social Security System

---

<sup>1</sup> Bill Sullivan, Senior Foreign Counsel with Christian Teo & Partners and Senior Adviser to Stephenson Harwood LLP.  
<sup>2</sup> Bill Sullivan is the author of "*Mining Law & Regulatory Practice in Indonesia – A Primary Reference Source*" (Wiley, New York & Singapore 2013), the first internationally published, comprehensive book on Indonesia's 2009 Mining Law and its implementing regulations.  
<sup>3</sup> Copyright in this article belongs to Bill Sullivan and Petromindo.  
<sup>4</sup> This article may not be reproduced for commercial purposes without the prior written consent of both Bill Sullivan and Petromindo.  
<sup>5</sup> An earlier version of this article appeared in the April – May 2020 edition of Coal Asia Magazine.

(“BPJS”) (“BPJS Law”), (iii) Law No. 24 of 2011 re Social Security Agency (“**Social Security Law**”) and (iv) various implementing regulations for the Manpower Law, the BPJS Law and the Social Security Law (together, “**Existing Manpower Laws & Regulations**”).

The Manpower Law was, supposedly, one of the signature “achievements” of the presidency of Megawati Sukarno Putri who is now chairwoman of Indonesia’s largest political party PDI-P, the membership of which includes Indonesia’s current president Jokowi Widodo.

The Existing Manpower Laws & Regulations represent a comprehensive scheme for the protection of workers, which scheme may be seen as reflecting the socialist thinking that played a key role in the founding of the Republic of Indonesia in 1945. This scheme is based on the premise that maintaining social stability in Indonesia is paramount, something that requires long-term employment continuity regardless of the associated economic costs. Long term employment continuity is to be achieved by (i) requiring workers to be employed on a permanent basis rather than on a fixed term or temporary basis except in very limited circumstances, (ii) making it extremely difficult, time consuming and expensive for employers to terminate workers even in the case of changing economic conditions and (iii) mandating extraordinarily generous severance and long service payments in those comparatively rare situations where employers are finally able to fulfil the onerous requirements for worker termination. The unstated (but no doubt always intended) consequence of Indonesia’s existing comprehensive scheme for the protection of workers is that the Government largely avoids the financial burden of having to provide unemployment benefits.

Employers in Indonesia generally find the Existing Manpower Laws & Regulations very burdensome and costly to comply with. Employers are often obliged to accept the continued employment of inefficient and unproductive workers as well as of workers in excess of employers’ actual needs as economic conditions change.

The existing procedures that companies must follow, if they want to terminate a permanent employee and assuming that one or other of the very limited termination grounds is available, are notoriously complex, time consuming and expensive. The procedures involve, among other things, (i) bi-lateral negotiations between the company and the relevant employee, (ii) tri-partite mediation/negotiations among the company, the relevant employee and the Manpower Office and (iii) obtaining approval from the Industrial Relations Court.

Permanent employees, who are terminated, currently receive large and mandatory payouts comprising of (i) accrued but unpaid salary and benefits, (ii) severance payments, (iii) long service payments and (iv) allowances for various notional costs and expenses associated with employment termination such as housing foregone and relocation to the point of original hire. The severance payment and the long service payment are tied to the relevant employee’s number of years of service with a particular employer. In the case of the severance payment, the amount of the same is automatically doubled if the reason for termination is the need to achieve greater business “efficiency”.

The difficulty of and the costs involved in terminating workers, notwithstanding changed economic conditions, are routinely cited by industry associations, chambers of commerce and international institutions (such as the World Bank) as one of the major impediments to doing business in Indonesia and as being an important disincentive for foreign investors to select Indonesia, rather than Vietnam, Thailand or Malaysia, as the place to undertake new projects

or to expand existing projects in Indonesia.

Although the problems created by the Existing Manpower Laws & Regulations have long been understood by the Government, it has proved difficult for successive Governments to find the political will to overhaul the Existing Manpower Laws & Regulations. A combination of declining foreign investment and weakening domestic economic conditions has, at last, forced the current Government to “grasp the nettle” and try to dilute, although not eliminate, at least some of the most problematic aspects of the Existing Manpower Laws & Regulations.

The Government’s proposed changes to the Existing Manpower Laws & Regulations were originally set out in the Omnibus Bill on Job Creation (“**Omnibus Bill**”) which is now before the Peoples’ Consultative Assembly (“**DPR**”). In late April and faced with the prospect of major demonstrations by union members, the Government and the DPR agreed to remove, from the Omnibus Bill, the proposed changes to the Existing Manpower Laws & Regulations and otherwise defer further consideration of the same until the ongoing Covid-19 crisis is resolved.

## **ANALYSIS AND DISCUSSION**

### **1. Overview of Proposed Changes**

The proposed changes to the Existing Manpower Laws & Regulations were originally set out in Chapter IV of the Omnibus Bill.

If it had become law in substantially its original form, the Omnibus Bill on Job Creation would have amended numerous articles of the Existing Manpower Laws & Regulations.

An important aspect of the proposed changes is to make the termination of permanent employees (i) less restrictive, (ii) procedurally simpler and (iii) more cost efficient for employers.

As the proposed changes are so numerous, only the more significant of the proposed changes are dealt with specifically in Part 2 below.

The Omnibus Bill, in its original form, was unclear in numerous respects and singularly lacking in detail as to how many of the proposed changes to the Existing Manpower Laws & Regulations would be implemented in practice. The Omnibus Bill envisaged that the detail of the proposed changes would be set out in one or more implementing regulations. Accordingly, at this stage the proposed changes to the Existing Manpower Laws & Regulations are open to different interpretations which make it necessary to be careful about definitively stating what the proposed changes mean or how they will be implemented in practice if and when they eventually become law.

## 2. **Proposed Changes in Detail**

- 2.1 **Employment of Foreign Workers – Relaxation of Work Permit Requirements:** Indonesian companies have found it increasingly difficult, in recent years, to obtain work permits for foreign workers. This has been due to the (i) Government’s insistence that employers give priority to the employment of local workers and (ii) the stringent experience and formal qualification requirements that have to be satisfied by foreigners wanting to work in various sectors of the Indonesian economy.

The Government proposes to now make it easier for **certain** categories of foreign workers only to work in Indonesia by removing the existing requirement for the prospective employer company to obtain prior approval, from the Department of Manpower, of the Utilization of Foreign Manpower Plan (*Rencana Penggunaan Tenaga Kerja Asing* or “**RPTKA**”) which is currently a prerequisite for obtaining the notification from the Department of Manpower that serves as a work permit for each foreign worker (“**Notification**”).

RPTKA approval would **no** longer be required in the case of the following categories of foreign workers only:

- (a) members of the Board of Commissioners and the Board of Directors who are also shareholders of the relevant company;
- (b) production machinery maintenance workers in emergency situations;
- (c) specified vocational employees;
- (d) “start-up company” employees [**Note:** The draft Omnibus Bill did **not** provide any definition of what exactly is a “start-up company”];
- (e) persons travelling on business to Indonesia; and
- (f) persons undertaking research in Indonesia for certain or fixed periods.

Although, as originally drafted, the Omnibus Bill did not make the position entirely clear, the writer presently understands that (i) the fact RPTKA approval would no longer be required for certain categories of foreign workers was also intended to mean relevant foreign workers would not require Notifications but (ii) the relevant foreign workers would still require Temporary Residency Permits (“**ITAS**”).

It should be readily apparent to readers from the foregoing that, if and when the proposed changes become law, most foreign workers will still require both a Notification and an ITAS. However, any relaxation of the presently onerous Notification requirements, in the case of even some limited categories of foreign workers, is to be welcomed as a first step in the right direction.

- 2.2 **Fixed Term/Defined Period Agreements – Greater Flexibility:** As highlighted in the Background section above, Indonesia currently seeks to achieve long term employment continuity by requiring that all workers be employed on a permanent basis rather than on a fixed term or defined period basis unless the work to be

performed by the worker falls within one of a number of very limited categories. At the moment, fixed term or defined period employment is only allowed in the case of workers carrying out work that:

- (a) is temporary in nature;
- (b) can be completed within a maximum of three years;
- (c) qualifies as “seasonal” work; or
- (d) is in respect of new products that are still in the experimental or testing stage.

Because of how difficult and expensive it is to terminate permanent workers, even when economic conditions change, companies are understandably reluctant to take on additional workers unless the work to be performed can be brought within one or other of the limited categories in respect of which fixed term or defined period employment is possible. This is believed to be a significant disincentive for companies to expand their business activities and move into new business activities that have an uncertain future or are particularly susceptible to changing economic conditions.

The Government proposes to greatly increase the flexibility companies have as to the basis on which they employ workers. More particularly and as originally drafted, the Omnibus Bill envisaged that all types of work would, for the first time, be open to either fixed term/defined period employment or permanent employment at the discretion of the relevant company/employer and regardless of the nature of the activities to be performed by workers.

**2.3 Outsourcing – Greater Flexibility:** Because of the high cost of permanent employment and the difficulty of terminating permanent workers when economic conditions change, many companies (operating in labor intensive industries) have traditionally resorted to “outsourcing” arrangements whereby they enter into labor supply contracts with third party labor hire entities which employ the required workers and then make the services of those workers available to the companies as needed. The third party labor hire entities, rather than the companies actually receiving the benefit of the workers’ services, are responsible for compliance with the Existing Manpower Laws & Regulations.

The Government has traditionally responded negatively to outsourcing arrangements by imposing restrictions on the types of activities in respect of which outsourcing may be used. At the moment, outsourcing is meant to be confined to activities/work that are/is:

- (a) separate from the main business activities of the relevant company;
- (b) able to be carried out independently by the third party labor hire entity and its workers on the basis of standards set by the company;
- (c) supporting activities only such as cleaning and security; and

- (d) **not** directly related to production.

Self-evidently, the above restrictions greatly limit the circumstances in which outsourcing can legally be utilized. That said, it is well known that outsourcing is already widely used in practice and often in circumstances not strictly allowed by the Existing Manpower Laws & Regulations, thereby exposing the companies concerned to serious compliance issues.

The Government proposes to substantially change the outsourcing rules. To this end, the Omnibus Bill originally envisaged that **all** work/activities, regardless of type, would be allowed, for the first time, to be outsourced based on the individual discretion of each company.

- 2.4 **Working Hours and Overtime – Greater Flexibility:** The Existing Manpower Laws & Regulations include detailed provisions on working hours and overtime which can be quite restrictive in the case of certain industries such as energy, infrastructure and mining where work place demands can change rapidly and unexpectedly.

The Government wants to simplify and make more flexible the rules regarding working hours and overtime. To this end, the Omnibus Bill originally envisaged that:

- (a) maximum permitted working hours would be simplified to become:
- (i) 8 hours per day; and
  - (ii) 40 hours per week; and
- (b) maximum permitted overtime would be increased to become:
- (i) 4 hours (presently 3 hours) per day; and
  - (ii) 18 (presently 14 hours) hours per week.

- 2.5 **Rest Periods and Long Leave:** The Existing Manpower Laws & Regulations include detailed provisions on rest periods and long leave which can also be quite restrictive in the case of certain industries such as energy, infrastructure and mining where operations often take place in remote areas and finding cover/replacement workers, with the appropriate skills and experience, can be difficult.

The Government wants to simplify and make more flexible the rules regarding rest periods and long leave. To this end, the Omnibus Bill originally envisaged that:

- (a) the requirement for rest periods would be simplified to become:
- (i) 0.5 hours for every 4 hours of continuous work; and
  - (ii) 1 day for every 6 consecutive days of work; and
- (b) the requirement for compulsory paid long leave of not less than 2 months after 6 years of consecutive employment **would be eliminated altogether**. The

provision of paid long leave, its amount and timing would then become matters for each employer's discretion.

Compulsory paid long leave can be a significant expense and inconvenience for employers with large numbers of workers having many years of consecutive service. In industries facing challenging economic conditions and low margins, elimination of this expense would be very much welcomed.

- 2.6 **Salary and Minimum Wage Determination – New Focus:** With Indonesia's existing reliance on permanent employment arrangements, as well as the difficulty and cost involved in terminating permanent employees, it is not surprising that worker productivity is relatively low in Indonesia compared to other countries in South East Asia. This low productivity exacerbates the burden of high minimum wages for companies operating in low margin industries such as garment and shoe manufacturing.

The Government proposes to reform the process of salary and minimum wage determination so that the focus is on worker productivity and results achieved, as well as on hours worked, rather than just on hours worked. To this end, the Omnibus Bill originally provided that salary levels would henceforth be determined based on a combination of:

- (a) hours worked; **and**
- (b) **worker productivity/results achieved.**

Likewise, the Omnibus Bill originally introduced a new approach to minimum salary determination whereby the minimum salary, in each Province, would henceforth be determined according to the following formula:

$UMT + 1 = UMT + (UMT \times \%Pet)$  where:

- (a) UMT + 1 is the minimum salary, in the relevant Province, for the immediately following year;
- (b) UMT is minimum salary, in the relevant Province, for the current year; and
- (c) %Pet = GDP growth, in the relevant Province, for the current year.

Minimum salaries determined in accordance with the above formula would **not** apply to micro and small businesses. Although far from clear, it may also be the case that it was intended individual Governors would have the discretion to specify a different formula for determining minimum salaries applicable to labor intensive industries in their respective Provinces.

Workers and unions will undoubtedly have to undergo a material change in their current mind set in order to accept and become comfortable with the proposed move to salary and minimum wage determination based, at least in part, on productivity and results achieved.

- 2.7 **Bonus Payment – Incentive to Support Omnibus Bill:** The Government clearly recognizes that it will have to overcome considerable antipathy, if not outright opposition, from workers and unions to the proposed changes to the Existing Manpower Laws & Regulations. Accordingly, given the perceived importance of ensuring the proposed changes become law and thereby “kickstarting” the process of making Indonesia more competitive, the Government is proposing to offer workers a one-off bonus payment to “increase employee welfare” and as a **not** very subtle inducement to support the proposed changes to the Existing Manpower Laws & Regulations.

The Omnibus Bill originally provided that **existing** employees would receive a bonus payment:

- (a) in a maximum amount of 5 months’ salary for 12 years or more of service; and
- (b) payable not more than 1 year **after the Omnibus Bill became law.**

The bonus payment was **not** to apply to:

- (a) new employees (**i.e.**, persons only employed after the Omnibus Bill became law);
- (b) employees of micro and small businesses; and
- (c) **possibly**, employees earning more than Rp20 million per month.

It remains to be seen just how effective or otherwise the bonus payment will be in overcoming worker and union opposition to the proposed changes to the Existing Manpower Laws & Regulations.

- 2.8 **Employment Termination – Expanded Reasons:** Consistent with the Government’s intention to make it easier to terminate permanent employees, the Omnibus Bill originally provided that the currently very limited permitted reasons for termination of permanent employees would be expanded to include the following **additional** reasons:

- (a) the employer needs to undergo debt restructuring to overcome pressing financial difficulties;
- (b) the employer is declared bankrupt; or
- (c) the employer “commits an act harmful to the relevant employee” (**Note:** it is presently unclear just what this new reason was intended to cover).

- 2.9 **Employment Termination – Procedural Simplification:** In its original form, the Omnibus Bill also provided that termination of permanent employees would be possible:

- (a) where there was agreement between the employer and the relevant employee, **without** the need for:

- (i) tri-partite mediation/negotiation involving the Manpower Office; or
  - (ii) approval from the Industrial Relations Court; and
- (b) where there was **no** agreement between the employer and the relevant employee if termination occurs in various situations including the following **additional** situations:
- (i) the “working relationship expires” (**Note**: what precisely this means is presently unclear);
  - (ii) the employer is obliged to close due to force majeure; or
  - (iii) the employer is declared bankrupt

**without** the need for:

- (X) tripartite mediation/negotiation involving the Manpower Office; **but**
- (Y) with approval from the Industrial Relations Court.

2.10 **Employment Termination – Reduced Compensation:** Finally, the Omnibus Bill originally proposed to make some relatively modest changes to the compensation due to permanent employees in the event of their termination as follows:

- (a) the basic severance payment would **remain unchanged** with a maximum payment equal to 9 months’ salary after 8 or more years of employment; but
- (b) the long service payment was to **be reduced** to a maximum of 8 months’ salary after 21 or more years of employment from the existing maximum of 10 months’ salary after 24 or more years of employment.

As originally drafted, the Omnibus Bill did not make clear whether or not, in the case of termination due to the need to achieve greater business “efficiency”, the existing 100% loading of the severance payment amount otherwise due would continue to apply. It is **possible**, though, the Government intends to eliminate this additional cost.

2.11 **Social Security Protection for Terminated Workers:** Making it easier and less costly to terminate permanent employees inevitably gives rise to the issue of what happens to former permanent employees once they are terminated. In an endeavor to address this understandable concern, the Government proposes to introduce a new social security program for terminated workers to be administered by BPJS.

The Omnibus Bill originally provided that terminated workers would be entitled to so-called “Loss of Occupation Security” in the form of:

- (a) training;
- (b) certification;

- (c) cash facilities; and
- (d) placement assistance.

It remains to be seen how effective or otherwise the proposed Loss of Occupation Security will be in overcoming the concerns of workers and unions about the reduced job security inherent in the proposed changes to the employee termination provisions of the Existing Manpower Laws & Regulations.

### 3. **Future of Proposed Changes**

As originally drafted, the Omnibus Bill dealt with numerous matters apart from and not directly related to manpower and job creation including, somewhat bizarrely, mining. Nevertheless, it was those provisions of the Omnibus Bill, setting out proposed changes to the Existing Manpower Laws & Regulations, that received the greatest attention and public scrutiny.

The proposed changes to the Existing Manpower Laws & Regulations were formulated by the Government at a time when the Government's focus was squarely fixed on the need for reform in order to make Indonesia a more competitive destination for foreign investment, particularly in labor intensive industries such as manufacturing. With the subsequent "explosion" of the Covid-19 crisis in Indonesia, however, it is not surprising that the Government is now much more focused on avoiding mass unemployment and accompanying social unrest. To this end, the Government has reassessed the desirability of proceeding, **at this time**, with the proposed changes to the Existing Manpower Laws & Regulations.

The DPR was always less enthusiastic, than the Government, about the proposed changes to the Existing Manpower Laws & Regulations. Even before the Covid-19 crisis began to dominate people's lives in Indonesia, the DPR was already noticeably cautious about moving too quickly to pass the Omnibus Bill. Indeed, the DPR seemed reluctant to commence serious consideration of the Omnibus Bill at all. It is unclear whether the original caution and reluctance displayed by the DPR were merely feigned and simply part of behind the scenes "horse trading" of political favours and concessions in other areas in return for supporting the Omnibus Bill or, in fact, reflected genuine unease about some of the proposed changes to the Existing Manpower Laws & Regulations. Nevertheless, with the popular media now reporting the large scale "furloughing" of workers in the hospitality and retail industries, shutdowns of factories – both forced and voluntary and concerns about the ability of many employers to continue paying worker salaries and the impending Idul Fitri bonus, it is not surprising that individual DPR members and the political parties they represent have re-evaluated the likely impact, on their popular support bases, of being seen to support making it easier for employers to terminate workers and pay them less compensation in connection with such terminations.

It remains to be seen whether or not the deferral of further consideration of the proposed changes to the Existing Manpower Laws & Regulations is merely temporary. There must be a concern that the momentum for the proposed changes has stalled and the Government will be reluctant to push for renewed DPR consideration of the same any time soon. To the extent that the standing of the Government has been tarnished by its slow and inconsistent handling

of the Covid-19 crisis, it may also be more difficult for the Government to secure the political support it will need to progress the proposed changes to Existing Manpower Laws & Regulations once the Covid-19 crisis is resolved.

Indonesia's need for the proposed changes to the Existing Manpower Laws & Regulations will, however, be arguably greater than ever once the Covid-19 crisis is resolved. Indonesia's slow and inconsistent response to the Covid-19 crisis means that it is possible Indonesia will be one of the last countries to emerge from the Covid-19 crisis and, so, less well placed to attract new foreign investment than other South East Asian countries such as Vietnam which, for whatever, reason, seem to have coped better with the Covid-19 crisis than has Indonesia. If this, indeed, proves to be the case, then the obstacles that Indonesia faces in restoring employment to pre-Covid-19 levels, will be very considerable. Labor market reform could be a critical factor in overcoming these obstacles.

## **SUMMARY AND CONCLUSIONS**

The proposed changes to the Existing Manpower Laws & Regulations are unquestionably necessary in order to make Indonesia more competitive in attracting foreign investment, especially in labor intensive manufacturing industries.

If and when the proposed changes become law, there will be major benefits for energy, infrastructure and mining companies given that, individually and collectively, they employ large numbers of local workers.

Given the traditional reluctance of successive Governments to “benchmark” Indonesia against other South East Asian countries or even to recognize that Indonesia needs foreign investors at least as much as foreign investors need Indonesia, the current Government deserves considerable praise for promoting structural reform of the local labor market.

The Covid-19 crisis may well have put the future of many of the proposed changes to the Existing Manpower Laws & Regulations in doubt, at least for the time being and as a matter of short term political expediency. However, the very fact that structural reform of the local labor market is even being discussed, at the most senior levels of the Government, is a major step forward for Indonesia. It seems that, finally, major structural reform of the Indonesian labor market is no longer the “taboo” subject it has long been. This is real progress.

\*\*\*\*\*

*This article was written by Bill Sullivan, Senior Foreign Counsel with Christian Teo & Partners and Senior Adviser to Stephenson Harwood LLP. Christian Teo & Partners is a Jakarta based, Indonesian law firm and a leader in Indonesian energy, infrastructure and mining law and regulatory practice. Christian Teo & Partners operates in close association with international law firm Stephenson Harwood LLP which has ten offices across Asia, Europe and the Middle East: Beijing, Dubai, Hong Kong, London, Paris, Piraeus, Seoul, Shanghai, Singapore and Yangon.*

## Get in touch



**Bill Sullivan**

T: +62 21 5150 280  
M: +62 815 8506 0978  
E: bsullivan@cteolaw.com



**Christian Teo**

T: +62 21 5150 280  
M: +62 818 124 747  
E: cteo@cteolaw.com



**Claudius Novabianto**

T: +62 21 5150 280  
M: +62 818 0858 9235  
E: cnbianto@cteolaw.com