LABOUR LAW REFORM IN INDONESIA

A COMPARISON WITH INTERNATIONAL LABOUR STANDARDS

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Mondiaal FNV

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INTRODUCTION

In October 2020, the Indonesian Parliament passed the Omnibus Law (Law No. 11/2020 on Job Creation), introducing significant changes in the country's legislative regime on employment, investment, immigration, environmental standards, business licensing, and building permits. In the field of employment, it revised several articles in the following laws: Law No. 13/2003 on Manpower; Law No. 18/2017 on Foreign Workers; Law No. 40/2004 on National Social Security; and Law No. 24/2011 on Social Security Agency.

Earlier this year (2021), the Indonesian Government issued the following four implementing regulations to facilitate implementation of the Omnibus Law.

1. Government Regulation No. 34 of 2021 on foreign manpower **(GR 34)**;
2. Government Regulation No. 35 of 2021 on fixed-term employment, outsourcing, hours of work, and termination of employment **(GR 35)**;
3. Government Regulation No. 36 of 2021 on wages **(GR 36)**; and
4. Government Regulation No. 37 of 2021 on unemployment insurance benefits **(GR 37).**

The focus here is only on reforms that are included in the above-mentioned employment legislation. The Omnibus Law came into effect on 2 November 2020. The aforementioned implementing regulations have also been in place since 2020, with different effective dates.

This brief is not exhaustive, and the economic data from Indonesia must also be looked into in order to fully assess the impact of reforms: for instance, the percentage of workers affected. Similarly, local teams must be engaged in understanding the ramifications of these reforms, since they are more nuanced and, to be understood in depth, need to be examined within the context of a local background. Moreover, the brief is more a comparative exercise in understanding the Omnibus Law and its implementing regulations vis à vis international labour standards and labour regulations elsewhere in the world. Therefore, it should be supplemented by briefs from local organisations.

A. FIXED-TERM EMPLOYMENT CONTRACTS (FTCs)

Under the **2003 Manpower Law** (Law No. 13/2003 on Manpower), fixed-term employment contracts could only last up to two years and be extended once for up to one year. After a one-month gap, these contracts could be renewed once for two years. In that sense, the maximum duration of a fixed-term contract, including extension and renewal, was five years. If employers violated these requirements, the contract would be deemed permanent.

Under the **Omnibus Law,** all restrictions on the initial duration, extension, and renewal have been removed. The critical implementing regulation on the subject is Government Regulation No. 35 of 2021 on fixed-term employment, outsourcing, hours of work, and termination of employment **(GR 35)**, which came into effect on 2 February 2021.

GR 35 recognises three types of fixed-term employment contracts:

- FTCs based on a time period (work estimated to be completed in a not-too-long period of time; seasonal work; work related to new products, new activities, or additional products that are still in an experimental or trial phase);
- FTCs based on completion of the work (one-time jobs; temporary work); and
- FTCs in relation to other non-permanent work.

Under **GR 35**, the maximum length of fixed-term contracts, including renewals and extensions, is five years. The regulation does not limit the number of renewals as long as the total period, including renewals, does not exceed five years.

In this way, the provision under both the new and the old law remains the same, as both limit the maximum length of fixed-term contracts to five years. The Omnibus Law and the implementing regulation allow flexibility to employers, as there are no longer any restrictions on the initial term, extension, and renewals, except that the total length of fixed-term contracts should not exceed five years.

Pre-conditions regarding the type of work for which fixed-term contracts may be applied have been retained with minor adjustments. The earlier law

required FTCs to be registered with the local Ministry of Manpower (MoM) office within seven days of the contract being signed. Under the new law, all FTCs must now be registered through an online system within three working days. If the online system is not available, registration can be done at the local MoM office within seven business days.

B. TERMINATION OF FTC AND COMPENSATION

Under the 2003 Manpower Law, any party terminating an FTC prematurely was required to pay the other party an amount of compensation equivalent to the employee's salary for the remaining term of the FTC. For example, a party terminating a two-year contract after 14 months of employment would have to pay the other party ten months' salary in compensation. No compensation was payable if the FTC had reached its expiration date.

This situation has changed significantly under **GR 35**. Compensation for the remaining term of an FTC has been abolished. It is now payable (only to the local or national workers) by the employer in the following cases:

a) Expiry of the FTC;
b) Expiry of each extension/renewal of the FTC;
c) Early termination of the FTC, irrespective of who terminates the contract.

Compensation is payable at the rate of one month's wage for every 12 months of service. If the length of service is either less or more than twelve months, compensation is calculated on a pro-rata basis. For example, if an employer (or even a worker) terminates a two-year FTC after 18 months, the compensation payable (by the employer) is one and half times (1.5 X) the monthly salary. If neither party terminates the FTC prematurely and the FTC expires after two years, the employer must pay the employee two months' salary as compensation. The previously mentioned compensation is available only to local workers. Foreign or migrant workers are not eligible. Similarly, the new provision on payment of compensation on the termination or expiry of an FTC is not applicable to micro and small enterprises, except by way of an agreement between the workers and the enterprise.

Comparison with International Labour Standards

The relevant Convention on the subject is the Termination of Employment Convention, 1982 (No. 158). This Convention does not limit the duration of the fixed-term contract; however, it does require states to provide 'adequate safeguards against recourse to contracts of employment for a specified period, the aim of which is to avoid the protection resulting from this Convention.'

The new law has not changed the maximum length of the FTC. Moreover, according to the WageIndicator Labour Rights Index, 11 countries allow for a five-year FTC. These include countries from all continents, including Europe. The earlier compensation terms for terminating an FTC were exploitative for workers, as they required the worker to compensate the employer for the remaining period of an FTC if they resigned prior to its expiry. Under the new law, compensation for the expiry, renewal or premature termination of an FTC has been introduced. Compensation in instances of premature termination is lower, but when compared with earlier compensation it is still in line with international labour standards.

C. WORKING HOURS AND OVERTIME

Under the **Omnibus Law** and **GR 35**, the maximum permitted number of overtime hours has been raised from three to four hours per day and from 14 to 18 hours per week. The law still requires the employer to obtain the employee's consent prior to engaging them for overtime. However, employees are not entitled to overtime pay if they hold positions with certain responsibilities (such as innovators, planners, executors, and/or controllers of the employer's operations); if their working hours cannot be 'capped' (especially employees in managerial positions); and if they are paid higher salaries.

The new regulation requires that the employment agreement, company regulations, or collective labour agreement may specify the positions that are excluded from entitlement to overtime pay. The employee will be entitled to overtime if exemptions are not stipulated in any of the above instruments.

Under the old legislation, workers with at least six consecutive years of service were entitled to at least two months' long-service leave if this was provided for in the company's long-service entitlement policy. Under the Omnibus Law, long-service leave entitlement has been removed, though parties may still mutually agree on this entitlement. Moreover, long-service leave is now applicable only to certain companies, the details of which are not provided in **GR 35**.

Comparison with International Labour Standards

Different ILO Conventions (001 and 030) and Recommendations (116) deal with the subject. However, they leave the decision to fix maximum working hours inclusive of overtime to the member states. Nevertheless, ILO considers weekly working hours to be excessive when they exceed 48 hours. Forty working hours a week is the standard number in Indonesia. If an employee works 18 hours of overtime per week, their total number of working hours amounts to 58, which is excessive in terms of the above-mentioned ILO standard. Of the 115 countries covered under the WageIndicatorLabour Rights Index, the maximum number of working hours per week, including overtime, exceeds 57 hours per week for 34 countries.

The excessive number of working hours may also have a detrimental effect on workers' weekly non-work days. It could lead to a breach of international labour standards on the subject (ILO Conventions 14 of 1921 and C106 of 1957), which stipulate a weekly non-work period of at least 24 consecutive hours in each seven-day period. Similarly, the excessive number of working hours also has a negative impact on workers' health and well-being. The removal of long service leave can also have a negative impact on workers' well-being.

D. MINIMUM WAGE

The 2003 Manpower Law regulated setting of the minimum wage at three levels: Provincial Minimum Wage (UMP); District/City Minimum Wage (UMK); and Sectoral Minimum Wage (UMSP/UMSK). The Omnibus Law removes the sectoral minimum wage, but the sectoral wages indicated earlier will remain effective until they expire, except in cases where provincial or district wages are higher than sectoral wages. The implementing regulation – Government Regulation No. 36 of 2021 on wages **(GR 36)** – became effective on 2 February 2021.

Under the 2015 Minimum Wage Regulations (GR No.78/2015), wages were determined based on the unit of time or unit of production. Under GR 36, wages based on the unit of time are no longer defined on a daily, weekly, or monthly basis; instead, wages are determined on an hourly, daily, or monthly basis. Hourly wages are defined only for part-time workers. The minimum wage setting or revision formula has also changed under the new regulation.

GR 36 clarifies that the provincial minimum wage (determined/notified by the Governor under the recommendation of the Provincial Minimum Wage Council) is the primary benchmark. The Provincial Minimum Wage Council includes government, trade union, employer, and academic representatives. A district- or city-level minimum wage may also be determined if the district's average economic growth is higher than the provincial growth rate for the previous three years.

However, concerns have been raised about the new formula with respect to calculating minimum wages under GR 36. The formula is not only different but also, while retaining the Council, takes away the Council's key functions. Under Law 2003, the Council used to conduct a market survey to determine the cost of living (KHL – Decent Living Need) in the region/province. GR 78/2015 stipulates that the Wages Council can still determine decent living requirements in the fifth year by conducting a market survey and recommending the results to the Governor. The new formula in GR 36 has abolished the KHL. The formulation now is based on economic and employment conditions with the variables of purchasing power parity, labour absorption rate, and median wages. All economic data are to be provided by the National Agency of Statistics (BPS).

While the Omnibus Law exempts micro and small enterprises (MSMEs) from having to pay the minimum wage, GR 36 requires the collectively agreed wage (at the enterprise level) to be at least 50% of the average provincial public consumption rate and 25% above the provincial poverty line. Earlier legislation (2003 Manpower Law) also allowed postponement of the minimum wage for those employers who were unable to pay it. Instead, the Omnibus Law regulates the issue and allows payment of a lower wage (in comparison with minimum wage) by meeting the above-mentioned conditions.

Below is a brief explanation of how proposed changes in setting a minimum wage and applying it negatively affect workers' rights in the country.

A) REMOVAL OF KHL IN DETERMINING MINIMUM WAGES

The 2003 Manpower Law stipulated that a minimum wage should be in accordance with decent living requirements (locally referred to as Kebutuhan Hidup Layak/KHL). There were seven KHL components that covered 60 types of needs: namely, food and beverages; clothing; housing; education; health; transportation; and recreation and savings. Previously, the annual KHL review was used

by the Wage Council as the basis for calculating a minimum wage. However, GR 78/2015 changed the timeline of the KHL review from one year to five years.

The new law and regulation do not designate KHL as a factor in determining and revising minimum wage. The new formula takes into account the following three economic and employment conditions: purchasing power parity; labour absorption rate; and median wages. However, the new regulation takes inflation and local economic growth rate into consideration in determining city- and regency-level wages.

B) NON-PAYMENT OF MINIMUM WAGE NO LONGER A CRIMINAL OFFENCE

Similar to the old wage-related rules, the new regulation GR 36/2021 prohibits the paying of wages lower than the minimum wage. However, Job Creation Law 11/2020, in conjunction with GR 36/2021, changed the provisions of the Manpower Act 13/2003 by eliminating the criminal provision of paying wages lower than the minimum wage. Under the previous rules, paying wages below the minimum wage was a criminal offence. Company owners could be subject to a minimum imprisonment of one year and a maximum of four years and/or to a monetary fine ranging between IDR100 million to 400 million.

The loss of legal security in the application of minimum wages is evident in Ministerial Decree (Permenaker) No. 2/2021 concerning the Implementation of Wages in Certain Labour-Intensive Industries During the Covid-19 Pandemic. This Decree provides the opportunity to adjust the amount of wages and the method of payment based on the agreement between the employer and the worker.

C) ELIMINATION OF SECTORAL MINIMUM WAGES

Other than Provincial and Regency/City minimum wages, wages could be determined according to the capabilities of the business sector and the region concerned. However, under the new regulations, the Sectoral Minimum Wage has been abolished. Certain conditions must be met in order to set the Regency/City minimum wage: namely, the economic growth rate of the Regency/City must be higher than the provincial rate for three successive years. If certain intended conditions are not met, the Governor cannot determine the minimum wage for regencies/cities that do not yet have a Regency/City minimum wage. This means there is a possibility that the Provincial Minimum wage is applicable in an area.

D) EXEMPTION FOR MICRO AND SMALL BUSINESSES AND THE UNIVERSAL RIGHT TO A DECENT WAGE

Exceptions to the Provision of Minimum Wages for micro and small businesses had never previously been made. GR 36/2021 states that the minimum wage for micro and small businesses is determined on the basis of an agreement between the employer and workers within the company under the following conditions:

a. It is at least 50% of the average public consumption at the provincial level; and
b. It is at least 25% above the poverty line at the provincial level, sourced from the National Agency of Statistics.

This regulation opens up opportunities for micro-entrepreneurs and small businesses to have a basis for paying wages below the minimum wage. Under the old rules, micro and small businesses were actually encouraged to pay the minimum wage.

Micro and small enterprises are defined as those relying on traditional resources and not engaging in high-tech and non-capital-intensive businesses.[1] However, there is no supervisory mechanism to check whether micro and small businesses meet the above conditions and are eligible for the exemptions.

This wage exemption rule is a clear violation of the universal right to wages, which states that everyone is entitled to a fair and decent wage without any discrimination in any form.[2]

Comparison with International Labour Standards

In terms of consultation and involvement regarding representative organisations of workers and employers through the wage council, the reform is in line with the ILO Convention on the subject: i.e. the Minimum Wage Fixing Convention, 1970 (No. 131). While the new regulation considers the needs of workers and their families through 'purchasing power parity' (price of services and a basket of goods in the country), the authority of the Wage Council in determining a minimum wage decreased when the daily living needs (KebutuhanHidupLayak – KHL) review changed from being conducted annually to every five years.

[1]GR No.7/2021 concerning Relaxation, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium-Sized Enterprises
[2]Art. 7 of International Covenant on Economic, Social and Cultural Rights and Article 38(4) of Law No. 39 of 1999 on Human Rights.

Furthermore, the non-payment of a minimum wage is no longer a criminal offence in Indonesia, although fines are still imposed on employers for the non-payment of wages. Moreover, considering that since Micro and Small Enterprises (MSEs) 'provide jobs to over 93 percent of those engaged in wage employment[3], the reform has the potential to deprive millions of wage workers of their right to decent wages and ultimately to decent work.

E. UNEMPLOYMENT INSURANCE

Under the 2003 Manpower Law, there was no provision for unemployment benefits. The Omnibus Law introduces unemployment benefits (Job Loss Security) under Indonesia's Manpower BPJS system (Badan Penyelenggara Jaminan Sosial). The implementing regulation – Government Regulation No. 37 of 2021 – on unemployment insurance benefits **(GR 37)** came into effect on 2 February 2021.

This benefit includes access to job openings, training, and cash payments, which are capped at six months' salary, with IDR5 million (approximately USD350) as the maximum monthly salary. It should be mentioned here that the highest monthly minimum wage is paid in Jakarta, where the minimum wage is approx. IDR4.4 million per month. The Central Government and the combined accident and life insurance contributions (that existed previously and were valid at BPJS Manpower) pay the monthly premiums for unemployment benefits. The contribution to the unemployment benefits program is 0.46% of the monthly wages, 0.22% of which is paid by the government. The remaining contributions (0.24%) consist of 0.14% from accident insurance and 0.10% from life insurance. Workers and unions are of the view that the implementation of combined contributions, as regulated in Minister of Manpower Regulation 7/2021, will reduce the benefits of accident and life insurance in the BPJS program.

Among other conditions, unemployment benefits are available only to Indonesian citizens who had not yet reached the age of 54 when registering for the benefits, and who were registered under the Manpower and Health BPJS programs. The benefit is available for six months, and in the form of 45% of a worker's monthly wage for three months followed by 25% of the monthly wage for the next three months, subject to the above-mentioned limits. Workers can access unemployment benefits provided that they have had a minimum insurance period of 12 months during the previous 24 months, and have made Manpower BPJS contributions for at least six consecutive months before termination of the contract. If the employer has not registered the worker with the Job Loss Security Program, the employer is liable to pay the previously mentioned cash and job training benefits.

Comparison with International Labour Standards

Two ILO conventions on the subject are relevant. The Social Security (Minimum Standards) Convention of 1952 sets the minimum standards on social security, while Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) provides specific details on unemployment benefits. Under Convention 102, the periodic payments must be at least 45% of the reference wage, and the duration of benefits can be limited to 13 or 26 weeks in a 12-month period. Considering that unemployment benefits are being provided in Indonesia for the first time, the minimum standards set by ILO Convention 102 are being met.

F. OUTSOURCING OF CORE ACTIVITIES

The Omnibus Law repeals Articles 64 and 65 of the 2003 Manpower Law and amends Article 66 on outsourcing. Government Regulation 35 also regulates outsourcing. The employment relationship between the outsourcing company and the worker may be based on an FTC (PKWT) or a permanent contract (PKWTT).

The new regulation provides that where the employment is based on an FTC, the terms of the FTC must expressly provide for a transfer of the worker's employment protections upon a change of outsourcing company (in cases where the work still exists). This is required to ensure the continuity of employment protection for outsourced employees.

Earlier legislation had extensive requirements regarding outsourcing, and prohibited the use of outsourced employees in main activities or any activities related directly to an enterprise's production process. However, under the new regulations, the restriction on engaging outsourced employees only in non-core business has been removed. There is no restriction on the type of work that can be outsourced as the Omnibus Law and GR 35 allow the outsourcing both of core and non-core activities.

[3]https://www.ilo.org/jakarta/whatwedo/projects/WCMS_444105/lang--en/index.htm

Comparison with International Labour Standards

Comparison with International Labour Standards
While outsourcing and subcontracting lead to precarious working conditions, and can also be exploitative, they are not illegal in terms of International Labour Standards. The Private Employment Agencies Convention, 1997 (No. 181), regulates the activities of employment agencies and secures the fundamental rights of workers. Therefore, the above-mentioned action, though contestable in national courts, is not against international labour standards.

However, the Omnibus Law that expands outsourcing to both core and non-core businesses has violated the Convention (No. 181), which states that a consultation with a representative from employers' organisations and workers' organisations must take place to limit certain types of jobs and services provided by private employment agencies. Likewise, the new regulation clarifies that responsibility regarding the working conditions of outsourced workers rests entirely with the private labour suppliers (employment agencies), whereas in the Convention (No. 181), a country may determine and allocate the responsibilities between private labour supply agencies and user companies. Such circumstances can lead to more precarious working conditions for outsourced workers in Indonesia.

G. EMPLOYMENT TERMINATION NOTICE

Under the 2003 Manpower Law, there was no notice of termination requirement. Employers were required to negotiate a mutual agreement with the employee concerned in order to terminate their employment. If no mutual agreement could be reached, the employer could only terminate the employment relationship unilaterally after obtaining an order from the Industrial Relations Court (IRC). However, this procedure was not required if the worker was still in their probation period, or had resigned, reached the retirement age, or died, or if the FTC had expired. As a result, terminating employment was a burdensome process for employers.

Under the **Omnibus Law** and its implementing regulation – Government Regulation No. 35 of 2021 – on fixed-term employment, outsourcing, hours of work, and termination of employment (GR 35), effective from 2 February 2021, the employer may serve a written notice of termination, citing reasons, at least 14 working days before the employment relationship is terminated. If the employee agrees to termination, this must be reported to the Ministry of Manpower.

If the employee does not accept the termination, they have the right to submit a written response to the notice, giving reasons, at the latest seven working days after receiving the notice. If the parties fail to settle the dispute mutually, the termination procedure follows the dispute mechanism through tripartite negotiation. If the parties still fail to resolve the dispute, either party may initiate proceedings in the Industrial Relations Court.

Comparison with International Labour Standards

The ILO Termination of Employment Convention, 1982 (No. 158), sets the standards on termination of employment. It requires a reasonable notice period or compensation instead of notice except in cases of gross misconduct. The required notice period (14 working days) is appropriate, and a similar notice period is observed in many other countries. The WageIndicator Labour Rights Index indicates that Australia, Canada, Cyprus, Malta, Democratic Republic of Congo, Ghana, and Guatemala require only a two-week notice of termination (although the time increases with length of service) after one year of service. The new termination notice period in Indonesia is not in violation of ILO Convention 158, since the actual time needed to terminate the employment contract will be much longer than 14 working days.

H. TERMINATION PAYMENTS

Termination payments under Indonesian labour law generally comprise three components: severance pay; long-service pay, and rights disbursement. There is, however, a fourth element: separation pay, which is payable in the event of voluntary resignation by the worker, and termination of employment on the grounds of misconduct or where the worker is detained for six months for an alleged crime.

Under the Omnibus Law, the severance pay and rights disbursement components have been reduced, while the service pay component remains unchanged. For rights disbursement, there is no longer a requirement for employers to pay housing or medical and healthcare allowances (earlier calculated as an additional 15% of total severance payment and service payment) on the termination of employment. The rights disbursement now includes only compensation for accrued but unavailed leave, repatriation costs, and housing, as well as for any other contractual entitlements. The maximum amount of severance pay and service pay is nine (for service of eight years or more) and ten (for service of 24 years or more) months' wages, respectively. Micro

and small enterprises are exempted from payment of severance pay, long-service pay, and compensation rights, except where agreed between workers and employer. The regulation that exempts micro and small enterprises from termination payments as well as minimum wages is entirely new, and is a form of discrimination with regard to their employees.

The severance pay is still equivalent to **two months'** wages per year of service if the termination of employment is due to prolonged illness or a disability arising from a work injury that prevents the employee from working for more than 12 months, or in the event of a worker's death. The severance pay is the equivalent of **1.75 months'** wages per year of service in the event of a worker's retirement. Previously, if the employer had not registered the employee in a pension programme, a severance payment of **2 months' salary** per year was payable.

In all other situations (more than 20 cases), severance pay now ranges from **0.5** to **1 month's** salary per year of service, depending on the grounds for termination. In the event of voluntary resignation, only a rights disbursement payment is payable. A worker may also receive separation pay if this has been stipulated in the employment contract, in company regulations, or in a collective labour agreement. The details of all the other situation and benefits under the Omnibus Law are presented in **Box 1** at the end of this brief.

Comparison with International Labour Standards

The ILO Termination of Employment Convention, 1982 (No. 158), requires the states to provide a severance allowance or separation pay on termination of employment. The amount of such a payment must be based on the length of service and the level of wages. Though the amounts under the Omnibus Law and regulations are considerably lower than the earlier amounts, they are still reasonable when compared at the international level.

For example, consider a situation where the company is conducting a merger, a consolidation, or a spin-off, and a worker is not willing to continue the employment relationship or the employer is not willing to accept the worker. In those circumstances, the worker has the following rights under the Omnibus Law:

- 1 x severance pay;
- 1 x long-service pay; and
- Rights disbursement.

Let us assume that the worker in the previously mentioned case has put in five years of service. Under the Omnibus Law, this employee will receive the following benefits:

- Severance pay (6 months' wages);
- Long-service pay (2 months' wages); and
- Rights disbursement (depending on accrued leave, repatriation, and housing costs).

The above example shows that a worker with five years of service – if dismissed because of a merger or acquisition – receives eight months' wages as a termination benefit. It is the equivalent of 34 weeks of benefit after five years of service. World Bank data indicate that of more than 190 countries, only Ghana, Sierra Leone, Sri Lanka, and Zambia offer higher severance pay than Indonesia in cases of redundancy. However, although reduced, the new benefits are still comparably quite high.

I. EMPLOYMENT OF FOREIGN WORKERS

The Omnibus Law removes the requirement of a written permit from the Minister for Manpower to employ foreign or migrant workers. This makes the employment of foreign nationals easier in Indonesia. Detailed provisions are found in Government Regulation No. 34 of 2021 on the Employment of Foreign Workers (**GR 34)**, which came into effect on 01 April 2021.

The Manpower Law required employers to obtain approval from the Ministry of Manpower for their Manpower Utilisation Plan (RPTKA). While the requirement still exists, the list of exemptions has been expanded. As regards the employment of foreign workers, the Omnibus Law exempts employers from seeking **RPTKA** approval in the following situations:

- a vocational activity;
- a technology-based start-up;
- production activity in the event of an emergency;
- during a business visit; and
- research activity for a certain period.

If foreign workers fail to have an approved RPTKA, administrative sanctions can be imposed; these include a fine, a temporary suspension of RPTKA approval, and the revocation of RPTKA approval. The amount of the fine, calculated on the basis of per person per position per month, may range from IDR6 million up to IDR36 million.

Comparison with International Labour Standards

The ILO has adopted two critical conventions relating to migrant workers: these are Migration for

Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). Under Convention 97, member states are required to treat migrant workers no less favourably than their own nationals in respect of a number of matters, including conditions of employment, freedom of association, and social security.

Removal of the requirement regarding an employment permit in the aforementioned fields eliminates discriminatory treatment and allows workers to secure employment. It is not in violation of the relevant international labour standards. Moreover, under **GR 34**, employers are required to insure foreign or migrant workers with less than six months of employment with a private insurance provider against work-related accidents resulting in injury. Earlier, employers were required to register all migrant workers with more than six months of employment with the Manpower Social Security Administrator. This again is in line with Convention 97, which requires the removal of discriminatory treatment involving local and migrant workers

CONCLUSION

The Omnibus Law provides for unemployment benefits, severance pay for termination of an FTC, removal of an employment permit for some categories of foreign workers, and notice of employment termination. However, there are several possible violations of international labour standards, including the limits on working hours. Excessive working hours as well as the removal of long service leave have the potential to aggravate working conditions, and they have a negative impact on workers' well-being as well as on their occupational health and safety.

Likewise, the review on the cost of daily living needs with regard to determining the minimum wage changed from being conducted annually to every five years. This, again, has the potential to worsen workers' living conditions and to violate ILO Convention 131, which requires states to consider the needs of workers and their families in combination with economic factors. Moreover, the non-payment of a minimum wage is no longer a criminal offence, and fines are regulated through a collective agreement or company regulations, which have the potential to violate the requirements of international labour standards on the enforcement of minimum wages.

A reform in outsourcing practices now allows all activities to be outsourced, whether core or non-core, and can lead to precarious employment conditions and the erosion of workers' rights in the country. Similarly, the exemption of micro and small enterprises from paying minimum wages, compensation for fixed-term employment contracts, and termination payment for workers appears to deprive millions of workers of their right to decent wages and to decent working conditions. These areas – namely, excessive working hours, enforcement of minimum wages, outsourcing, and the exemption of micro and small enterprises – need to be explored further in cooperation with local organisations.

BOX 1- COMPENSATION BENEFITS UNDER OMNIBUS LAW

1	The company is conducting a merger, consolidation or spin-off, and the worker is not willing to continue the employment relationship, or the employer is not willing to accept the worker	• 1x severance pay due • 1x long-service pay • Rights disbursement
2	The company is being acquired	• 1x severance pay due • 1x long service pay • Rights disbursement
3	The company is being acquired, but the worker refuses to continue the employment due to changes to the terms of employment	• 0.5x severance pay due • 1x long service pay • Rights disbursement
4	The company is taking efficiency measures due to losses it has suffered	• 0.5x severance pay due • 1x long service pay • Rights disbursement
5	The company is taking efficiency measures to prevent further losses	• 1x severance pay due • 1x long service pay • Rights disbursement
6	The company is closing down due to losses suffered over a two-year period, whether consecutively or not	• 0.5x severance pay due • 1x long service pay • Rights disbursement
7	The company is closing down but not because of losses	• 1x severance pay due • 1x long service pay • Rights disbursement
8	The company is closing down due to force majeure	• 0.5x severance pay due • 1x long service pay • Rights disbursement
9	A force majeure event has occurred, but the company is not closing down	• 0.75x severance pay due • 1x long service pay • Rights disbursement
10	The company is undergoing a delay or debt payment due to losses it has suffered	• 0.5x severance pay due • 1x long service pay • Rights disbursement
11	The company is undergoing a delay or debt payment but not due to losses it has suffered	• 1x severance pay due • 1x long service pay • Rights disbursement
12	The company has been declared bankrupt	• 0.5x severance pay due • 1x long service pay • Rights disbursement
13	The worker has informed the employer of their intention to terminate the employment relationship (e.g. due to an assault, insult, or threat by the employer)	• 1x severance pay due • 1x long service pay • Rights disbursement

14	The industrial relations dispute settlement agency has issued a decision that states the employer is not guilty of the violation alleged by the worker, and the employer has decided to terminate the employment relationship	• Rights disbursement • Separation pay according to the employment agreement, company regulations, or collective bargaining agreement
15	The worker has resigned voluntarily	• Rights disbursement • Separation pay according to the employment agreement, company regulations, or collective bargaining agreement
16	The worker has been absent for five or more working days without serving written notice supported by valid evidence, and the employer has duly summoned the worker twice in writing	• Rights disbursement • Separation pay according to the employment agreement, company regulations, or collective bargaining agreement
17	The worker has violated the employment agreement, company regulations, or collective bargaining agreement, and has been served a first, second, and third successive warning	• 0.5x severance pay due • 1x long service pay • Rights disbursement
18	The worker has committed a violation of a serious nature as stipulated under the employment agreement, company regulation, or collective bargaining agreement	• Rights disbursement • Separation pay according to the employment agreement, company regulations, or collective bargaining agreement
19	The worker is unable to work for six months due to being detained for an alleged crime that has caused the company to suffer a loss	• Rights disbursement • Separation pay according to the employment agreement, company regulations, or collective bargaining agreement
20	The worker is unable to work for six months because the worker has been detained for an alleged crime that has not caused the company to suffer a loss	• 1x long service pay • Rights disbursement
21	A court has convicted the worker of a crime that has caused the company to suffer a loss before the six-month detainment period has lapsed	• Rights disbursement • Separation pay according to the employment agreement, company regulations, or collective bargaining agreement
22	A court has convicted the worker of a crime that has not caused the company to suffer a loss before the six-month detainment period has lapsed	• 1x long service pay • Rights disbursement
23	The worker is suffering from a prolonged illness or disability due to a work injury, and after more than 12 months is unable to work	• 2x severance pay due • 1x long service pay • Rights disbursement
24	The worker has requested termination of employment due to prolonged illness or disability due to a work injury, and after more than 12 months is unable to work	• 2x severance pay due • 1x long service pay • Rights disbursement
25	Retirement	• 1.75x severance pay due • 1x long service pay • Rights disbursement
26	The worker has died	• 2x severance pay due • 1x long service pay • Rights disbursement

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