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CHANGES IN THE EMPLOYMENT REGULATIONS REGIME: TEMPORARY EMPLOYEE, OUTSOURCING, TERMINATION OF EMPLOYMENT, MINIMUM WAGE AND SOCIAL SECURITY PROGRAM

The employment sector is one of the clusters that has received the most attention since the issuance of the Omnibus Law. Following our previous newsletter [[click here to read](#)], there were uncertain matters that have not been regulated under the Omnibus Law considering those matters that will be further regulated under the government regulations. Finally, the government of Indonesia issued several regulations in the employment cluster to accommodate the implementation of particular provisions in the Omnibus Law. The Ministry of Manpower also unveiled a regulation to support the implementation of the relevant government regulation.

The implementation regulations comprise of the following:

- 1) Government Regulation No. 35 of 2021 on the Temporary Employment Agreement, Outsourcing, Working Hours and Breaks and Termination of Employment Relationships (“**GR No. 35/2021**”), which came into force on 2 February 2021;
- 2) Government Regulation No. 36 of 2021 on the Wages (“**GR No. 36/2021**”), which came into force on 2 February 2021;
- 3) Government Regulation No. 37 of 2021 on the Job Loss Security Program (“**GR No. 37/2021**”), which came into force on 2 February 2021; and
- 4) Ministry of Manpower Regulation No. 7 of 2021 concerning the Procedure of Participant’s Registration and Recomposition Implementation of Internal Contributions on the Job Loss Security Program (“**MoM Regulation No. 7/2021**”), which came into force on 1 April 2021.

The highlight’s points of the respective government regulations are as follows:

1. Temporary Employment Agreement, Outsourcing, and Termination of Employment Relationship based on the GR No. 35/2021

A. Temporary Employment Agreement/*Perjanjian Kerja Waktu Tertentu* (“PKWT”)

GR No. 35/2021 clarifies the legal loopholes that previously PKWT may be made continuously. Now, PKWT shall be registered online by the employer to the Ministry of Manpower within 3 (three) business days as of the signing of the PKWT. If the online registration is not available yet, the registration shall be conducted manually within 7 (seven) business days as of the signing of the PKWT in writing to the Ministry of Manpower. Furthermore, PKWT consists of three types, among others:

- a. PKWT based on period of time

This kind of PKWT may be applied for particular works (such as work that would not take a long time to complete, seasonal work or work for the new products, new

activities or additional product that are still in a try-out phase). PKWT may be implemented for a maximum of 5 (five) years including its extension. It is worth noting that the GR No. 35/2021 does not limit the maximum times for the extension. Hence, it can be construed that PKWT may be made several times as long as the overall PKWT period and its extension do not exceed 5 (five) years.

b. PKWT based on completion of certain work

PKWT based on completion of certain work shall contain (i) the scope and limitations for a work to be declared complete; and (ii) the length of time for completion of work that is adjusted to the completion of a work. GR No. 35/2021 allows the parties to terminate this PKWT upon the completion of work even though the work can be finished earlier than the agreed time.

Nevertheless, if the work cannot be completed within the agreed time, the PKWT period may be extended to a certain time limit until the completion of work. The GR No. 35/2021 does not cap the extension period.

c. PKWT for Daily Employee

This PKWT is intended for other certain works whose types, nature, or activities are temporary in nature (such as those works whose time and volume of work, as well as payment of employees' wages are dependent on their attendance). This employment relation may be carried out under PKWT for daily work and the employee may only work for less than 21 (twenty one) days in 1 (one) month. If the said employee works for 21 (twenty one) days or more in 3 (three) consecutive months or more, such relevant employee's status will become a permanent employee under a Permanent Employment Agreement/*Perjanjian Kerja Waktu Tidak Tertentu* ("PKWTT").

Currently, unlike previously, PKWT does not require the terminating party to pay the remaining contract value. This is because the GR No. 35/2021 regulates that the compensation shall be paid upon the termination of PKWT by the employer to the employee with working period of at least 1 (one) month continuously. The compensation for the employee who works for 12 (twelve) consecutive months shall be his/her 1 (one) monthly salary. Meanwhile, the compensation for the employee who is having service period of (i) 1 month or more, but less than 12 (twelve) months; or (ii) more than 12 (twelve) months, shall be calculated with the following formula:

$$\frac{\text{work period}}{12 \text{ (twelve)}} \times 1 \text{ (one) monthly salary}$$

Please note that the compensation does not apply to the foreign workers employed based on PKWT. The amount of compensation for the employee working at micro-scale business and small-scale business shall not use the above formula, but based on the agreement between the employer and the employee.

All in all, GR No. 35/2021 mandates the employer to pay the compensation, regardless the PKWT is terminated by the employer or the employee.

B. Outsourcing

The employment relationship between the outsourcing company and the employee shall be proved by the PKWT or PKWTT. Outsourcing company will be in charge for the worker/laborer's protections, wages, benefits, job conditions, and any disputes that may occur.

In the event that the outsourcing company hires employees based on PKWT, then the said PKWT shall require a transfer of rights' protection for the employee if there is a change of outsourcing company and as long as the work object still exists.

C. Termination of Employment

Generally speaking, voluntarily resignation or a various specific factors such as corporate actions (merger, acquisition or spin-off), efficiency, liquidation, force majeure, bankruptcy, suspension of debt payment obligations, criminal acts by the employer, employee is absent for 5 business days consecutively without a written information, prolonged illness or disability suffered by the employee or other specific reason regulated under GR No. 35/2021, can be used as a reason(s) to terminate the employment relationship between the employer and the employee.

GR No. 35/2021 requires the termination to be performed by providing the notification letter and delivered no later than 14 (fourteen) business days prior to the termination of employment relationship. While if the termination occurs in the probation period, the notification letter must be delivered by no later than 7 (seven) business days prior to the termination of employment relationship.

If the employee does not have any objection to the notification letter upon receiving the same, it will be regarded as the acceptance of termination. Nevertheless, suppose the employee refuses the termination, then the employee shall submit such refusal in writing at the latest 7 (seven) business days as of receiving the notification letter and also conduct bipartite negotiation. If the negotiation fails, the parties shall settle it through industrial relation court.

GR No. 35/2021 also stipulates the termination packages case by case in detail.

2. Minimum Wages Under the GR No. 36/2021

GR No. 36/2021 elucidates that the minimum wage is applicable to workers who have worked for less than 1 (one) year. Meanwhile, the wages' structure and scale at the relevant company will apply to workers who have worked for 1 (one) year or more. Now, the minimum wage shall consist of provincial minimum wage or regency/city-level minimum wage with certain conditions (regional economic growth or inflation in the relevant regency/city). Besides, under this GR No. 36/2021, the Governor is no longer allowed to determine the sectoral minimum wage, but the sectoral minimum wage which was issued before 2 November 2020 shall remain

valid until the relevant decree expires or minimum wage is determined higher than sectoral minimum wage.

Bearing in mind that micro and small enterprises are exempted to pay the minimum wages since the wages must be determined by both parties' agreement under the following criterias:

- a. at least 50% (fifty percent) of the average public consumption at the provincial level; and
- b. the agreed wage's value shall be at least 25% (twenty five percent) above the poverty line at the provincial level.

The above approach mandates the micro and small-scale enterprises that are excluded from paying minimum wage to take into consideration to rely on traditional resources and/or not participate in high-tech or capital-intensive activities.

3. **Job Security Program Under the GR No. 37/2021 and MoM Regulation No. 7/2021**

In an attempt to maintain a decent living standard when the workers lose their jobs, GR No. 37/2021 and MoM Regulation No. 7/2021 require employers to include workers as members in the Unemployment Insurance Program/*Jaminan Kehilangan Pekerjaan* ("**JKP Program**") organized by the Social Security Agency for Labor and the Central Government. The requirements for the employee to be registered under JKP is that such employee shall be an Indonesian nationality, who has not reached the age of 54 (fifty four) years old during registration, and has an employment relationship with the company.

JKP Program provides benefits in the form of cash, access to job market information and job training from the JKP Program's monthly contribution made by the employers.

Note: The content of this article does not constitute legal advice and should not be relied upon since there will be implemented regulation(s) to be further issued. The judge's opinion may also be different, due to the facts relevant to the case. If you need specific advice related to this topic, please contact us by email through info@yangandco.com.