
Finding a New Equilibrium in Indonesia's Employment Law?



After much debate, the Indonesian House of Representatives finally approved the Omnibus Law. The second edition of "**Omnibus Law 2020: Overview Series**" will highlight changes in the **employment** sector.

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 our alerts on the Omnibus Law [here](#).

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

In Indonesia, as in many other countries, employment law is often a sensitive issue, and past governments have shied away from resolving issues surrounding employment. With the enactment of the Omnibus Law, various provisions of the current Labour Law (Law No. 13 of 2003) that are deemed to be "too restrictive" or "too difficult" are either removed entirely or updated.

Among the provisions that are being updated by the Omnibus Law includes provisions on termination of employment, compensation for termination of employment, outsourcing, fixed-term employment, work permit for expatriates, and the establishment of a new social security program called the loss of employment security program.

Termination of Employment

The Omnibus Law still applies an exhaustive list for the basis for termination of employment and the majority of the basis for termination remain the same as that set out in the Labour Law. But the Omnibus

Law added new grounds for termination: a spin-off of the company, the filing of a suspension of debt payment petition against the company, and a declaration of bankruptcy against the company.

In addition, the termination process has now been simplified by taking out the requirement to obtain the court's approval before termination of employment. There is also no longer the requirement to issue three consecutive warning letters before termination of employment due to the employee's violation of the employment agreement, company regulation or collective labour agreement.

Termination for Corporate Actions

The Omnibus Law acknowledges corporate actions as a basis to terminate employment. Under Article 154A of the Omnibus Law, a merger, consolidation, acquisition, and spin-off are listed as reasons for termination. Unfortunately, the Omnibus Law does not state the exact amount or formula of the termination payment that a company must pay in this event.

Termination Payment

While the Omnibus Law retains the formula for the termination payment, there is a difference with the formula in the Labour Law. Previously, under the Labour Law, an employee who have worked for more than 24 years could receive a termination payment of up to 32.2x of his monthly salary. This amount appears to have been reduced to 19x of an employee's monthly salary.

What is missing under the Omnibus Law is the criteria that links the termination payment formula with the grounds of termination, which would give employees the final figure that they would receive in the end. For now, we can only assume that until a government regulation on this matter is issued, an employer would need to rely on the termination payment provision set out in their employment agreement, company regulation or collective labour agreement.

The Omnibus Law also introduces a new post-employment benefit that will be managed by a new body that will be supported by the government.

Minimum Wage

Here, the Omnibus Law puts the power to set minimum wage to the hands of the provincial government. In certain conditions, a governor may even set the minimum wage for regencies or municipalities in their province.

The Omnibus Law also took out the minimum wage provision based on industry sector.

Outsourcing

Outsourcing, one of the most contentious issues in labour law, is now easier. The Omnibus Law took out provisions regarding the outsourcing of work and labour, and as a result, there is no longer a limitation on the type of work that an outsourced employee can conduct.

But the Omnibus Law introduces new obligations on the outsourcing company that are designed to protect and guaranteed the outsourced employees' welfare and interest. Now, an outsourcing company must employ its employees under a fixed-term or permanent employment agreement, which must include a provision on the transfer of undertaking for employment protection (TUPE). An outsourcing company must also be in the form of a limited liability company and be licensed by the central government.

Given the complexity of outsourcing, we expect that the government will issue specific implementing regulation to address the public's concern in this area.

Fixed-Term Employment

The existing labour law puts a lot of restrictions on temporary work arrangement, including limiting contract period to a total of three years. This limitation has now been taken out by the Omnibus Law.

The Omnibus Law, however, maintains the restriction that a temporary work arrangement can only be applied to a work that is temporary in nature. The potential consequence of a temporary work arrangement being deemed as a permanent employment due to failure to comply with this requirement has also been retained.

Expatriate Work Permit

With respect to expatriate work permit, the Omnibus Law simplifies and cements the current prevailing practise on work permits, which has been in place since 2018 under Ministry of Manpower Regulation No. 10 of 2018, by not requiring expatriates to obtain a work permit (*Izin Mempekerjakan Tenaga Kerja Asing*).

Employers are still required to obtain Foreign Manpower Utilisation Plan (*Rencana Penggunaan Tenaga Kerja Asing* or "RPTKA"), except for vocational and start-up companies. Employment of foreign directors and commissioners is also excluded from RPTKA.

The Omnibus Law retains the prohibition to employ foreigners in a human resources position, as well as the requirement only to employ expatriates under a fixed-term employment agreement.

New Job Security Program

The Omnibus Law introduces a loss of job security program to be implemented by BPJS, Indonesia's social security implement agency. This program will be administered by BPJS and the government. Individuals enrolled in the program will be eligible to receive a cash payment, work-related training and access to the job market. Again, we expect that this program will be further covered in an implementing regulation.

It is expected that the government will roll out implementing regulations to the Omnibus Law in the next three months. For now, we have to wait and see whether the government will fill in the gaps from the Omnibus Law not only by giving certainty, but also regulating many of the sustenance that were previously in the Labour Law. Coupled with the fact that employment is a sensitive area, changes in this sector may take some time to implement due to technical and political hurdles.

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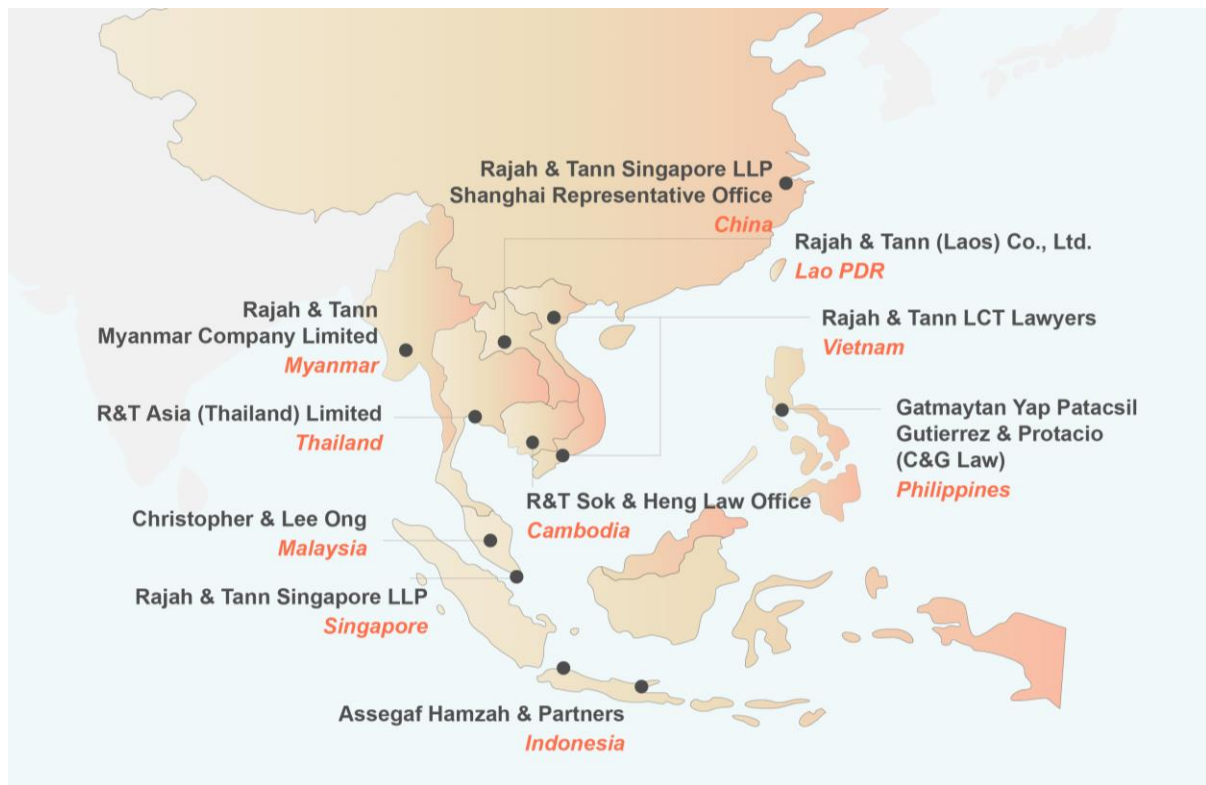
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