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EMPLOYMENT ALERT: UTILIZATION OF EXPATRIATES

Commonly, the utilization of expatriates in Indonesia reflects a need for talent in certain positions. The employment of such foreign workers in Indonesia must be in accordance with the procedures for using foreign workers, as ordinarily regulated by the government and/or the Minister of Manpower. Upon the enactment of the Omnibus Law, provisions regarding foreign workers have undergone regulatory changes in the employment cluster. Following our previous newsletter [[click here to read](#)], there are uncertain matters related to the use of expatriates that have not been regulated under the Omnibus Law.

In 2021, the Indonesian government issued a regulation in the employment sector regarding the utilization of expatriates under the Government Regulation No. 34 of 2021 concerning the Utilization of Foreign Workers (“**GR No. 34/2021**”), which came into force on 1 April 2021. To espouse the implementation of GR No. 34/2021, the Ministry of Manpower has also enacted the Ministry of Manpower Regulation No. 8 of 2021 (“**MoM No. 8/2021**”), which is concerned with its implementation. Kindly note that the MoM No. 8/2021 revoked and repealed both the Ministry of Manpower’s Regulation No. 10 of 2018, concerning the Utilization of Foreign Workers (“**MoM No. 10/2018**”), and the Minister of Manpower and Transmigration Decree No. KEP.223/MEN/2003 concerning the Occupations in Educational Institutions that are Exempted from the Obligation to Pay Compensation.

Through this newsletter, we would like to highlight some important points regarding the GR No. 34/2021 and MoM No. 8/2021, which are as follows:

The Scheme of Utilization of Foreign Workers

A. Obligations and Prohibition of Foreign Workers’ (“TKA”) Employer

Any TKA Employer shall employ the TKA through the Foreign Workers’ Utilization Plan/*Rencana Penggunaan Tenaga Kerja Asing* (“**RPTKA**”). TKA Employers shall submit an online application to the Ministry of Manpower (“**MoM**”) through <https://tka-online.kemnaker.go.id/> (“**TKA Online**”). Furthermore, every TKA Employer is obliged to hold a RPTKA ratified by the MoM or other appointed officials. Additionally, TKA Employers are defined as legal entities incorporated under Indonesian law or other entities permitted to hire TKA. However, individual legal entities are not considered as TKA Employers. Article 3 of MoM No. 8/2021 details the forms of various TKA Employer entities in context.

Any TKA that are employed under one TKA Employer may be employed by another, with the approval of the first TKA Employer if it is within the first employer’s RPTKA validity period, for the same position as: (i) a director or commissioner; or (ii) TKA in the vocational education and vocational training sector, digital economy sector and oil-and-gas sector for cooperation contract contractors.

A TKA Employer has obligations to appoint Indonesian workers as TKA's understudies for the transfer of technology and expertise from TKA by providing an education and training for TKA's understudy workers. Other than that, the TKA Employer shall also return the TKA to his/her original country after the employment agreement expires. Nevertheless, such obligations do not apply to any TKA which are a director, commissioner, head of representative office, advisor, administrator, supervisor of foundation or employed for a temporary work.

In addition, TKA Employer must register TKA in the national social security program, should they work for more than 6 (six) months. Any TKA that work for less than 6 (six) months must be registered in an insurance program from an insurance company. TKA Employer must report once in a year to the MoM or the appointed official for the (i) implementation of recruitment of TKA, education; (ii) job training for TKA's understudy workers; and (iii) transfer of technology and expertise from TKA to TKA's understudy workers; and (iv) the expiration of the employee agreement on the temporary work of TKA.

Aside from the obligations above, GR No. 34/2021 stipulates that the prohibitions on the employment of TKA would be, as follows:

- i. individual employer to hire TKA;
- ii. TKA Employer to recruit TKA with multiple positions in the same company; and
- iii. TKA Employer to employ TKA in positions which are in charge of personnel fields.

B. Application Procedures of RPTKA

The steps for application are as follows:

- a. application for RPTKA's validation;
- b. eligibility assessment for RPTKA's approval;
- c. uploading data;
- d. Compensation fund for the Utilization of TKA/*Dana Kompensasi Penggunaan TKA* ("DKPTKA") payment; and
- e. validation of RPTKA.

After the payment of the DKPTKA is fully made, the validation of RPTKA will be issued by the MoM. Nonetheless, the validation of RPTKA is not applicable for any TKA who are (i) a director or commissioner who holds shares; (ii) diplomatic and consular staff at representative offices of foreign countries; or (iii) TKA for production activities that are stopped due to the emergency, vocational, technology-based start-ups, business visits and research for a certain period.

Unlike MoM No. 10/2018, the validation of RPTKA under MoM No. 8/2021 can be functioned as a recommendation to obtain the visa and stay permit for TKA to work in Indonesia. Thus, to obtain the visa and stay permit, a TKA Employer no longer needs to apply for the notification as referred to in MoM No. 10/2018.

In addition, MoM No. 8/2021 provides that a director or commissioner who holds the shares can obtain a recommendation for visa and stay permit to work in Indonesia from the Indonesian Investment Coordinating Board/*Badan Koordinasi Penanaman Modal*. On the other hand, a diplomatic and/or consular staff at representative offices of foreign countries can obtain such a recommendation from the Ministry of Foreign Affairs.

Aside from the above, MoM No. 8/2021 provides special oversight for TKA that work in the technology-based and vocational start-ups' sectors. Any TKA who work in these sectors for more than 3 (three) months, must hold the RPTKA ratification. In contrast, they do not need the RPTKA validation if they work for less than 3 (three) months. However, TKA Employers in these sectors that are not required by the MoM to ratify the RPTKA must still submit the TKA's data through TKA Online. These provisions were previously not regulated by the MoM No. 10/2018.

C. Sanctions

The sanctions for any violation of MoM No. 8/2021 consist of fines, temporary suspension of the application for RPTKA validation and/or revocation of the RPTKA validation. In particular, the fines will be imposed upon TKA Employer that employs TKA without the RPTKA, whereby the amount depends on how many months the TKA dwells in Indonesia.

Upon the issuance of MoM No. 8/2021, any TKA licenses that have not yet expired will remain valid until their expiration date and any TKA licenses that are in the submission process shall comply with the provisions under the MoM No. 8/2021.

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