

AHP - OMNIBUS LAW 2020: Overview Series



After much debate, the Indonesian House of Representatives finally approved the Omnibus Law. In anticipation of the questions that will arise, we will be launching a series of client update titled "**Omnibus Law 2020: Overview Series**" within the upcoming weeks. The updates will dissect and discuss the various elements and issues of the Omnibus Law.

It has come to our attention that there are multiple drafts of the bill in public circulation. Analysis may differ depending on which version of the draft is used as the basis. We continue to monitor this evolving situation, with various teams currently examining the bill to produce updates that are relevant to you. As always, we are committed to supporting you with advice and guidance. You can find a list of our past client alerts on our AHP Newsletters.

If you have any questions or concerns, please contact our attorneys or the BD team at BD@ahp.id.

Indonesia's Omnibus Law: Explained

On 5 October 2020, the Legislation Body of the House of Representatives of the Republic of Indonesia ("DPR") and the Indonesian government agreed to pass the Omnibus Bill on Job Creation or what is commonly known as the Omnibus Law. The bill is a breakthrough effort by the government to comprehensively amend 76 sectoral laws and amend or revoke hundreds of regulations to create job opportunities and improve Indonesia's investment ecosystem.

Within seven days after the date of the plenary meeting at DPR on 5 October 2020, the bill will be delivered to the President, who is expected to sign the bill into law. Failing which, it will automatically become law within 30 days after the draft bill is jointly agreed by the President and DPR.

From the beginning, the Omnibus Law has attracted both criticisms and applauds. Despite its controversial deliberation process, many, including the government, believes that the Omnibus Law will

accelerate Indonesia's national economic growth and encourage reform of the country's regulatory system, which in turn will make Indonesia more favourable for investment in today's global economy. Oppositions against the Omnibus Law have mostly come from labour groups, NGOs, and students, all of whom have regularly expressed their rejection through a series of mass rally.

Compared to the initial draft released in early April 2020, which amended a total of 79 laws,¹ the final draft amended a total of 76 laws. Seven laws have been excluded from the initial draft, namely:²

1. Law No. 40 of 1999 on Press;
2. Law No. 20 of 2003 on National Education;
3. Law No. 14 of 2005 on Teachers and Lecturers;
4. Law No. 12 of 2012 on Higher Education;
5. Law No. 20 of 2013 on Medical Education;
6. Law No. 4 of 2019 on Midwifery; and
7. Law No. 20 of 2014 on Standardisation and Conformity Assessment.

On the other hand, the Omnibus Law includes the amendment of four new laws as follows:³

1. Law No. 6 of 1983, in conjunction with Law No. 16 of 2009 on the General Rules and Guidelines on Taxation;
2. Law No. 7 of 1983, in conjunction with Law No. 36 of 2008 on Income Tax;
3. Law No. 8 of 1983, in conjunction with Law No. 42 of 2009 on Value-Added Tax on Goods and Services and Tax of Luxury Goods; and
4. Law No. 18 of 2017 on the Protection of Migrant Workers in Indonesia.

The Bigger Picture

The Omnibus Law consists of 15 chapters and 186 articles, spanning over 900 pages, and covering these main subjects:

1. investment growth and licensing leniency;
2. protection and enforcement of small-medium scale enterprises and cooperative;
3. employment;
4. research and innovation;
5. ease of doing business;
6. land procurement;
7. economic area;
8. central government investment and national strategic projects;
9. government administration; and
10. sanctions.

This is by far the most ambitious and complicated piece of legislation in Indonesia, covering many sensitive areas, such as employment, that previous governments have refused to touch.

There are several ways in which the Omnibus Law seeks to address problems that often become the source of regulations overlap and inconsistency. First, it enables the central government to set standards and criteria for local and ministerial-level regulations. The Omnibus Law states that a local regulation cannot be inconsistent with the regulations above it. The simplification and synchronisation of regulations in Indonesia is much needed, considering that local regulations sometimes present a stumbling block to investment and ease of doing business.

Second, the Omnibus Law simplifies the licensing process in Indonesia by bringing it under the central's government authority and integrating it in the online submission system ("**OSS**") platform. Currently, the OSS is managed by the Indonesia Investment Coordinating Board or BKPM. Online submission will bring transparency and eradicate corruption in the licensing process. At the same time, this centralisation of power in the central government will allow the government to operate more efficiently and effectively.

Constitutionality Challenge

In April 2020, three NGOs filed a lawsuit against the President of the Republic of Indonesia at the Jakarta Administrative Court to demand the revocation of the Presidential Letter (Supres) of the Omnibus Law.⁴ The hearings had been completed and parties are now awaiting the court decision.⁵

Keeping in mind that the government and the DPR had already concluded the deliberation of the Omnibus Law, any challenge in the future will have to be brought by way of a petition for judicial review to the Constitutional Court.

A Long Road Ahead

By any measure, the Omnibus Law is an ambitious project. This one-fits-all law amends 76 cross-sectoral laws, which consequently will require the government to undertake a process of harmonisation and synchronisation of existing laws, on top of making new regulations in the form of a government regulation, presidential regulation, ministerial regulation or decree, that are hierarchically placed below the Omnibus Law.⁶ It is expected that at least 39 new government and presidential regulations will be drafted and passed within three months after the enactment of the Omnibus Law.⁷

The biggest task will be the massive synchronisation of regulations. Under the Omnibus Law, all regulations will be reviewed against the regulations or laws above it for inconsistency. We expect that the majority of the 39 new regulations will specifically deal with this task.

Because these implementing regulations will be key in ensuring that the Omnibus Law can be implemented effectively and achieve its intended purpose, our hope is that these regulations will be issued in a timely manner. While some have said that the timing is not ideal, reform to Indonesia's bureaucracy and regulatory system is long overdue.

1. Coordinating Ministry of Economic Affairs, Press Release No. HM.4.6/137/SET.M.EKON.2.3/10/2020 re. Omnibus Law is Approved, Protection of Small-Medium Scale Enterprises and Priority of Workers, dated 4 October 2020.
2. Ibid.
3. Ibid.
4. Case Tracking Information System (SIPP) of the Administrative Court of Jakarta https://sipp.ptun-jakarta.go.id/index.php/detil_perkara
5. Ibid.
6. Article 181 of the Omnibus Law.
7. Article 185 of the Omnibus Law.

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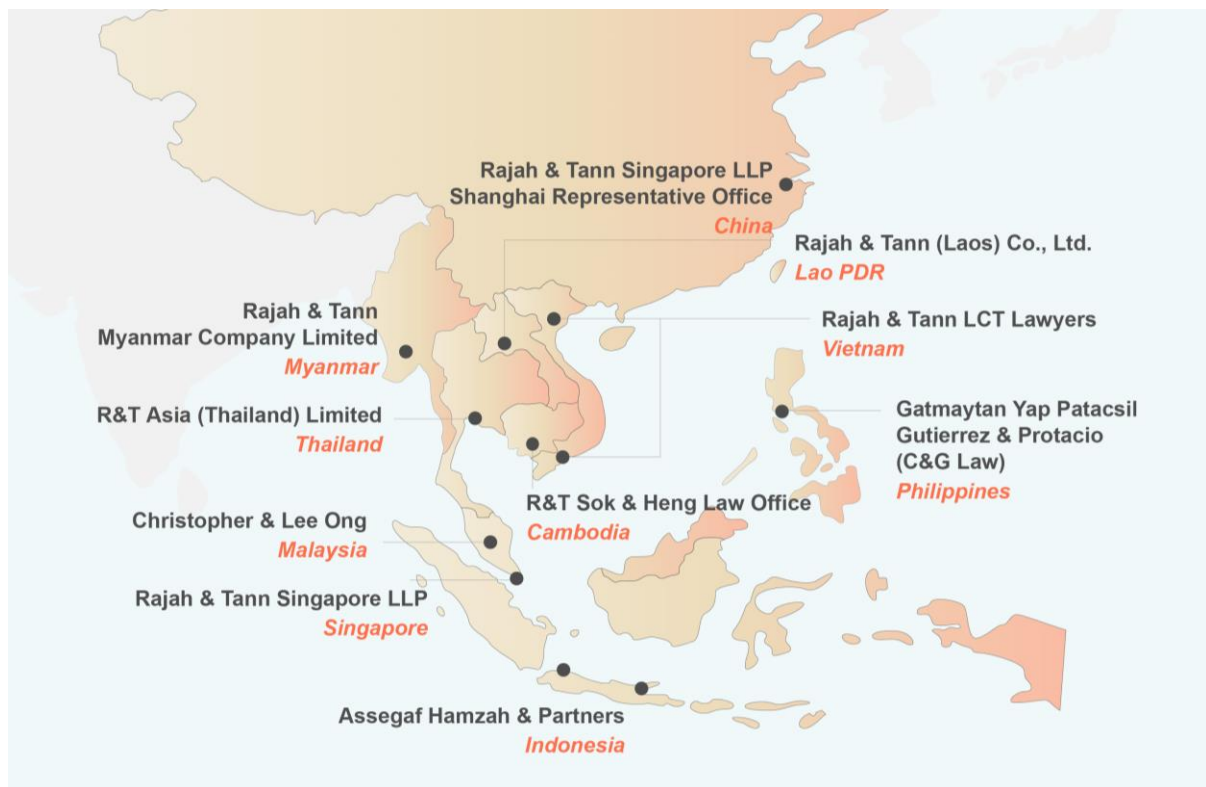
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