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Indonesia ATD MHM Newsletter

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OVERVIEW ON THE CHANGES SET OUT UNDER PERPPU NO. 2 OF 2023 ON JOB CREATION

Introduction

Law No. 11 of 2020 on Job Creation (“Job Creation Law”) was enacted on November 2, 2020, and considered a breakthrough approach by the Indonesian Government. It is the first law covering a comprehensive set of regulations in an omnibus format that governs and amends laws and regulations in various sectors. The issuance of the Job Creation Law is intended to boost the growth of the Indonesian national economy, ease doing business and increase investment opportunities, and ultimately create more job opportunities in Indonesia.

As a breakthrough legal instrument, there were questions about the constitutionality of the Job Creation Law. On November 25, 2021, the Constitutional Court declared the Job Creation Law conditionally unconstitutional due to it being procedurally flawed for adopting the omnibus format by the Constitutional Court Decision No. 91/PUU-XVII/2020 (“MK Decision”). Based on such MK Decision, the Constitutional Court gave Indonesian Government 2 (two) years to rectify the Job Creation Law.¹

As a response towards the MK Decision, on December 30, 2022, Indonesian Government responded by issuing Government Regulation in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang – “Perppu”) No. 2 of 2022 on Job Creation (“Job Creation Perppu”), which came into force on the same date of its enactment.²

¹ In response to the MK Decision, Indonesian Government issued Law No. 13 of 2022, amending Law No. 12 of 2011 on the Formation of Laws and Regulations (“Law No. 12/2011”), in order to accommodate the use of omnibus format in Indonesian regulatory framework.

² Government Regulation in lieu of Law (or, Perppu) is stipulated under Law No. 12/2011 as a regulatory instrument that can be issued by the President if there is a compelling urgency—which is determined based on the subjective perspective of the President. However, under the regulation there is no period for the House of Representatives.

Below we highlight key-items under the Job Creation Perppu:

1. General Overview on the Job Creation Perppu and its Impact towards the Output under the Job Creation Law

While the Job Creation Perppu is intended to amend Job Creation Law, based on our review, most of the provisions and amendments that were introduced under the Job Creation Law remains the same under the Job Creation Perppu (save for employment and tax, as discussed in section 2 and 3 below), among others:

- ➔ Classification of and stipulation on risk-based business licensing;
- ➔ Implementation of Spatial Plan Conformity (Kesesuaian Kegiatan Pemanfaatan Ruang), Environmental Approval (Persetujuan Lingkungan), and Building Approval (Persetujuan Bangunan Gedung);
- ➔ Establishment of micro or small-scale business/legal entity individually;
- ➔ Establishment of Sovereign Wealth Fund (which already established and currently known as Indonesia Investment Authority/INA);
- ➔ Establishment of Land Bank (Bank Tanah);
- ➔ Stipulation on wider use of Right to Manage (Hak Pengelolaan); and
- ➔ Stipulation on eligibility of foreign ownership for strata title of ownership (Hak Milik atas Satuan Rumah Susun/HMSRS) for an apartment built over land with Right to Build (Hak Guna Bangunan).

Furthermore, the Job Creation Perppu also validated the output resulting from Job Creation Law, namely:

- ➔ all licenses, permits and certificates e.g., halal certificates and feasibility certificates (including sectoral licenses and permits) that were issued prior to and under the Job Creation Law will continue to be valid until their respective expiry dates (if any);³
- ➔ legal entities established under Job Creation Law will continue to be valid until their respective expiry dates;⁴ and
- ➔ all governmental actions under the Job Creation Law will continue to be valid and effective provided such actions are consistent with good government governance e.g., issuance of ministry-level regulation revoking several of previous regulations due to the issuance of Job Creation Law.⁵

2. Different Provisions under the Job Creation Perppu

- (a) Law No. 13 of 2003 on Manpower (“Manpower Law”)

³ Article 182 point a and b of Job Creation Perppu. Furthermore, permits and licenses that are still being processed shall be issued according to the Job Creation Perppu according to Article 182 point d of Job Creation Perppu

⁴ Article 182 point c of Job Creation Perppu

⁵ Article 182 point e of Job Creation Perppu

Previously, Job Creation Law removed provisions regarding outsourcing under Manpower Law.⁶ As such, there was an unclear interpretation towards outsourcing arrangement in Indonesia, particularly on whether or not core business activities can be transferred to outsourcing companies. However, the Job Creation Perppu reinstated such provision. Essentially, under the Job Creation Perppu, the Indonesian Government will issue an implementing regulation to govern outsourcing arrangement including which business function/activities that can be outsourced to outsourcing companies.

Further, the Job Creation Perppu added a provision to allow Indonesian Government to determine the minimum wage formula in certain situations, e.g., disaster as determined by the President, global and/or national economic crisis situation such as non-natural pandemic disaster.

(b) Provisions regarding taxes

While previously Job Creation Law elaborated several amendments on taxes, Job Creation Perppu removed several of such amendments as it has been regulated/amended under Law No. 7 of 2021 on Harmonization of Tax Regulations.

3. Closing Provisions of Job Creation Perppu

Under Article 184 of Job Creation Perppu, any implementing regulations (i) of the laws amended by Job Creation Perppu; and (ii) issued under Job Creation Law, will continue to apply unless contradictory to the Job Creation Perppu. After the law standardizing the attorneys' fee was abolished in April 2004, legal fee based on hourly rate was introduced but contingency fee agreements remain popular for domestic litigation proceedings in Japan. This is in contrast with Singapore, where hourly rate has been and still is the norm in litigation proceedings, whereas CFAs are still new and yet to gain popularity.

Conclusion

There have not been many changes made to the Job Creation Perppu in comparison to the Job Creation Law, as it almost merely re-stated stipulations under the Job Creation Law. The Job Creation Perppu is also seen as a quick solution to comply with requirement in the MK Decision to rectify the Job Creation Law. It remains to be seen how effective the Job Creation Perppu is as pending approval by the House of Representatives, the status of Job Creation Perppu can still be questioned whether it has effectively revoked the Job Creation Law.

⁶ This includes the revocation of implementing regulation on outsourcing i.e., Minister of Manpower Regulation ("MOM Reg.") No. 19 of 2012 (as amended by MOM Reg. No. 27 of 2014) on Terms and Conditions of Outsourcing which was revoked on November 12, 2021, by MOM Reg. No. 23 of 2021 on Revocation of Minister of Manpower Regulation due to the Promulgation of Job Creation Law.



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The information provided in this bulletin is summary in nature and does not purport to be comprehensive or to render legal advice.

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