Indonesia Omnibus Law on Job Creation and Implementing Regulations
## Indonesia Omnibus Law on Job Creation and Implementing Regulations

- **Company Law**
  - *Indonesia Omnibus Law – Changes to the Company Law*

- **Competition Law**
  - *Indonesia Omnibus Law – Changes to the Competition Law and What They Mean for Business Players*

- **Employment**
  - *Indonesia Omnibus Law Employment Sector Implementing Regulations – Win, Lose or Draw for Employers?*
  - *New Regulation Looks to Ease Process of Hiring Foreign Workers in Indonesia*
  - *Omnibus Job Creation Law – Changes to Indonesian Employment Laws*

- **Geothermal**
  - *Indonesia’s Omnibus Law Puts Focus on Direct Use of Geothermal Resources*

- **Halal**
  - *Indonesia Omnibus Law – Changes to the Halal Products Law*

- **Healthcare**
  - *Indonesia’s New Investment List – Healthcare Sector*

- **Immigration**
  - *New Immigration Regulation Promises More Ease and Clarity for Foreigners in Indonesia*
  - *Indonesia Omnibus Law – Changes to the Immigration Law*

- **Investment**
  - *Indonesia’s New Investment List – Summary of Draft Presidential Regulation*
  - *Indonesia Omnibus Law – Simplification of Business Licensing and Investment Requirements*

- **Mining**
  - *Indonesia Omnibus Law – Changes to the Mining Law*
- **Oil and Gas**
  - Update on Indonesia’s Omnibus Law and Implementing Regulations – Oil and Gas Sector
  - Indonesia Omnibus Law – Changes to the Oil and Gas Law

- **Postal, Telecom and Broadcasting**
  - Indonesia Omnibus Law – Impact on Postal, Telecom and Broadcasting Sectors

- **Power**
  - Update on Indonesia’s Omnibus Law and Implementing Regulations – Power Sector

- **Shipping**
  - Indonesia Omnibus Law – Changes to the Shipping Law Hint at Smoother Sailing for Business

- **Tax**
  - Indonesia Omnibus Law and the Impact on Tax Laws

- **Trade**
  - Indonesia Omnibus Law Update – Amendments to the Trade Law
**Indonesia Omnibus Law – Changes to the Company Law**

Indonesia’s closely watched omnibus jobs creation bill recently became law. The stated aim of the Omnibus Law is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law revises various provisions in laws across numerous sectors, including Law No. 40 of 2007 on Limited Liability Companies (the “Company Law”), which helps regulate the norms and practice of doing business in Indonesia.

One of the changes under the Omnibus Law is the minimum capital requirement for limited liability companies (perseroan terbatas or “PTs”). The Omnibus Law also pays special attention to micro and small businesses and how their rights are exercised in tandem with the Company Law. Article 109 of the Omnibus Law contains three important amendments to the Company Law aimed at supporting micro and small businesses operating in Indonesia.

**No Minimum Authorized Capital**

Limited liability companies in Indonesia are required to have authorized capital of at least IDR 50 million, as per Article 32 of the Company Law. Article 109(3) of the Omnibus Law removes this minimum authorized capital requirement for PTs. Instead, the Omnibus Law stipulates that the authorized capital of a PT will “be determined by the decisions of the company’s founders”.

With this change, a limited liability company potentially could have authorized capital below IDR 50 million. However, the Omnibus Law also provides that the capitalization of a PT shall be further implemented by a Government Regulation. So it remains to be seen whether a PT will in fact be able to have authorized capital of less than IDR 50 million.

**No Minimum Number of People for Company Establishment**

Article 7 of the Company Law stipulates that a PT can only be established by two or more people, with people in this case including legal entities. The Omnibus Law amends that requirement for some PTs. While it is understood that one shareholder is sufficient for state-owned entities, all of whose shares are owned by the state-, regional- or village-owned entities, Article 109(2) of the Omnibus Law now stipulates that there is no minimum number of people required to establish a micro or small business. The same also applies to a PT that manages the stock exchange, clearing and guarantee institutions, securities depositories, settlement institutions and other institutions under the Capital Market Law.
So, with this change under the Omnibus Law, a PT categorized as a micro or small business can be established by a single person/legal entity. This is further confirmed by Article 153A(1) of the Omnibus Law.

**Special Provisions for Micro and Small Businesses**

The Omnibus Law contains a special section in Article 109(5) that outlines general provisions for limited liability companies categorized as micro or small businesses ("MSBs"), which are as follows:

a. MSBs may be established by one person based on a statement of establishment made in Bahasa Indonesia. This statement of establishment must consist of the MSB’s purposes and objectives, business activity, authorized capital and other information related to the establishment of the company. The statement of establishment will be registered electronically with the Ministry of Law and Human Rights ("MOLHR").

b. Any amendments to the statement of establishment must be approved by a General Meeting of Shareholders ("GMS") and be informed to the MOLHR electronically.

c. The Board of Directors ("BOD") of an MSB will manage the company in line with the purposes and objectives of the company, and administer policies that are deemed correct and within the confines of the Omnibus Law and/or the statement of establishment. The BOD must also prepare a financial report for the MSB.

d. The shareholders of an MSB must be individuals (not legal entities). The company founders, which may be the shareholders, can only establish one MSB per year. Further, the shareholders are not personally liable for agreements made under the name of the MSB unless any of the following events occur:
   i. The MSB does not fulfill the requirements to be a legal entity;
   ii. The shareholder in question utilizes, directly or indirectly, the MSB for their own interests;
   iii. The shareholder in question is involved in an unlawful act conducted by the MSB; or
   iv. The shareholder in question unlawfully uses the assets of the company, directly or indirectly, which causes the MSB to be unable to repay its debts.

e. The liquidation of an MSB must be conducted by a GMS through a written statement of liquidation, which must be informed electronically to the MOLHR. MSBs can be liquidated as follows:
   i. Based on a decision of the GMS;
   ii. End of the MSB’s period of establishment;
   iii. Based on a court decision;
iv. Based on the repeal of a legally binding commercial court decision, the MSB’s assets are not sufficient to repay all of its debts that are subject to bankruptcy;

v. The assets that are subject to a bankruptcy proceeding are in a situation of insolvency; or

vi. The MSB’s business license is repealed, requiring the company to initiate liquidation proceedings.

f. If an MSB no longer fulfills the criteria of a micro or small business, it must convert its status to a regular limited liability company.

It should be noted that the above will be further implemented by Government regulations.

Conclusion

The above amendments to the Indonesian Company Law under the Omnibus Law have a special focus on the rights and obligations of micro and small businesses. Most of these provisions revolve around the enablement, establishment, functioning and liquidation of MSBs. Although technical regulations must still be issued to implement these changes, the amendments under the Omnibus Law are likely to have a significant impact on Indonesian company law, especially for micro and small businesses. (November 5, 2020).

For more information, please contact:

Rusmani Lenggogeni, Partner
rusmainilenggogeni@ssek.com

Julian Martin, Associate
julianmartin@ssek.com

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Indonesia Omnibus Law – Changes to the Competition Law and What They Mean for Business Players

Indonesia’s closely watched omnibus jobs creation bill recently became law. The stated aim of Law No. 11 Year 2020 on Jobs Creation (the “Omnibus Law”) is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law revises various provisions in laws across multiple sectors of the economy, including Law No. 5 of 1999 regarding Prohibition of Monopolistic Practice and Unfair Business Competition (“Competition Law”). The Omnibus Law amends four articles and deletes one article from the Competition Law. At a glance, the changes may appear to be minor, but these small changes may have big consequences for business players, domestic and foreign alike.

We discuss the noteworthy changes and the potential consequences of these changes.

Changes to Appeal Procedure

The Omnibus Law amends two articles that deal with the process of appealing a decision of the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha or “KPPU”). These changes are meant to designate the Commercial Court as the venue for any appeal of a KPPU decision. Previously, the appeal had to be submitted to the relevant district court. Now the Commercial Court, which specializes in handling commercial disputes such as bankruptcy, liquidation and intellectual property disputes, will have jurisdiction over competition matters.

It remains to be seen how the new appeals procedure will unfold in practice, particularly whether the civil procedural law will apply to the appeals process in the Commercial Court for competition cases. The Omnibus Law only mandates the issuance of an implementing Government Regulation to address the imposition of administrative sanctions; there is no mandated Government Regulation to further clarify the new appeals process. Therefore, we will have to wait and see whether, despite not being directly mandated, the Government will provide some clarity to the appeals process in the Government Regulation to be issued or whether the Supreme Court will issue a circular letter to fill the void.

Removal of Administrative Fine Cap

Perhaps the most significant change to the Competition Law is the deletion of the cap on administrative fines imposed by the KPPU. Formerly, under Article 47 of the Competition Law, the KPPU could impose administrative fines of between IDR1 billion and IDR25 billion. Under the Omnibus Law, Article 47 of the Competition Law is amended to remove the IDR25 billion cap. This means the KPPU may have the power to impose even larger administrative fines for violations of competition laws and regulations.
This could be most significant in the case of merger filings. The current implementing Government Regulation on merger filing, Government Regulation No. 57 of 2010, stipulates that the KPPU may impose an administrative sanction in the amount of IDR1 billion per day for a delay in submitting a merger notification to the KPPU up to a maximum amount of IDR25 billion, consistent with the power granted to the KPPU under the original text of Article 47 of the Competition Law.

Removing the cap on the administrative fine would potentially give the KPPU the power to impose a daily administrative fine without limit until the merger filing is made to the KPPU. If this proves to be true, business players would need to carefully consider the potential higher exposure on merger filings and any other competition regulations applicable to them.

**Limited Imposition of Criminal Sanction**

While we have seen the potential expansion of administrative sanctions through the removal of cap on administrative fines, the Omnibus Law also amends Article 48 and deletes Article 49 of the Competition Law to limit the scope of potential criminal sanctions.

Formerly, the Competition Law stipulated criminal sanctions for various violations of the Competition Law, including oligopolistic practices, price-fixing, cartel practices, vertical integration and abuse of dominant market position. Under the Omnibus Law, Article 48 is amended so that only a violation of Article 41 of the Competition Law – refusing to provide evidence or hindering the investigation process – might potentially result in a criminal sanction in the form of a maximum IDR5 billion fine or imprisonment for one year.

The Omnibus Law also deleted Article 49 of the Competition Law on additional criminal sanctions that may be imposed. Previously, for violations of the Competition Law, additional criminal sanctions could be imposed in the form of revocation of licenses, prohibition on the violating party acting as the director or commissioner of a company, or suspension of business activity.

**Key Takeaway**

The removal of the cap on administrative fines is concerning because business players would be exposed to unlimited administrative fine. However, we see the Government trying to balance this new risk by limiting the potential exposure to criminal sanctions for violations of the Competition Law. It remains to be seen if this effort will strike the kind of balance that would encourage business players to enter and stay in the Indonesian market.

As with other provisions under Omnibus Law, we will have to wait until the mandated implementing Government Regulation is issued for further clarity on the above changes.
We will update this publication when more information is available for our review. (November 12, 2020).

For more information, please contact:

**Syahdan Z. Aziz**, Partner
syahdanaziz@ssek.com

**Raoul A. Muskitta**, Associate
raoulmuskitta@ssek.com

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Indonesia Omnibus Law Employment Sector Implementing Regulations – Win, Lose or Draw for Employers?

Indonesia’s Omnibus Law (Law No. 11 of 2020 on Job Creation), which was issued on November 2, 2020, set new standards for employment terms and conditions by introducing new concepts and rules. Our article on those changes is here.

However, the Omnibus Law merely revoked certain provisions under the Labor Law (Law No. 13 of 2003 regarding Labor) without providing replacement provisions to regulate, for example, termination benefit formulas. In other areas, the Omnibus Law did not elaborate on the newly introduced concepts, such as the notice of termination procedure.

It was only with the recent issuance, on February 2, 2021, of several implementing regulations that the new rules and procedures introduced by the Omnibus Law in only very general terms were confirmed and clarified.


We summarize some of the significant changes confirmed by these three government regulations:

A. GR 35 – Focus on Termination

1. Reduction of termination entitlements: The Government, with the stated intention of stimulating economic growth and attracting foreign investment, in the Omnibus Law removed the health and housing allowance component, which had accounted for 15% of the total Severance Pay and Service Pay, from the Compensation Pay under the Labor Law. Now GR 35 reduces termination entitlements for permanent employees across the board. For example, under GR 35 the entitlements for termination due to poor performance, following the issuance of three warning letters, are reduced from one-time Severance Pay, one-time Service Pay and Compensation Pay, as per the Labor Law, to one-half (0.5) time Severance Pay, one-time Service Pay and Compensation Pay.

2. Notice of termination procedure: The previous regime under the Labor Law put the focus on termination by requiring prior Labor Court approval to terminate employees, which added an additional burden for employers. Under GR 35, the Government has adopted the notice of termination concept, similar to countries throughout much of Asia and common law jurisdictions. The employer can now
unilaterally issue a written notice of termination with reason at least 14 working days prior to the planned termination date.

If the employee accepts the termination, the employer must report such termination to the local labor service office. And if the employee does not accept the termination, the employee must submit a written statement rejecting the termination with reason at the latest 7 working days after receiving the notice. If the parties then fail to settle the dispute via a bipartite negotiation, the termination procedure will follow the usual dispute mechanism, namely a tripartite negotiation (normally via mediation by a local government labor official). If the parties still fail to resolve the dispute, either party may initiate Labor Court proceedings.

3. **Compensation pay for fixed-term employees:** A new entitlement scheme introduced by GR 35 is the provision of compensation pay to employees upon the completion of their fixed-term contract. Such payment is referred to in GR 35 as Compensation. Note that this Compensation is not the same as the Compensation Pay referred to above for permanent employees. There is no similar statutory entitlement under the Labor Law. This Compensation applies to the completion of the initial period of a fixed-term contract prior to any extension thereof, as well as to the completion of any extension of that fixed-term contract. GR 35 provides the following calculations for these Compensation payments:

<table>
<thead>
<tr>
<th>Service Period</th>
<th>Compensation for fixed-term employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than a month</td>
<td>0</td>
</tr>
<tr>
<td>1 month or more but less than 12 months</td>
<td>(service period / 12) x 1 month salary and fixed allowance, if any</td>
</tr>
<tr>
<td>More than 12 months</td>
<td></td>
</tr>
</tbody>
</table>

GR 35 also provides that Compensation applies for the early termination of a fixed-term contract. However, GR 35 has created some uncertainty with respect to this issue given that the Labor Law also provides a certain entitlement for the early termination of a fixed-term contract.

Until clarified by further legislation, it appears that there are now two rules governing entitlements for the early termination of a fixed-term contract, which, if applied together, may contradict the stated purpose of the Omnibus Law, which is to create a better environment for the private sector to stimulate the economy.

Note that Compensation does not apply to foreign fixed-term employees.

4. **Determination of gross misconduct (or termination due to urgent reasons) and termination entitlement formula:** The Labor Law did at one point regulate gross misconduct and its formula for termination entitlements, but in 2004 the relevant clause was struck down by the Constitutional Court. As a result,
employers in practice simply copied the stricken clause into their employment contracts, company regulations or collective labor agreements and created their own entitlement formula for gross misconduct termination. GR 35 now stipulates that an employer can terminate an employee for committing a violation with urgent reasons regulated in the employment contract, company regulation or collective labor agreement, with the employee entitled to Compensation Pay and Separation Pay.

5. **Streamlining outsourcing rules:** The outsourcing rules under the Labor Law were confusing and ambiguous. Previously, outsourcing was divided into “outsourcing of services” and “outsourcing of labor supply,” both with different sets of rules. GR 35 eliminates this distinction and revokes the various procedural requirements. The previous restriction that outsourcing was limited to non-core business processes has also been eliminated. The focus of GR 35 is the protection of outsourced employees and the licensing of outsourcing companies.

6. **Determination of specific efficiency/redundancy rule:** The Labor Law did not have a specific clause on efficiency/redundancy for circumstances of ordinary downsizing of workforce, elimination of job positions, etc. Rather, employers in practice relied on settling a termination due to efficiency/redundancy by using the termination formula under the efficiency clause in the Labor Law, which also required the company to close.

GR 35 now provides two different efficiency clauses, without requiring the company to close. One clause regulates termination due to efficiency as a result of the company experiencing losses, while the other clause regulates termination due to efficiency to avoid the company experiencing losses. The former entitles employees to one-half (0.5) time Severance Pay, one-time Service Pay and Compensation Pay, while the latter entitles employees to one-time Severance Pay, one-time Service Pay and Compensation Pay.

**B. GR 36 – Minimum Wage Revamp**

The Government has amended the minimum wage rules by eliminating the sectoral minimum wage. Now, the available minimum wage rules are only for regional minimum wage, namely provincial minimum wage and district/city minimum wage. Further, where it was not previously regulated, GR 36 regulates salary on an hourly rate but limited to part-time workers.

GR 36 also provides that small and micro businesses are exempted from the minimum wage requirement, but the agreed salary should meet at a minimum certain data benchmarks as provided by the Government’s statistics agency.
C. GR 37 – New Employment Security Program

GR 37 introduces Job Loss Security ("JLS"), a new social security program under the BPJS Employment (BPJS Ketenagakerjaan) social security program. JLS participants are essentially employees who have enrolled in the BPJS Employment and BPJS Health (BPJS Kesehatan) social security programs. Indonesian employees under 54 years old who have enrolled in both BPJS Employment and BPJS Health are automatically enrolled in JLS as of the date GR 37 was issued, i.e., February 2, 2021.

The JLS monthly contribution is 0.46% of the participant’s monthly salary, with 0.22% of the contribution provided by the Government and the remaining 0.24% taken by reducing the employer’s existing contributions to the Work Accident social security program by 0.14% and the Death social security program by 0.10%.

JLS benefits consist of (a) a monthly cash benefit for six months, (b) access to job market information and career counselling and (c) online or offline job training. (April 13, 2021).

For more information, please contact:

Ira A. Eddymurthy, Senior Partner
iraeddymurthy@ssek.com

Dicky Tanjung, Senior Associate
dickytanjung@ssek.com

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New Regulation Looks to Ease Process of Hiring Foreign Workers in Indonesia

A new Government Regulation set to come into force on April 1, 2021, will introduce several changes that we view are meant to simplify the process for hiring expatriate workers in Indonesia and in turn attract greater investment into the country.

The new regulation is Government Regulation No. 34 of 2021 regarding the Utilization of Foreign Workers (“GR 34/2021”). It follows the enactment of Law No. 11 of 2020 regarding Job Creation (the “Job Creation Law”), which amended several previously applicable provisions on the utilization of foreign workers in Indonesia as regulated under Law No. 13 of 2003 regarding Manpower (the “Manpower Law”).

GR 34/2021 will revoke Presidential Regulation No. 20 of 2018 upon its promulgation. While the principal provisions relating to the utilization of foreign workers under the current laws and regulations remain in force, GR 34/2021 does introduce some significant changes, which we highlight here.

Change in Work Permit Application Procedure

GR 34/2021 introduces a significant change to the expatriate work permit application process, removing the Notification (Notifikasi) application from the process. Previously, employers were required to obtain a Foreign Worker Utilization Plan (Rencana Penggunaan Tenaga Kerja Asing or “RPTKA”) and a Notification approved and issued by the Minister of Manpower (“MOM”) prior to employing foreign workers. Now, GR 34/2021 removes the Notification requirement and adds one new step, the RPTKA appropriateness assessment (“RPTKA Assessment”). During the RPTKA Assessment, the MOM will determine within two business days whether the submitted information and documents are correct and complete.

The documents submitted for the RPTKA Assessment are mostly the occupation-related documents previously required for RPTKA applications under MOM Regulation No. 10 of 2018 (“MOM Reg 10/2018”).

Either simultaneously with the submission of the RPTKA Assessment documents or once the MOM issues the RPTKA Assessment result, applicants are required to submit personal information and documents of the foreign workers, similar to those required for the Notification application under MOM Reg 10/2018. These documents and personal information will be verified by the MOM within no more than two business days.

Upon verification and the payment of the Foreign Worker Utilization Compensation Fund (Dana Kompensasi Penggunaan Tenaga Kerja Asing or “DKP-TKA”) by the applicant, the MOM will issue the RPTKA Approval (Pengesahan RPTKA).
Security for Work Accident

Article 8(2) of GR 34/2021 provides that the insurance program for foreigners who work in Indonesia for less than six months shall at least cover work accident security. This provision did not exist in previously applicable regulations.

Restriction on Dual Positions in One Company

GR 34/2021 now clearly regulates that employers may not hire a foreign worker to occupy two different positions in a single company. Although this restriction has long been implemented in practice, it was not explicitly stated in any of the existing regulations.

RPTKA Approval Requirement for Government Agencies, International Bodies and Foreign State Representatives

Based on MOM Reg 10/2018, government agencies, international bodies and foreign state representatives that plan to hire foreign workers to work in Indonesia are not required to apply for an RPTKA. According to GR 34/2021, however, they will be required to obtain an RPTKA Approval prior to employing foreign workers, though they are exempted from the RPTKA Assessment process.

Easier Licensing for Tech-Based Startups

With the purpose of boosting investment growth in Indonesia, the Government has eased the foreign worker employment licensing process for tech-based startups by waiving the requirement that such businesses obtain an RPTKA before hiring foreigners. This exemption lasts no more than three months, after which the startups must apply for an RPTKA Approval for their foreign workers.

Additional Documents for RPTKA Approval Application

GR 34/2021 clarifies the documents required for the RPTKA Approval application. Previously, in practice, applicants were required to upload to the MOM’s TKA Online system the employer’s Deed of Establishment and Articles of Association, a Business Registration Number (Nomor Induk Berusaha or “NIB”), and a Mandatory Manpower Report (Wajib Lapor Ketenagakerjaan or “WLK”), although such documents were not required by the applicable regulations at the time. Now, GR 34/2021 clearly states the requirement to submit these documents when applying for RPTKA Approval.

DKP-TKA Payment as Requirement for RPTKA Approval

While previously the payment of DKP-TKA had to be made after the obtainment of the RPTKA and Notification (Notifikasi), under GR 34/2021 the payment will be made prior to the issuance of the RPTKA Approval.
New Types of RPTKA and Extension Period

GR 34/2021 introduces three new types of RPTKA, namely (i) Over 6 Months, (ii) Non-DKP-TKA, and Special Economic Zone (Kawasan Ekonomi Khusus or “SEZ”). The Over 6 Months and Non-DKP-TKA RPTKAs are granted for no longer than two years and are extendable, while the SEZ RPTKA is granted for no longer than five years and is also extendable. The SEZ RPTKA for company Directors and Commissioners may be granted for a period as needed by the employer.

Further, once GR 34/2021 comes into force, an Emergency RPTKA will no longer exist, as foreigners who need to work in Indonesia on an emergency basis may simply apply for the relevant visa available for urgent/emergency matters.

GR 34/2021 provides that an RPTKA must be extended at least 30 days prior to its expiration. Over 6 Months and Non-DKP-TKA RPTKAs can be extended for no more than two years, while the SEZ RPTKA can be extended for up to five years.

RPTKA Approval as Basis for Stay Permit Issuance

Different from the prior regime, GR 34/2021 mandates that the approved RPTKA will directly serve as a basis for the issuance of a work visa and stay permit. Therefore, a Notification (Notifikasi) is no longer the underlying document for the issuance of a work visa and stay permit.

Chief Representative Office Exempted from Certain Obligations

Under GR 34/2021, a Chief of Representative Office is released from the obligation (i) to appoint an Indonesian Co-Laborer (TKI Pendamping) for knowledge and technology transfer purposes and (ii) to provide work education and training for the Indonesian Co-Laborer.

Annual Reporting Obligation

Employers in Indonesia will be required to submit an annual report to the MOM on their employment of foreign workers. The report will cover the implementation of (i) foreign workers employment, (ii) the education and training of Indonesian Co-Workers, and (iii) knowledge and technology transfer from foreign workers to Indonesian Co-Workers. Employers must also submit a report to the MOM when completing or terminating the employment relationship with their foreign workers.

Administrative Sanctions

GR 34/2021 introduces a new administrative sanction in the form of a fine on employers that fail to employ foreign workers with a proper work permit (the Approved RPTKA). The fine will be in the amount of six million Rupiah per worker per month, up to a maximum
of six months from the first day the workers entered Indonesia. The fine must be paid by the employer no later than two weeks from the official imposition.

The above information is subject to clarification from the relevant institutions. (February 26, 2021).

**For more information, please contact:**

Stephen I. Warokka, Partner  
stephenwarokka@ssek.com

Angky Banggaditya, Associate  
angkybanggaditya@ssek.com

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Indonesia’s closely watched omnibus bill on job creation was ratified by Indonesian President Joko Widodo as the Job Creation Law on November 2, 2020 and came into force on that date. The stated aim of the Job Creation Law is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.


We highlight here some of the most significant changes to these employment-related laws.

**Expatriate Employment**

Continuing the Government’s reform of expatriate employment rules and procedures introduced in 2018, the Job Creation Law amends certain provisions of the Labor Law on the employment of expatriates, most notably the Expatriate Manpower Utilization Plan (Rencana Penggunaan Tenaga Kerja Asing or “RPTKA”), which together with the Notification issued under the RPTKA now serves as the work permit issued by the Central Government. An RPTKA is not required for directors or commissioners with “certain” share ownership {SSEK Note: to be clarified by regulation}, shareholders, diplomatic and consular staff at representative offices of foreign countries, or expatriate workers needed for production activities that have stopped due to an emergency, vocational activities, business visits, technological startups, or performing research for a set period of time.

A new Government Regulation should be issued by the end of February 2021 to update the positions open to foreign workers and the period of employment of foreign workers.

**Termination of Permanent Employee Procedure**

The most intriguing potential development relates to the procedure governing termination of employment. In all common law jurisdictions and throughout most of Asia, the employer can unilaterally terminate employment by written notice of termination. That terminates the employment relationship and takes the individual off the payroll although the employee has the right to object to the termination (e.g., as to the grounds or quantum of notice or pay in lieu of notice) and commence legal proceedings for wrongful dismissal.
Under the Labor Law prior to the Job Creation Law, employers in Indonesia had no right to unilaterally terminate employment in any circumstance. Rather, unless the termination was settled and agreed through negotiations, the employer was required to obtain a Labor Court approval for each individual termination and the employee was entitled to up to six months’ salary during such legal proceedings. The business community has long considered this procedure to put unfair bargaining power in the hands of employees who have been able to successfully negotiate for termination settlement packages in excess of their generous statutory entitlements in order for the employer to avoid the costly, lengthy and disruptive formal legal proceedings.

The legislature did not clearly state in the Job Creation Law that the employer can unilaterally terminate employment upon written notice without a court order. But the new rules created by the Job Creation Law may be so interpreted. For the first time, the Job Creation Law creates the notice of termination concept by requiring the employer to provide written notice of termination with reasons. It also abolishes Article 152 of the Labor Law, which has been construed as the main provision requiring the employer to obtain a Labor Court approval of any proposed termination.

Given the enormous implications of this possible change in the Indonesian employment law regime, these new rules merit a careful review in comparison with the old rules.

**Old Law**

**Article 151**

1) Employer, employees, workers/labor union, and the government must make every effort to prevent employment terminations occurring.

2) If every effort has been made but employment terminations cannot be avoided, then the proposed employment terminations must be negotiated by the employer with the workers/labor union, or with the employee if the employee concerned is not a member of a workers/labor union.

3) If the negotiation referred to in paragraph (2) truly fails to achieve an agreement, the employer may only terminate the employment of the employee after obtaining approval from the industrial relations dispute settlement institution.

**Article 152**

1) An application for employment termination approval shall be submitted in writing to the industrial relations dispute settlement institution accompanied by the reasons that form its basis.

2) An application as referred to in paragraph (1) may be accepted by the industrial relations dispute settlement institution if the negotiations as referred to in Article 151 paragraph (2) have taken place.

3) Approval for an employment termination application may only be given by the industrial relations dispute settlement institution if the reason for terminating
employment has actually been negotiated, but the negotiations failed to reach an agreement.

**Article 170**

An employment termination that is not conducted in compliance with the provisions of Article 151 paragraph (3) and Article 168, excluding [sic] Article 158 paragraph (1), Article 160 paragraph (3), Article 162 and Article 169, shall be void by law and the employer shall be required to re-hire the employee and pay all salary and all entitlements which should be received.

**Job Creation Law Changes to the Labor Law**

**Replacement for Article 151**

1) Employer, employees, workers union/labor union and the Government shall make efforts so that there is no termination of employment relationship. {**SSEK Note:** The official elucidation indicates that “make efforts” means positive activities that may ultimately prevent the termination of the employment relationship, such as re-arrangement of working hours, savings (penghematan), improving work methods and providing coaching for employees.}

2) **In the event that the termination of the employment relationship is unavoidable, the objectives and reasons for the termination of the employment relationship shall be notified by the employer to employees and/or workers union/labor union.**

3) In the event that employees have been notified and reject the termination of the employment relationship, settlement of the termination of the employment relationship must be conducted through bipartite negotiation between the employer and employees and/or workers union/labor union.

4) In the event that the bipartite negotiation as referred to in paragraph (3) fails to reach an agreement, the termination of the employment relationship shall be conducted through the next stage in accordance with the mechanism of industrial relationship dispute settlement.

**New Article 151A**

The notification as referred to in Article 151 paragraph (2) does not have to be given by the employer in the event that:

a. employees resign based on their own will (**SSEK Note:** i.e., voluntary resignation);

b. employees and employer terminate the employment relationship in accordance with a fixed-term employment agreement;

c. employees reach pension age in accordance with the employment agreement, company regulation or collective employment agreement; or

d. employees pass away.
Articles 152 and 170 have been repealed

Although not entirely clear, these changes to the Labor Law may well be construed as permitting the employer to effectively terminate employment by written notice of termination with reasons while ensuring that the employee has the right to object, negotiate and commence legal proceedings for wrongful dismissal in the Labor Court. This may be clarified by the anticipated Government Regulation and/or by termination cases in the coming months.

Termination of Permanent Employee Entitlements

Among the most notable changes to the Labor Law is the revocation of Articles 161-172, which provide the different termination benefit packages applicable for the various grounds for termination. That also effectively abolishes one of the heads of termination benefits formerly known as the housing and medical allowance payment equal to 15% of the sum of severance and/or service pay. For example, Article 161 previously clarified the entitlements for a poor performance termination with three written warning letters. Article 162 previously clarified the entitlements for a voluntary resignation. And the balance of these articles clarified the termination benefits payable for change of status of the employer, closing of the employer (with or without proven economic losses), bankruptcy, retirement age, absence without leave for five work days despite two written warning letters, and long-term disability.

The Job Creation Law still recognizes the familiar grounds for termination as well as the list of severance and service pay components depending upon the length of employment. However, the Job Creation Law does not provide any formula for calculating these precise termination benefits for each different ground for termination. Further provisions regarding the quantum of termination benefits are to be provided in the anticipated Government Regulation.

The Job Creation Law may have liberalized the employer’s procedural right to terminate employment by notice of termination as discussed above, but the legislature has added a countermeasure to guard employees against employer abuse by making it a criminal offence for the employer to fail to pay statutory termination entitlements. For perspective, the majority of Indonesian legislation contains criminal sanctions for key violations but such sanctions are seldom enforced by the government in practice given a regulatory practice of issuing official warning letters to the relevant company to rectify its conduct.

Term and Termination of Fixed-Term Employment

Another very significant change to the Labor Law is the revocation of the maximum statutory period of a fixed-term employment agreement, which was previously subject to the “2-1-2 rule” (i.e., maximum two-year first term, extendable once for a maximum of one year, and which can be renewed for a maximum of two years after a “clean break” period of 30 days). The Job Creation Law provides that fixed-term employment
agreements can be based on a fixed period of time or on completion of a specified project as expressly set forth in the relevant employment agreement.

Although completion of the time period of a fixed-term contract, and now completion of the project, is a legitimate basis to terminate a fixed-term employee, the Job Creation Law provides that such fixed-term employees are now entitled to some termination benefits at the end of the term or project, which is a very significant and controversial development. A new Government Regulation will be issued to further clarify the rules on fixed-term employment agreements.

Termination of Expatriate Employees

The Job Creation Law does not provide a specific provision on termination of expatriate employees. However, on 19 December 2017, the Supreme Court issued SEMA No. 1 on Implementation of 2017 Supreme Court Meeting Result as a Guideline for the Role of Indonesian Courts (“SEMA No.1”). It set out new policies on criminal, civil, religious and military legal proceedings to be applied by all courts in Indonesia. In the section on Labor Court proceedings, SEMA No.1 set out the following new policies:

1. Expatriate employees can be employed in Indonesia only for a certain position and a certain period under a fixed-term employment agreement (Perjanjian Kerja Waktu Tertentu or “PKWT”).
2. The legal protection of expatriate employees only applies if such foreign employees have obtained a work permit (Izin Mempekerjakan Tenaga Kerja Asing or “IMTA”). (SSEK Note: The IMTA has been replaced by the above-noted RPTKA and the related Notification under the current rules.)
3. If the expatriate’s work permit has expired but the period of his/her fixed-term employment agreement is still valid, the remaining period of their fixed-term employment agreement will not be protected by law.

The Supreme Court guidelines are not part of the Indonesian hierarchy of laws and regulations since the Supreme Court is a court and does not write legislation. However, SEMA No.1 certainly indicates the opinion of the Supreme Court that expatriate employees must be characterized as fixed-term contract workers and it is likely this interpretation will be followed by the Indonesian Labor Court. We note that the Indonesian court system does not adopt the stare decisis principle and therefore the courts can decide differently on cases with similar merits.

Outsourcing

We are pleased to see that the Job Creation Law revokes the various articles on the “outsourcing of services” in the Labor Law and now only focuses on the “outsourcing of workers”. Officials of the Ministry of Manpower have unofficially acknowledged in the past that the “outsourcing of services” really refers to the entire services sector of the Indonesian economy whose employees do not need special protection. Instead, the new
rules properly focus on the protection of workers who are essentially supplied by outsourcing companies to other companies.

Previously, the Labor Law provided that labor suppliers can be used only for supporting services or activities not directly related to the core activities of the user company. The Job Creation Law has abolished this restriction. Labor supplier companies must obtain a special license from the Central Government, and a new Government Regulation will be issued to regulate the licensing of labor suppliers and the protection of employees of labor supplier companies.

**Social Security Benefits Due to Loss of Jobs and BPJS**

In a very ambitious development, the Job Creation Law introduces a new type of social security benefit under the Social Security (BPJS) Law expressly described as “loss of job security” benefit. This would be commonly known in many jurisdictions as “unemployment insurance”. The new unemployment social security benefit will be administered by the Employment Social Security Administrator (BPJS Ketenagakerjaan) and the Central Government. The benefit will be in the form of (a) cash money capped at the equivalent of six months’ wages, (b) access to information on opportunities in the labor market and (c) job training. A Government Regulation will be issued to regulate this new social security benefit.

The Job Creation Law also amends several provisions in the BPJS Administering Body Law and adds the above-mentioned new loss of job security benefit to the relevant articles.

The Job Creation Law provides that six billion rupiah in state funds will be used as the initial capital to administer the loss of job security program.

**Protection of Indonesian Migrant Workers**

The Job Creation Law moves the licensing authority for Indonesian migrant worker placement companies in the Migrant Workers Law from the Minister of Manpower to the Central Government. It also provides that all branches of migrant worker placement companies must obtain a license issued by the relevant provincial government.

**Minimum Wage Procedure for Indonesia Including DKI Jakarta Provincial Minimum Wage**

The Indonesian Minister of Manpower issued Circular Letter No. M/11/HK.04/X/2020 dated October 26, 2020, addressed to Governors throughout Indonesia, which instructs them to stipulate the 2021 Provincial Minimum Wages by October 31, 2020, while making it possible for Governors to apply the 2020 minimum wage for 2021. In response to that, the DKI Jakarta Governor issued Governor Regulation No. 103 of 2020 regarding the Provincial Minimum Wage for 2021, which provides that the 2021 minimum wage is Rp.4,416,186.548 valid as of January 1, 2021.
This regulation also provides that employers/entrepreneurs economically affected by COVID-19 may apply for the imposition of the 2020 provincial minimum wage in 2021 subject to fulfilling requirements which were subsequently set forth in Head of Manpower Service Office of DKI Jakarta Decree ("Head of Service Office") No. 3100 of 2020. This Decree provides that applications for this special treatment must be submitted to the Head of Service Office no later than December 18, 2020. Only certain business sectors listed in the Decree are eligible, while other sectors can still apply with additional supporting documents such as loss/profit report for January 2020 until October 2020 and January 2019 until December 2019, as well as a Debtor Information Document from the Financial Services Authority (Otoritas Jasa Keuangan or "OJK") for the period of October 2020 if available. For the listed business sectors, the application letter must enclose a statement letter, copy of NIB which states the relevant KBLI number and data of number of employees and their work periods. (December 4, 2020).

For more information, please contact:

Stephen I. Warokka, Partner
stephenwarokka@ssek.com

Indrawan D. Yuriutomo, Associate
indrawanyuriutomo@ssek.com

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Indonesia’s Omnibus Law Puts Focus on Direct Use of Geothermal Resources

The Indonesian Government enacted Law No. 11 of 2020 regarding Jobs Creation (the “Omnibus Law”) on November 2, 2020. The stated aim of the Omnibus Law is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law amends various provisions in laws across numerous sectors, including amending 29 provisions and removing six provisions in Law No. 21 of 2014 regarding Geothermal (the “Geothermal Law”).

Many of the changes to the Geothermal Law concern the direct use of geothermal resources. We look at some of the key changes.

Centralizing the Direct Use of Geothermal Resources

The authorities of the central government and local governments (provincial, regency and municipal) to oversee and regulate business activities related to the direct use of geothermal resources remain the same as under the Geothermal Law.

However, the Omnibus Law now gives the central government the authority to stipulate norms, standards, procedures and criteria for the direct use geothermal resources. Local governments must then follow these norms, standards, procedures and criteria when exercising their authorities, including when issuing a Business License for the Direct Utilization of geothermal resources, known as a Perizinan Berusaha Terkait Pemanfaatan Langsung or “PBPL”. This direct use license was known as an Izin Pemanfaatan Langsung under the Geothermal Law.

Details regarding the norms, standards, procedures and criteria shall be further regulated under a government regulation, but it is hoped that they will simplify licensing matters, particularly the licensing authority given to local governments.

Determining the Price for Direct Use of Geothermal Energy

The Omnibus Law removes the provision in the Geothermal Law on the authority of the central government to determine the price of geothermal energy from direct use business activities. Instead, the Omnibus Law stipulates that the price of direct use geothermal energy will be stipulated in a government regulation that is to be issued. We assume that the central government will still have the authority to determine the price of direct use geothermal energy price, but we will have to wait for the implementing government to be certain.
Removing the Production Fee for the Direct Use of Geothermal Resources

The Omnibus Law removes the requirement for holders of a PBPL to pay production fees (iuran produksi) for direct use geothermal energy. Now PBPL holders are only required to pay local taxes and retributions/levies.

It is hoped that removing the production fee will encourage greater investment in Indonesia’s geothermal sector, particularly in business activities related to the direct use of geothermal resources.

No Separate License for Indirect Geothermal Use in Water Conservation Areas

In keeping with its stated aim of easing the process of doing business in Indonesia, the Omnibus Law removes the provision of the Geothermal Law requiring a separate license from the Minister of Maritime Affairs and Fisheries for business activities related to the indirect utilization of geothermal resources in water conservation areas. It is hoped that removing this additional licensing requirement under the Geothermal Law will spur investment in the sector.

Criminal Provisions Under the Omnibus Law

The Omnibus Law has added qualifications for certain criminal offenses under the Geothermal Law, meaning that criminal sanctions for these offenses will be imposed only if the offenses have resulted in casualties or have damaged health, safety and/or environment. The affected offenses are as follows:

a. conducting direct geothermal activities (i) without a PBPL, (ii) not in the location stipulated in the Business License, and (iii) not in accordance with its purposes;

b. conducting indirect geothermal activities without a Business License for Indirect Utilization (Perizinan Berusaha untuk Pemanfaatan Tidak Langsung or “PBPTL”).

The Omnibus Law also removes the threat of imprisonment as contained in provisions in the Geothermal Law for the following violations:

a. intentionally conducting exploration, exploitation and/or utilization activities not in the designated work area;

b. carrying out indirect geothermal utilization business activity without a PBPTL; and

c. intentionally using a PBPTL not in accordance with its purposes.

Conclusion

The Omnibus Law focuses on business activities related to the direct use of geothermal resources. It gives the central government the power to control the authorities given to local governments. The Omnibus Law also seeks to encourage investment in the direct use geothermal sector by scrapping the production fee for the direct use of geothermal resources. For indirect geothermal activities, the Omnibus Law eliminates the dual
licensing regime in water conservation areas. But it will be important to closely monitor further implementing regulations to be issued for Omnibus Law. (December 2, 2020).

For more information, please contact:

Fransiscus Rodyanto, Partner
fransiscusrodyanto@ssek.com

Fernando Lintong, Associate
fernandolintong@ssek.com

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Indonesia Omnibus Law – Changes to the Halal Products Law

Indonesia’s closely watched omnibus jobs creation bill recently became law. The stated aim of Law No. 11 Year 2020 on Jobs Creation (the “Omnibus Law”) is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law revises various provisions in laws across numerous sectors, including Law No. 33 Year 2014 on Halal Product Assurance (“Law 33/2014”). Law 33/2014 requires all products imported, distributed and sold as halal in Indonesian territory to be halal certified. It also provides the mechanism for halal certification.

The Omnibus Law makes the following changes to the halal certification process:

Simplification of the Certification Process

The Omnibus Law contains articles to speed up and simplify the issuance of halal certificates.

Businesses that want to have their products or services halal-certified must submit a written application to the halal certification body, BPJPH (Badan Penyelenggara Jaminan Produk Halal). Under the Omnibus Law, the BPJPH must examine and verify the application within one business day. Under the previous regime, the BPJPH had 10 days to complete this step.

After verifying the application, the BPJPH will request a Halal Inspection Agency (LPH) to check the halal status of the product or service in question. The LPH will then appoint a Halal Auditor to inspect/examine the relevant product or service. The Omnibus Law speeds up the examination process from 40-60 days to 15 days.

After the examination is completed, the LPH will submit the results of the examination and its evaluation of the halal status of the product or service directly to the Indonesian Ulema Council (Majelis Ulama Indonesia or “MUI”), with a copy sent to the BPJPH.

The MUI will then hold a Halal Fatwa Assembly, a meeting of experts and relevant officials, to determine the product’s halal status. The Omnibus Law speeds up the time period to hold the Halal Fatwa Assembly from 30 business days to three business days.

If the MUI approves the halal status of the product or service, the BPJPH will issue a Halal Certificate within one business day (previously seven business days).

The Omnibus Law also simplifies the Halal Certificate renewal process. The BPJPH will automatically issue renewals to companies that submit a renewal application to the BPJPH with a statement that their production process is halal and they have not
changed the composition of the relevant product(s) since originally obtaining their Halal Certificate.

**Halal Certification for Micro and Small Businesses**

The Omnibus Law provides that micro and small businesses that apply for halal certification do not have to pay any fees. Under Law 33/2014, micro and small businesses were still subject to halal certification fees but were allowed under the law to have payment facilitated by a third party.

The Omnibus Law also allows micro and small businesses to appoint a Halal Supervisor (**Penyelia Halal**), the person at the business in charge of ensuring the production process is halal, from a Community Organization (**Organisasi Kemasyarakatan**).

**LPH**

Law 33/2014 provides that the Government and/or the public can establish an LPH, which as mentioned above assists the BPJPH in examining whether a product or service is halal. It further stipulates that if an LPH is established by the public it must be proposed by a legal Islamic religious institution. The Omnibus Law expands this to include private universities that are under the auspices of an incorporated Islamic religious institution or a legal Islamic foundation.

The Omnibus Law also provides that if a region, which is not defined, does not have an LPH established by the public, legal Islamic religious institutions and/or private universities may cooperate with state-owned enterprises or the Indonesian Food and Drug Authority to assist the BPJPH in conducting halal examinations for products and services.

The Omnibus Law also revokes the requirement that an LPH be accredited by the BPJPH and the requirement that Halal Auditors obtain certification from the MUI.

**Sanctions**

Law 33/2014 outlines the administrative sanctions for businesses that (i) do not abide by their obligations as Halal Certificate holders, (ii) fail to include a halal label on their products, (iii) fail to register their products as halal or (iv) fail to separate halal and non-halal production processes. In contrast, the Omnibus Law simply says violations are subject to administrative sanctions that will be elaborated in a Government regulation that is to be issued.

**Implementing Regulations**

Law 33/2014 provides that details regarding Halal Supervisors, LPH, Halal Auditors, the Halal Certificate renewal process, fees, public involvement, and sanctions shall be further regulated in a ministerial regulation, which was issued in the form of Minister of

The Omnibus Law now provides that the above matters shall be further regulated in a Government regulation that is to be issued. (November 10, 2020).

For more information, please contact:

**Winnie Rolindrawan**, Partner  
winnierolindrawan@ssek.com

**Syarifah R. Fakhry**, Associate  
syarifahfakhry@ssek.com

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Indonesia’s New Investment List – Healthcare Sector

Following the issuance of Law No. 11 of 2020 on Job Creation ("Omnibus Law"), the Government of Indonesia has released the long-awaited new Investment List, under Presidential Regulation No. 10 of 2021 regarding Investment Sectors ("New Investment List"). The stated aim of the New Investment List is to boost foreign investment in Indonesia. It came into force on March 4, 2021 and replaces the previous Negative Investment List (Daftar Negatif Investasi or “Negative List”) under Presidential Regulation No. 44 of 2016.

As anticipated, the New Investment List significantly relaxes investment restrictions under the Negative List. We will focus here on changes to investment in the healthcare sector under the New Investment List.

Key Changes – Liberalizing Investment in Healthcare Sector

Under the Negative List, healthcare, one of the more heavily regulated industries in Indonesia, was subject to a number of restrictions on foreign investment. Most of these restrictions have now been lifted, unless otherwise regulated by more specific regulations.

For example, under the Negative List, hospitals were subject to 67% maximum foreign ownership for non-ASEAN investors and 70% for ASEAN investors. These foreign ownership caps are not included in the New Investment List, which means that hospitals should be open for 100% foreign ownership. However, Government Regulation No. 47 of 2021 on Hospital Administration, an implementing regulation for the Omnibus Law, requires that any hospital with foreign ownership have at least 200 beds. This regulation in effect prohibits foreign investment in hospitals with fewer than 200 beds.

The New Investment List also liberalizes foreign investment in the pharmaceutical manufacturing business, which previously was subject to 85% maximum foreign ownership. Under the New Investment List, there is no longer any foreign shareholding cap applicable for this line of business.

Similarly, there is no foreign shareholding cap in the New Investment List for the pharmaceutical wholesaler business. In the past, pharmaceutical wholesaling was closed for foreign ownership under a long-standing policy of the Ministry of Health, despite not being included in the Negative List. While there is no guarantee the same Ministry of Health policy will not again be imposed, we believe that with the current wave of investment liberalization, the pharmaceutical wholesaler business will be open for 100% foreign ownership.

The table below highlights key segments of the healthcare sector that have seen a significant relaxation of investment restrictions under the New Investment List:
### Business Activity

<table>
<thead>
<tr>
<th>Pharmaceutical Manufacturing</th>
<th>Negative List</th>
<th>New Investment List</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>85% maximum foreign ownership</td>
<td>Open for 100% foreign ownership</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pharmaceutical Wholesaler</th>
<th>Closed for foreign ownership</th>
<th>Open for 100% foreign ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raw Pharmaceutical Wholesaler</td>
<td>Closed for foreign ownership</td>
<td>Open for 100% foreign ownership</td>
</tr>
<tr>
<td>Hospitals</td>
<td>67% foreign ownership (70% for ASEAN investors)</td>
<td>Open for 100% foreign ownership, but subject to minimum number of beds</td>
</tr>
<tr>
<td>Medical Devices Distributor</td>
<td>Maximum 49% foreign ownership</td>
<td>Open for 100% foreign ownership</td>
</tr>
<tr>
<td>Medical Devices Testing</td>
<td>Maximum 67% foreign ownership</td>
<td>Open for 100% foreign ownership</td>
</tr>
</tbody>
</table>

### Business Lines Reserved for Cooperatives and MSMEs

Similar to the previous Negative List, the New Investment List contains a number of business activities that are reserved for Indonesian cooperatives (*koperasi*) and micro, small and medium enterprises (*MSMEs*), or which are open to foreign ownership but subject to a partnership arrangement with Indonesian cooperatives or MSMEs. Reserving business activities for cooperatives and MSMEs in effect closes these activities to foreign investment, since foreign investment in Indonesia must be made as a large-scale business. An example of this restriction is the retail trading of pharmaceutical products at pharmacies.

Business activities that require a partnership with cooperatives and/or MSMEs are still open for foreign investment, provided that the foreign invested company engage with local cooperatives of MSMEs. One example of a business activity that falls under this requirement is Class A Medical Devices Manufacturing.

### Remaining Restrictions

Other than the above business-specific requirements, the New Investment List imposes foreign ownership limitations for two healthcare business lines, those being Traditional Medicine Manufacturing and Manufacturing Raw Materials for Traditional Medicine. Both lines of business are 100% closed for foreign ownership.
Implementation and Exceptions

The New Investment List came into force on March 4, 2021. Existing business entities engaging in a business that is no longer subject to foreign ownership restrictions can now restructure their shareholding in keeping with the current investment framework under the New Investment List.

Also note that for those few healthcare business activities still subject to foreign shareholding limitations under the New Investment List, exceptions to these limitations may apply in certain circumstances where the business is:

a. located in a Special Economic Zone;

b. conducted through indirect/portfolio investments in the domestic capital market;

c. grandfathered from a previous and more favorable investment framework; or

d. subject to more favorable treatment in a treaty between Indonesia and the investor’s country of origin.

The New Investment List represents a significant step by the Government of Indonesia to liberalize foreign investment in the healthcare industry, in particular healthcare wholesalers. However, it remains to be seen how the other technical ministries, including the Ministry of Trade, which supervises the general wholesaler and trading business, will align with the New Investment List. In particular, we will have to see how the Ministry of Trade reconciles the New Investment List with the existing prohibition on companies with foreign shareholding acting as a wholesaler or distributor unless it appoints a local wholesaler and/or distributor.

While we will have to closely monitor how the New Investment List is implemented in practice, we believe that it demonstrates the commitment of the current administration to reduce barriers to foreign investment and promote economic liberalization. (March 19, 2021).

For more information, please contact:

Ira A. Eddymurthy, Senior Partner
iraedddymurthy@ssek.com

Fadhillah Rizqy, Associate
fadhilla.hrizqy@ssek.com

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New Immigration Regulation Promises More Ease and Clarity for Foreigners in Indonesia

As a continuation of the Indonesian Government’s stated goal to make Indonesia more investment friendly through the enactment of Law No. 11 of 2020 regarding Job Creation, a new Government Regulation ("GR") was issued and came into force on February 2, 2021. The new regulation is GR No. 48 of 2021 regarding the Third Amendment to GR No. 31 of 2013 regarding the Implementing Regulation of Law No. 6 of 2011 regarding Immigration ("GR 48/2021").

While the principal provisions relating to the presence of foreigners in Indonesia under the current laws and regulations remain in force, GR 48/2021 introduces some significant changes, which we highlight here.

Change in Validity of Limited Stay Permit

One of the biggest changes introduced by GR 48/2021 is the legally permissible length of a foreigner’s Limited Stay Permit (Izin Tinggal Terbatas or “ITAS”). Previously, an ITAS was granted for a maximum period of two years and could be extended for maximum two-year periods up to an aggregate stay of six years in Indonesia, after which the foreigner was required to process a new ITAS.

GR 48/2021 now provides that an ITAS is valid for a maximum of five years and can be extended under the condition that the aggregate stay of the foreigner in Indonesia does not exceed ten years. GR 48/2021 also further clarifies that an ITAS for work purposes that is valid for no more than 90 days can be extended under the condition that the aggregate stay of the foreigner in Indonesia does not exceed 180 days.

Change in Validity Period of Visit Stay Permits

Simplification is a big theme of GR 48/2021, with the regulation revising provisions of older regulations to make them more straightforward and easier to comprehend. For example, in the case of a Visit Stay Permit issued based on entry to Indonesia under a Single-Entry Visit Visa, GR 48/2021 now provides that such Visit Stay Permit is valid for a maximum period of 180 days and is non-extendable. The validity period used to be 60 days and it was extendable inland four times up to an aggregate stay of six months.

Meanwhile, Visit Stay Permits issued based on entry under a Multiple-Entry Visit Visa are granted for a maximum period of 180 days and are extendable up to an aggregate stay of no more than twelve months in Indonesia.

Another big change is the validity period of Stay Permits issued based on entry under a Visit Visa on Arrival, which used to be thirty days and extendable for another thirty days. Under GR 48/2021, the maximum validity period of this Stay Permit is no more than thirty days and it is no longer possible to be extended.
Introduction of ‘Second Home’ Category

GR 48/2021 introduces a new category to Indonesian immigration rules, whereby foreigners can now obtain a Limited Stay Visa (Visa Tinggal Terbatas or “VITAS”) for non-work purposes for the purpose of having Indonesia as a “second home” (rumah kedua). Foreigners must have settled in Indonesia for five to ten years and fulfil certain requirements to qualify for this new visa category. This “second home” category replaces elderly tourists, who were eligible for a non-work VITAS in previous regulations. GR 48/2021 does provide that non-work VITAS already issued for elderly tourists shall remain applicable as a non-work VITAS for foreigners in the “second home” category.

Additional Requirements to Obtain a VITAS

GR 48/2021 adds two requirements for a VITAS application, namely:

a. A statement letter of good standing from the relevant authorities or the embassy/consulate of the foreigner's country of origin; and
b. A health examination letter stating that the foreigner is free from any contagious disease that could endanger public health.

Pre-investment and Requirements for Obtaining a Visit Visa

GR 48/2021 adds a new eligibility category for both Single and Multiple-Entry Visit Visas, i.e. pre-investment activities. These are activities in conjunction with starting a business, such as activities related to field surveys and/or feasibility studies. In relation to the required guarantee letter from a guarantor for a Visit Visa application, if a foreigner does not have a guarantor then the guarantee letter can be replaced with a proof of payment of an Immigration Guarantee, as discussed below.

Immigration Guarantee

GR 48/2021 requires certain foreigners in Indonesia to have a guarantor responsible for the presence and activities of said foreigners during their stay in Indonesia, and for reporting any change in the civil status, immigration status and/or address of such foreigners. This guarantor requirement does not apply to foreigners legally married to Indonesians, foreign investors, or citizens of countries that reciprocally waive guarantee requirements.

Foreign investors, “second home” foreigners, and foreigners engaged in pre-investment activities may make an official payment to a Directorate General of Immigration bank account that will be treated as an immigration guarantee payment that replaces the guarantor requirement. This payment will be used, if necessary, to cover the cost of repatriation or deportation, overstay, and/or any other outstanding immigration costs that must be paid by the relevant foreigner. If the immigration guarantee is not used to pay immigration obligations, the full amount of the payment shall be returned to the foreigners once their Stay Permit expires.
Conversion of Stay Permits

Another significant change introduced by GR 48/2021 is the possibility for foreigners themselves to apply to the relevant Head of Immigration Office or appointed Immigration Official for the conversion of a Visit Stay Permit to an ITAS, or an ITAS to a Permanent Stay Permit (ITAP). Previously, only guarantors could submit these applications. (March 15, 2021).

For more information, please contact:

Stephen I. Warokka, Partner
stephenwarokka@ssek.com

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Indonesia Omnibus Law – Changes to the Immigration Law

Indonesia’s closely watched omnibus jobs creation bill recently became law. The stated aim of Law No. 11 of 2020 regarding Job Creation (2 November 2020) (the “Omnibus Law”) is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law, among other things, introduces several changes to the currently applicable Law No. 6 of 2011 regarding Immigration (the “Immigration Law”). We highlight some of the noteworthy changes below.

Electronic Visas and Stay Permits

The Omnibus Law amends the definition of visas and stay permits to include that visas and stay permits may be issued either manually or electronically.

Pre-investment and Second Home

The Omnibus Law adds “pre-investment” as one of the activities that expatriates can perform in Indonesia under a Visit Visa (Visa Kunjungan). Pre-investment is not included in the current Immigration Law. It is expected that this additional category will provide greater certainty and considerable ease to foreign investors who wish to travel to Indonesia for meetings and/or business discussions, as well as for potentially conducting other activities in conjunction with the establishment of a new business in the country.

Further, in relation to Limited Stay Visas (Visa Tinggal Terbatas or “VITAS”), the Omnibus Law replaces “elderly” with foreigners treating Indonesia as a “second home” on the list of foreigners eligible to obtain a VITAS. This change could benefit expatriates who do not qualify as elderly but make or wish to make Indonesia their second home. A more detailed explanation of VITAS eligibility will be provided in a Government Regulation that is to be issued.

Limited Stay Permits (ITAS) at Immigration Checkpoints

The Omnibus Law further reaffirms that expatriates who have obtained their Limited Stay Permit (Izin Tinggal Terbatas or “ITAS”) at certain immigration checkpoints (i.e. designated airports/ports/borders) are not required to apply for the ITAS at their local Immigration Office, which should provide added certainty for the ITAS collection process.

Permanent Stay Permit (ITAP)

In addition to adding expatriates with a “second home” in Indonesia as eligible for obtaining an ITAP, the Omnibus Law provides that a separate Government Regulation will stipulate further provisions regarding ITAP eligibility.
Guarantors of Expatriates

A big breakthrough introduced by the Omnibus Law is the exemption from the requirement to have a guarantor (penjamin) in Indonesia for expatriates who invest in Indonesia and/or whose country of origin applies a reciprocal exemption for Indonesian nationals. Under the current Immigration Law, only foreigners who are married to an Indonesian citizen are excluded from the requirement to have a guarantor in Indonesia.

The Omnibus Law further provides that foreigners who qualify for the exemption are still obligated to deposit an “immigration guarantee” as a replacement for the guarantor. Further details on the immigration guarantee will be set forth in a Government Regulation. (November 11, 2020).

For more information, please contact:

Stephen I. Warokka, Partner
stephenwarokka@ssek.com

Angky Banggaditya, Associate
angkybanggaditya@ssek.com

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Indonesia’s New Investment List – Summary of Draft Presidential Regulation

Investment in Indonesia is subject to the Negative Investment List, or DNI. The current Negative Investment List was issued in 2016 through Presidential Regulation No. 44 of 2016 regarding the List of Business Fields that Are Closed and Business Fields that Are Conditionally Open for Investment.

There are three types of business in the 2016 Negative Investment List: those that are open to investment, those that are closed, and those that are open to investment with requirements.

New Investment List

A draft Presidential Regulation has been made public that contains a new Investment List. In the draft Investment List, all lines of business are open other than the six sectors mentioned below and those lines of business that can only be done by the Central Government. Under the recently issued Omnibus Law on Job Creation, six sectors are closed to investment. Those are narcotics, gambling and/or casinos, harvesting of fish listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), utilization or harvesting of coral, chemical weapons, and chemicals that might damage the ozone layer.

Open Lines of Business in Draft Investment List

1. Priority lines of business (for which fiscal – tax holiday, tax allowance, investment allowance, customs and excise incentives – and non-fiscal facilities – ease of business licensing, immigration, labor, etc. – are available). The granting of these incentives shall be in accordance with laws and regulations.
2. Allocated lines of business or partnership with cooperatives and micro, small and medium enterprises.
3. Lines of business with certain conditions (i.e., reserved for domestic investment, limited foreign investment, and special licensing. Special licensing does not apply to:
   a. Capital investment through portfolio through domestic capital market;
   b. Businesses located in Special Economic Zones;
   c. Licenses already approved before the issuance of this regulation, unless those provisions were more beneficial to the investor and/or investors receiving special rights due to bilateral/multilateral agreements).
4. Lines of business other than the above (these are open to all capital investors, both domestic and foreign).
Priority Lines of Business

A priority line of business must fulfil the following criteria:
1. National strategic program/project;
2. Capital-intensive;
3. Labor-intensive;
4. High-tech;
5. Pioneer industry;
6. Export oriented/import substitution; and/or
7. Research, development and innovation-oriented.

DNI versus Draft Investment List

A large part of the 2016 Negative Investment List is a list of businesses open to investment with certain requirements. In the draft Investment List, a large part of the document is the priority list, while there are only four pages of the conditional investment list.

Acquisition, Merger, Consolidation

Under the draft Investment List, the rules on foreign ownership limitations are as follows:
- acquisition: foreign ownership limitation follows the acquired company as stated in the business license;
- merger: foreign ownership limitation follows the merger target company’s limitation; and
- consolidation: the provisions applicable at the time of the consolidation shall apply to the consolidated company.

ASEAN Investors

There is no mention of special treatment for ASEAN investors in the draft Investment List. This would be a departure from the 2016 Negative Investment List, which contains higher thresholds for foreign investment by investors from member countries of the Association of Southeast Asian Nations.

Limitations in Specific Sectors

It will be important to look at the different ministerial regulations issued for the different business sectors because provisions on foreign ownership limitations may differ between these ministerial regulations and the new Investment List. Note, however, that ministerial regulations rank below a Presidential Regulation in the Indonesian hierarchy of laws and regulations.
Other Changes in Draft Investment List

There are a number of significant changes in the draft Investment List. For example, distribution not affiliated with production is currently limited to 67% foreign ownership in the 2016 Negative Investment List, but it is not mentioned in the draft Investment List. Construction services as well as certain oil and gas supporting services which are now limited or even restricted for foreign ownership are also no longer mentioned in the draft Investment List, so theoretically, and subject to review of sectoral regulations, these businesses may be opened to 100% foreign investment. (January 22, 2021).

For more information, please contact:

Stephen Igor Warokka, Partner
stephenwarokka@ssek.com

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Indonesia’s closely watched omnibus jobs creation bill recently became law. The stated aim of Law No. 11 Year 2020 on Jobs Creation (the “Omnibus Law”) is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law, among other things, introduces new risk-based business licensing and simplifies the licensing process and investment requirements for numerous business sectors by amending and revoking provisions in various regulations. It also seeks to empower and protect micro, small and medium enterprises (“MSMEs”) and forms a sovereign wealth fund with the function to invest and manage Government funds and assets.

Below are noteworthy changes under the Omnibus Law.

**Risk-Based Business Licensing**

The Omnibus Law introduces risk-based business licensing, with the licensing requirements increasing along with the level of risk and business activity, as follows:

1. **Low-Risk Business Activity:** Only required to obtain a business identification number (nomor induk berusaha or “NIB”).

2. **Intermediate-Risk Business Activity:** Divided into (i) lower intermediate risk and (ii) upper intermediate risk. In addition to an NIB, companies that fall in the lower intermediate risk category will be required to provide a statement letter of fulfillment of business standards, while upper intermediate risk companies will have to obtain a business standards certificate from the central or regional Government. Businesses in these two categories may also need to obtain a product standards certificate issued by the central Government before commercializing their products.

3. **High-Risk Business Activity:** Required to obtain an NIB and license in the form of an approval issued by the central or regional Government for the business actors to perform their business activities. Companies involved in certain business activities will also be required to obtain a business standards certificate and product standards certificate issued by either the central or regional Government.

A Government Regulation will be issued to regulate the implementation of business licensing for each risk level and the supervision of business activities.

**Simplification of Business Licensing Requirements**

The Omnibus Law simplifies business licensing by eliminating the need for business actors to obtain a location permit. Instead of obtaining a location permit, business actors
will only have to ensure that their business location conforms to the relevant Detailed Spatial Plan (Rencana Detail Tata Ruang or "RDTR"). If the location conforms to the RDTR, the business actor will only be required to input the business location coordinates to the Online Single Submission (OSS) system. The Omnibus Law also amends the procedures for environmental approvals, building construction approvals and function feasibility certificate (sertifikat laik fungsi).

**Business Sectors Open to Investment**

In line with the Government’s plan to transform the current Negative Investment List of business fields that are closed, wholly or partially, to investment into a Positive Investment List, the Omnibus Law amends the business sectors open to investment under Law No. 25 of 2007 regarding Capital Investment (the "Investment Law").

Previously, the catch-all exception to business lines open for investment under the Investment Law was “business lines that are stipulated to be closed to or conditionally open for investment.” Now the Omnibus Law stipulates that all business lines are open for investment except for those that are stipulated otherwise or "activities that are reserved only for the Central Government."

The elucidation of the Omnibus Law provides that "activities that are reserved only for the Central Government" are service-like activities or activities related to security and defense, including government museums, flight navigation administration and telecommunication / navigation tools for shipping and vessels. While the language in the elucidation suggests that the list of activities reserved for the central Government included there is not exhaustive, there is no further information on the limits of this category.

The Omnibus Law also includes a new list of business activities that are closed for investment, which are (i) cultivation and manufacturing of category 1 narcotics (i.e., raw opium, coca leaves and plants, cocaine, heroin, methamphetamine and marijuana), (ii) gambling, (iii) fishing for endangered species, (iv) utilization or collection of coral, (v) manufacturing of chemical weapons, and (vi) manufacturing of ozone-depleting materials.

**Empowerment and Protection of MSMEs**

The Omnibus Law revises an article of the Investment Law on MSMEs and cooperatives. Where the Investment Law mandated the Government to reserve certain business lines for MSMEs and cooperatives, the Omnibus Law stipulates that the central and regional governments, in accordance with their respective authorities, shall provide facilities for and empower and protect MSMEs. Such empowerment and protection shall now also include human resources training and access to funding.
Central Government Investment

One of the most notable new changes under the Omnibus Law is the introduction of the concept of Central Government Investment. Under the Law, the Government gives the Minister of Finance and a new body, the Investment Management Institution, which will follow the sovereign wealth fund model, the authority and responsibility to manage the Government’s investments, which can be made through the placement and management of funds and assets.

The Investment Management Institution shall be in the form of an Indonesian legal entity fully owned by the Government of Indonesia and responsible to the President. In carrying out its function, the Investment Management Institution will be able to invest, directly or indirectly, cooperate with third parties, and establish special entities in the form of an Indonesian legal entity or a foreign legal entity. Government investments carried out by the Investment Management Institution may be sourced from state assets, the assets of state-owned enterprises and/or other legitimate sources.

A Government Regulation is to be issued to further regulate the governance of the Investment Management Institution. It is worth noting that the Omnibus Law explicitly provides that provisions of law that govern state financial management/state wealth/state-owned enterprises do not apply to the Investment Management Institution.

Supervision and Monitoring

The Omnibus Law outlines administrative sanctions for business licensing violations. These administrative sanctions can be in the form of (i) warnings, (ii) temporary suspension of business activity, (iii) fines, (iv) police action to cease business activities, (v) revocation of license/certification/approval, and/or (vi) revocation of business license. Further provisions on the implementation of administrative sanctions shall be elaborated in a Government Regulation that is to be issued.

Transitional Provisions

All business licenses and licenses from various sectors issued prior to the issuance of the Omnibus Law shall be valid in accordance with this Omnibus Law until their expiration. Licenses that are still in the application process must conform to the licensing procedures under the Omnibus Law. (November 17, 2020).

For more information, contact:

Ira A. Eddymurthy, Senior Partner
iraeddymurthy@ssek.com

Arvin Raharja, Associate
arvinraharja@ssek.com
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Indonesia Omnibus Law – Changes to the Mining Law

Indonesia’s closely watched omnibus jobs creation bill recently became law. The stated aim of Law No. 11 of 2020 regarding Jobs Creation (the “Omnibus Law”) is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law amends various provisions in laws across numerous sectors, including Law No. 4 of 2009 regarding Mineral and Coal Mining, as amended by Law No. 3 of 2020 (together, the “Mining Law”). The Omnibus Law does not introduce significant changes to the Mining Law, adding just one provision and amending another provision. This is most likely because the Mining Law was just amended through Law No. 3 of 2020 in June this year.

The most significant change under the Omnibus Law concerns special treatment incentives, which may be in the form of 0% royalty fee, for holders of a mining business license or special mining business license for production operation (“IUP-OP and IUPK-OP Holders”) that carry out coal value-added activities.

Incentives for Coal Value-Added Activities

The Omnibus Law introduces a new provision to the Mining Law that provides IUP-OP and IUPK-OP Holders that carry out coal value-added activities special treatment incentives related to payment of tax and non-tax state revenues. This fiscal incentive is aimed at improving domestic coal processing and creating a competitive price for coal-processed products.

There is no explicit guidance under the Omnibus Law on which tax and non-tax state revenues can be incentivized for IUP-OP and IUPK-OP Holders that carry out coal value-added activities, except for 0% royalty fee. It remains to be seen whether an implementing regulation will be issued to provide other incentives.

Under the Mining Law, IUP-OP and IUPK-OP Holders (including those that carry out coal value-added activities) are required to pay production royalty at varying rates. This production royalty constitutes non-tax state revenue paid by mining rights holders to the state on the revenue generated from the exploitation or production of mineral and/or coal (the “Royalty Fee”). As an overview, the Royalty Fee specifically for coal products is currently between 2% and 7% of the selling price, depending on the type of coal product.

The Omnibus Law introduces an exemption to the aforesaid payment of the Royalty Fee by offering a fiscal incentive of 0% Royalty Fee for IUP-OP and IUPK-OP holders that carry out coal value-added activities, namely coal upgrading, coal briquetting, coking, coal liquefaction, coal gasification and coal slurry/coal water mixture. They also qualify if they build their own mine-mouth steam power plant.
Sanctions for Hinderance or Interference of Mining Activities

The Omnibus Law amends the provision in the Mining Law on sanctions for hindering or interfering with mining activities. This is a minor amendment to the Mining Law, with the Omnibus Law only adding to this provision on sanctions a reference to Article 86F of the Mining Law relating to the obligations of holders of a rock mining business license (surat izin penambangan batuan or “SIPB”).

Sanctions in the form of up to one year’s imprisonment or fines in the maximum amount of Rp. 100 million may be imposed on any party that hinders or interferes with the mining business activities of holders of a mining business license (IUP), special mining business license (IUPK), people’s mining license (IPR) or SIPB that have completed the land settlement process with landowners in accordance with the prevailing laws and regulations.

Other Noteworthy Changes Related to Mining Business Activities

Aside from the provisions in the Omnibus Law that amend the Mining Law, the Omnibus Law also contains several notable provisions in other sectors that may affect the implementation of mining business activities. These provisions are as follows:

i. Exclusion of Coal Mining Products as Non-VAT Goods
The Omnibus Law amends Law No. 8 of 1983 regarding Value-Added Tax and Sales Tax on Luxury Goods, as lastly amended by Law No. 42 of 2009, to eliminate the value-added tax (“VAT”) exemption for coal mining products. This means that coal mining products will now be subject to VAT.

ii. Change of Forestry Permit Regime to Forestry Arrangement
The Omnibus Law slightly amends the wording of provisions regarding the borrow-use permit for forest areas stipulated in Law No. 41 of 1999 regarding Forestry, as lastly amended by Law No. 19 of 2004. The Omnibus Law essentially stipulates that the use of forest area for mining activities, among others, may be carried out by virtue of “borrow-use” from the central government. Interestingly, the Omnibus Law eliminates the word “permit” from the borrow-use context, leaving it ambiguous as to whether the borrow-use referred to in this new provision does not necessarily signify the issuance of a permit or license, but is rather a mere arrangement between the business actor and the central government. It remains to be seen how this change will play out in practice.

Conclusion

Other than the imposition of VAT on coal mining products, the Omnibus Law seems to follow the lead of the newly amended Mining Law in attempting to provide ease of business for business actors, including mining rights holders. Nevertheless, it will be important to closely scrutinize further implementing regulations and practices introduced.
by the government in enforcing the Omnibus Law, bearing in mind the general nature of many of the provisions. (November 6, 2020).

For more information, please contact:

**Fransiscus Rodyanto, Partner**
franciscusrodyanto@ssek.com

**Mutiara K. Ramadhani, Associate**
mutiararamadhani@ssek.com

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Update on Indonesia’s Omnibus Law and Implementing Regulations – Oil and Gas Sector

The Indonesian Government has enacted implementing regulations to Law No. 11 of 2020 on Jobs Creation (the “Omnibus Law”). The implementing regulation particularly relevant to the oil and gas sector is Government Regulation No. 5 of 2021 on the Implementation of Risk-Based Business Licensing (“GR 5/2021”), which was enacted on February 2, 2021. The regulation includes Appendices I and II specifically relating to the energy and mineral resources sector (“EMR Appendices”).

Generally, GR 5/2021 provides clarity on certain provisions relating to the requirements for oil and gas business licensing that were not made clear in the Omnibus Law. (You can see our article on the Omnibus Law and the Oil and Gas Law here.

Under GR 5/2021, Business Licenses in the oil and gas sector consist of licenses relating to (i) general survey, (ii) upstream oil and gas business, and (iii) downstream oil and gas business. GR 5/2021 also mentions Business Licenses for supporting businesses in the oil and gas sector. Below are some of the notable provisions in GR 5/2021.

General Survey

Implementation of General Survey

A general survey is principally implemented by the Ministry of Energy and Mineral Resources (“MEMR”) but may also be carried out by a business entity. Under GR 5/2021, the Central Government may impose administrative sanction(s) on a holder of a Business License for general survey work if it violates one of the obligations in its Business License and/or does not fulfill the obligation(s) and/or requirement(s) set forth in the laws and regulations.

GR 5/2021 does not offer details on the form of administrative sanction(s). However, MEMR Regulation No. 29 of 2017, as amended by MEMR Regulation No. 52 of 2018 regarding Licensing for Oil and Natural Gas Business Activities, lists the administrative sanction(s) applicable for violations of certain obligations relating to general survey work:

a. written warning;
b. temporary suspension of activity; or
c. revocation of general survey license.
Upstream Oil and Gas Business

Clarity on the Form of Business License

The Omnibus Law requires business actors in the sector to obtain at least a Business Identification Number (Nomor Induk Berusaha or “NIB”) and a Business License from the Central Government before conducting business activities. A Business License is defined very generally in the Omnibus Law as being legally granted to a business entity to commence and carry out its business and/or activities. In this regard, under the EMR Appendices of GR 5/2021, upstream oil and gas business activities are considered a high-risk business sector.

GR 5/2021 clarifies that the Business License for upstream oil and gas activities is in the form of a Production Sharing Contract (PSC) and NIB, and that the implementation of the Business License will not invalidate any provisions of the Production Sharing Contract.

GR 5/2021 contains a general transition provision stipulating that provisions on the implementation of risk-based business licensing under the regulation do not apply to business actors whose Business License was approved and became effective prior to GR 5/2021 coming into effect. This provision does not seem to waive the requirement for existing PSC contractors to obtain an NIB if they have not done so before GR 5/2021 came into effect.

The Omnibus Law provides that any person conducting exploration and/or exploitation activities without a “Business License or PSC” shall be subject to imprisonment for a maximum of six years and a maximum fine of Rp.60 billion.

Downstream Oil and Gas Business

Clarity on Sanctions

Under the Omnibus Law, a company conducting any downstream business activities without a Business License shall be subject to administrative sanctions in the form of termination of business and/or activities, a fine and/or “coercion (paksaan) by the Central Government”. There was no elaboration on what was meant by coercion (paksaan) in the Omnibus Law.

GR 5/2021 clarifies that coercion (paksaan) may be in the following forms:

a. dismantling of infrastructure and facilities;
b. confiscation of goods or tools that have the potential to cause violations;
c. corporate coercion; and/or
d. other actions aimed at stopping violations and actions to restore environmental functions.
GR 5/2021 also provides that the foregoing sanctions shall be imposed until a Business License is issued.

Additionally, under the Omnibus Law and GR 5/2021, the Central Government may impose administrative sanction(s) on the holder of a Business License for downstream oil and gas business activities if it violates one of the obligations in its Business License and/or does not fulfill the obligation(s) and/or requirement(s) set forth in the laws and regulations. Such administrative sanctions were not made explicit in the Omnibus Law, and GR 5/2021 clarifies that the administrative sanctions shall be in the following forms:

a. written warning;

b. temporary suspension of activities; and

c. revocation of Business License.

**Supporting Business in Oil and Gas**

**Business Licenses to Support the Oil and Gas Sector**

GR 5/2021 provides a list of 33 Business Licenses to support the oil and gas sector. The EMR Appendices further regulate each of these Business Licenses, which includes the requirements and time period to obtain the license, validity period of the license, authorized governmental entity to issue the license, and obligations for the business entity in implementing the relevant business activities based on the license.

**Sanctions**

Pursuant to GR 5/2021, any person carrying out supporting business activities in the oil and gas sector without the relevant Business License shall be subject to administrative sanctions in the form of:

a. termination of business and/or activity;

b. administrative fine; and/or

c. coercion from the Central Government.

The Central Government may impose administrative sanction(s) on the holder of a Business License for supporting business activities in the oil and gas sector if it violates one of the obligations in its Business License and/or does not fulfill the obligation(s) and/or requirement(s) set forth in the laws and regulations. Said administrative sanctions are as follows:

a. written warning;

b. temporary suspension of activities;

c. fine; and/or

d. revocation of Business License.
Key Takeaways

GR 5/2021 provides clarity on certain provisions relating to the oil and gas sector under the Omnibus Law, particularly by specifying the required Business License in the upstream oil and gas sector. The additional requirement for an NIB may not be in line with the overall purpose of the Omnibus Law, which is to simplify licensing procedures and remove excessive regulatory requirements. However, this may not be a substantial issue and should be a mere formality that some PSC contractors have already complied with in practice.

It will be necessary to monitor how GR 5/2021 is implemented in practice. (April 22, 2021).

For more information, please contact:

Fitriana Mahiddin, Partner
fitrianamahiddin@ssek.com

Aninda N. Savitri, Associate
anindasavitri@ssek.com

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Indonesia Omnibus Law – Changes to the Oil and Gas Law

Indonesia’s closely watched omnibus jobs creation bill recently became law. The stated aim of Law No. 11 Year 2020 on Jobs Creation (the “Omnibus Law”) is to boost investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law amends various provisions in laws across numerous sectors, including Law No. 22 of 2001 on Oil and Gas (the “Oil and Gas Law”).

We highlight some of the noteworthy changes to upstream and downstream oil and gas business activities under the Omnibus Law. We understand that a separate and more detailed amendment to the Oil and Gas Law is being prepared by the House of Representatives.

Upstream Oil and Gas Business

Introduction of Business License

Under the Omnibus Law, companies involved in upstream oil and gas business activities are required to obtain a “Business License” from the Central Government (the President, assisted by the Vice President and the Minister of Energy and Mineral Resources (“MEMR”)). A Business License is defined very generally in the Omnibus Law as being legally granted to a business entity to commence and carry out its business and/or activities.

It is unclear what type of Business License will be applicable to upstream oil and gas operations as the Omnibus Law did not revoke the requirement under Article 6 of the Oil and Gas Law that upstream oil and gas business activities be carried out and controlled through a Production Sharing Contract (“PSC”).

Upstream oil and gas may be considered a high-risk business sector under the Omnibus Law, which would require business actors in the sector to obtain at least a Business Identification Number (NIB) and a Business License from the Central Government before conducting business activities.

There are questions around the criteria and requirements for a PSC contractor to obtain a Business License. Another question is how this requirement will affect existing PSCs. The Omnibus Law contains a general transition provision stipulating that business licenses and sectoral licenses issued prior to the introduction of the Omnibus Law will remain in force until the expiration of the license, while Business Licenses that are in the application process shall be adjusted to conform with the provisions of the Omnibus Law. It is unclear whether under this provision PSC contractors with existing PSCs would not be subject to the requirement in the Omnibus Law to obtain a Business License.
Sanctions

The Omnibus Law amends the provision in the Oil and Gas Law on sanctions. It now provides that any person conducting exploration and/or exploitation activities without a “Business License or PSC” shall be subject to imprisonment for a maximum of six years and a maximum fine of Rp.60 billion.

Downstream Oil and Gas Business

Single Business License

The Omnibus Law removes the multiple business licensing requirement for downstream oil and gas business activities (processing, transportation, storage and/or trading) under the Oil and Gas Law. Rather, it designates a single integrated Business License that is applicable for all of the foregoing business activities. This Business License will be processed through an online system managed by the Central Government.

Currently, companies must manually apply for downstream business licenses with the Indonesian Capital Investment Coordinating Board (“BKPM”) c.q. the Directorate General of Oil and Gas in accordance with MEMR Regulation No. 40 of 2017 on the Delegation of Authority in Granting Licenses in the Oil and Gas Business Sector to the BKPM. With the enactment of the Omnibus Law, Business Licenses for downstream activities will be applied for and issued electronically through an online system managed by the Central Government.

Sanctions

Under the Omnibus Law, a company that conducts any downstream business activities without a Business License shall be subject to administrative sanctions in the form of termination of business and/or activities, a fine and/or “coercion (paksaan) by the Central Government”. There is no further elaboration on what is meant by coercion (paksaan). These sanctions will be further regulated in a Government Regulation that is to be issued.

A party that conducts downstream business activities without a Business License that result in damage to health, safety and/or the environment shall be subject to maximum imprisonment of five years or a maximum fine of Rp.50 billion.

Previously, under the Oil and Gas Law, a party that conducted downstream business activities without a business license was subject to imprisonment and a fine, with the maximum amounts differing according to the type of activity, i.e. processing, transportation, storage or trade. These sanctions were not subject to any prerequisites, e.g., activities that result in damage to health, safety and/or the environment.

Administrative sanctions for the violation of any requirement in a Business License and/or in the Oil and Gas Law as amended by the Omnibus Law are not made explicit in
the Omnibus Law, which simply provides for “administrative sanctions”. The criteria, type, fine amounts and the procedures for administrative sanctions are to be regulated by a Government Regulation. Previously, under the Oil and Gas Law, the administrative sanctions were stipulated as written warning, suspension of activities, freezing of activities, or revocation of business license.

The Omnibus Law also imposes sanctions for any person abusing the transportation and/or trading of subsidized gas fuel and/or liquefied petroleum gas in the form of imprisonment for a maximum of six years and a maximum fine of Rp.60 billion. Previously, the Oil and Gas Law only imposed the aforesaid sanctions for the abuse of the transportation and/or trading of subsidized fuel.

**Key Takeaways**

The Omnibus Law does not amend many provisions in the Oil and Gas Law and leaves room for further revisions under the amendment to the Oil and Gas Law the House of Representatives is said to be preparing. Revisions in the downstream sector should be in line with the overall purpose of the Omnibus Law, which is to simplify licensing procedures and remove excessive regulatory requirements. Revisions in the upstream sector, specifically relating to the Upstream Business License, may complicate business procedures and create more red tape by adding a new requirement for a business license in addition to a PSC.

It will be necessary to monitor developments with these changes under the implementing regulations to be issued, and how the Omnibus Law is implemented in practice. (November 18, 2020).

**For more information, please contact:**

**Fitriana Mahiddin**, Partner
fitrianamahiddin@ssek.com

**Aninda Nurul Savitri**, Associate
anindasavitri@ssek.com

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Indonesia Omnibus Law – Impact on Postal, Telecom and Broadcasting Sectors

Indonesia’s closely watched omnibus jobs creation bill became law on November 2. The stated aim of Law No. 11 Year 2020 on Jobs Creation (the “Omnibus Law”) is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process from the ministries to the central government to improve the ease of doing business in Indonesia.


A. Postal

Foreign postal operator requirements

The Omnibus Law amends the relevant provision of the Post Law that sets out the requirements for foreign postal operators to do business in Indonesia. Now, the Omnibus Law stipulates that the requirements for foreign postal operators will be further regulated in a Government Regulation. The Omnibus Law also removes the requirement that foreign postal operators cooperate with domestic postal operators, as well as the requirement for postal operators obtain a license from the Minister of Communication and Informatics to be a public company.

Sanctions

The Omnibus Law adds administrative sanctions for incompliance with business licensing requirements. Previously, the Post Law only provided criminal sanctions for parties that engaged in postal business activities without a license. The Omnibus Law typically provides that administrative sanctions will be imposed before criminal sanctions are levied. We believe this is to support business actors and give them the opportunity to get in compliance with licensing requirements instead of immediately hitting them with criminal sanctions.

B. Telecommunication

Mutual Spectrum Utilization

The Omnibus Law regulates that the central government can determine the mutual utilization of the radio frequency spectrum. Additionally, spectrum frequency license holders are allowed to (i) cooperate with other telecommunication operators in the use of radio frequency spectrum for the implementation of new technologies; and/or (ii) assign
the use of radio frequency spectrum to other telecommunication operators, with the prior approval of the central government.

The provisions on business licensing and the utilization of the radio frequency spectrum and satellite orbits will be further regulated in a Government Regulation.

**Infrastructure Sharing**

The Omnibus Law requires business actors that own passive infrastructure for telecommunication purposes to give telecommunication operators access for the utilization of such infrastructure. Business actors with infrastructure other than passive infrastructure for telecommunication purposes are not required to provide such access but they may be able to provide access to other telecommunication operators and/or broadcasting operators. Such joint utilization of infrastructure shall be conducted based on a cooperation agreement between the parties.

Additionally, the central and regional governments may provide facilities and/or other considerations for telecommunication operators to commence construction of telecommunications infrastructure. They may also provide shared passive infrastructure for telecommunication operators at an affordable cost. These new rules underline the push by the government to allow and encourage cooperation between and among the government and telecommunication operators in providing telecommunications infrastructure to ensure a thorough coverage for the public.

**Sanctions**

The Omnibus Law adds several new administrative sanctions, in addition to the revocation of license as previously regulated in the Telecom Law. The administrative sanctions available in the Omnibus Law include (i) written warning; (ii) suspension of business activity; (iii) administrative fine; and (iv) revocation of business licensing. What this means is that, unlike under the Telecom Law, telecommunication operators that violate provisions of the law may face certain other administrative sanctions instead of directly having their license revoked.

The Omnibus Law also increases criminal sanctions for telecommunication operations without the appropriate business license, from a maximum of six years imprisonment and/or a maximum fine of Rp.600 million under the Telecom Law, to a maximum of 10 years imprisonment and/or a maximum fine of Rp.1.5 billion.

**C. Broadcasting**

**Digital Broadcasting**

The Omnibus Law requires the migration to digital broadcasting following the development of technology. The migration of terrestrial television from analog technology to digital technology, and the analog switch-off, must be completed within
two years since the enactment of the Omnibus Law, i.e. by November 2, 2022. Further provisions on this migration will be regulated in a Government Regulation. (November 20, 2020).

**For more information, please contact:**

**Fahrul S. Yusuf,** Partner  
fahrulyusuf@ssek.com

**Dicky Tanjung,** Senior Associate  
dickytanjung@ssek.com

**Hansel Kalama,** Associate  
hanselng@ssek.com

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Update on Indonesia’s Omnibus Law and Implementing Regulations – Power Sector

As a follow-up to the Omnibus Law (Law No. 11 of 2020 on Job Creation) passed in November 2020, the Government of Indonesia has issued several implementing regulations. One of these is Government Regulation No. 25 of 2021 regarding the Administration of the Energy and Mineral Resources Sector (“GR 25/2021”), which entered into force on February 2, 2021.

GR 25/2021 regulates not only the power sector, but also the mineral resources and geothermal sectors. In this article, we will highlight a few key points regarding the power sector.

Previously there were two main government regulations governing the power sector in Indonesia, namely Government Regulation No. 14 of 2012 regarding Power Supply Business Activities, as amended by Government Regulation No. 23 of 2014 (“GR 14/2012”), and Government Regulation No. 62 of 2012 regarding Power Supporting Services Business (“GR 62/2012”). GR 25/2021 does not revoke these regulations; it also provides that the provisions of the implementing regulations of GR 14/2012 and GR 62/2012 will remain in force insofar as they do not contravene GR 25/2021.

The key points worth highlighting in GR 25/2021 in respect to the power sector are as follows:

Clarification of Business Licensing Nomenclature in the Electricity Sector

While the Omnibus Law only refers to a general Business Licensing (Perizinan Berusaha) for the electricity business without further clarification, GR 25/2021 stipulates the following business licenses:

- power supply for the public interest business license (izin usaha penyediaan tenaga listrik untuk kepentingan umum or “IUPTLU”), which can be issued by the Minister of Energy and Mineral Resources (“MEMR”) or the governor depending on their respective authorities. The IUPTLU is issued for the following business lines:
  
  i. power generation;
  ii. power transmission;
  iii. power distribution; and/or
  iv. power sales.

Similar to the rules prior to the issuance of the Omnibus Law, the above business lines can be combined (in an integrated manner). If power generation, transmission, distribution, and sales are performed in an integrated manner, the power generation and/or transmission can be done outside of the Work Area of the concerned business player.
GR 25/2021 mandates that the MEMR issue a regulation to further implement the power supply for the public interest business.

- power supply for own interest business license (izin usaha penyediaan tenaga listrik untuk kepentingan sendiri or “IUPTLS”), which can be issued by the MEMR or the governor depending on their respective authorities. Under the previous rules, this was known as an operational license.

This license is for captive power plant businesses with total capacity exceeding 500 kilowatts and connected within a single power installation system, which is similar to the previous rules. If the capacity is less than 500 kilowatts and the facility is connected within a single power installation system, a one-time report to the MEMR or the relevant provincial governor, depending on their authorities, is required before commencing the power supply activity.

- business license for power supporting services, which is issued for power supporting services.

Further details on the norms regarding these business licenses (such as risk-based licensing approach, the requirements and commitments applicable for the business license holders and the period to fulfil those requirements and commitments) are regulated separately under a different implementing regulation for the Omnibus Law, namely Government Regulation No. 5 of 2021 regarding the Administration of Risk-Based Business Licensing (“GR 5/2021”), in particular under Appendix II (Energy and Mineral Resources Sector).

GR 5/2021 further elaborates the implementation of a risk-based business licensing system, a regime where businesses are generally classified into low-risk, medium-risk (which is further sub-classified into lower-medium and higher-medium risk), and high-risk business activities, with the respective licensing requirements increasing along with the level of risk. Appendix II (Energy and Mineral Resources Sector) of GR 5/2021 provides the risk classification for various power supply and power supporting services businesses.

**Foreign Representative Office (FRO) for Power Supporting Services**

An FRO is an Indonesian representative office formed by foreign business entities or individuals engaging in power supporting business. FROs may only engage in the following power supporting services: (i) consultancy in Power Installation; (ii) construction and installation of Power Installation; and (iii) maintenance of Power Installation.

Utilization Installation consists of high-voltage, medium-voltage and low-voltage Power Utilization Installation.

FROs can only perform supporting services work that is high-cost. Specifically, the value of the work must be equal to or exceed the following minimum values:

<table>
<thead>
<tr>
<th>Supporting Service</th>
<th>Minimum Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultancy in Power Installation</td>
<td>Rp 10 billion</td>
</tr>
<tr>
<td>Construction and installation of Power Installation</td>
<td>Rp 100 billion</td>
</tr>
<tr>
<td>Maintenance of Power Installation</td>
<td>Rp 10 billion</td>
</tr>
</tbody>
</table>

There are certain requirements and obligations imposed on FROs. These include (i) to enter into a joint operation (kerja sama operasi) with a local power supporting services entity that is 100% locally owned and is in the form of a limited liability company; (ii) employ more Indonesians than foreign workers; (iii) appoint an Indonesian as the head of the FRO; (iv) prioritize local products; and (v) hold a qualification that is equal to a large qualification (kualifikasi besar) under Indonesian standards.

We understand that at least one official has indicated that licensing/registration for FROs in the eligible power supporting services as stated above will be under the auspices of the Ministry of Energy and Mineral Resources’ Directorate General of Electricity (“DGE”) and not the Ministry of Public Works and Housing (“MPW”).

We further understand that other officials have indicated that by virtue of the Construction Services Law (Law No. 2 of 2017) and its implementing government regulation, Government Regulation No. 22 of 2020, the construction of power installations is expressly deemed a special construction service that is subject to the regulations in the power sector.

If that is the case, if the scope of work is mechanical/electrical work relating to the power supply and utilization installation, the licensing and certification (known as sertifikasi badan usaha) would be under the auspices of the DGE. Whereas, if the entity’s scope of work includes not only mechanical/electrical work relating to the power supply and utilization installation, but also civil structure and/or building, the entity must also obtain a certification of business entity (sertifikat badan usaha) in the construction services under the auspices of the MPW, in addition to the licensing and certification for power supporting business under the DGE’s auspices.

Given that the introduction of FROs in the power supporting services is very new it remains to be seen whether the same requirements would also apply to the FROs (e.g., if the FRO’s scope of work involves some civil construction work and electrical installation, would it also have to be registered with the MPW, in addition to being registered with the DGE.)
Battery Energy Storage System

The Government of Indonesia has joined the energy storage bandwagon. It recently championed the concept of a state-owned holding company for energy storage businesses and has taken steps to attract more investment to the energy storage sector. Certain services in respect of battery energy storage systems are now included among recognized power supporting services. Moreover, FROs, which would likely have the requisite technology and knowledge for this line of business, would be able to engage in the consultancy, construction, installation, and maintenance of high-cost battery energy storage systems (see above for the minimum value of projects).

MEMR Discretion to Resolve Issues

Article 59 of GR 25/2021 provides that the MEMR (under the coordination of the minister that administers the coordination, synchronization and control of government administration in economy) will evaluate the implementation of this regulation by taking into account the development and enhancement of the investment ecosystem and businesses to accelerate jobs creation.

Interestingly, Article 60 of GR 25/2021 also expressly provides that if GR 25/2021 does not govern a certain matter, or is incomplete, unclear and/or there is governance stagnancy for a certain matter, the MEMR may exercise their discretion to resolve concrete problems in the administration of the energy and mineral resources sector.

It will be interesting to see how these provisions play out in practice. (April 15, 2021).

For more information, please contact:

Syahdan Z. Aziz, Partner
syahdanaziz@ssek.com

Miftahul Khairi, Associate
miftahulkhairi@ssek.com

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Indonesia Omnibus Law – Changes to the Shipping Law Hint at Smoother Sailing for Business

Indonesian President Joko Widodo recently signed Law No. 11 of 2020 on Jobs Creation (the “Omnibus Law”). The stated aim of the Omnibus Law is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law revises various provisions in laws across numerous sectors, including more than 60 articles in Law No. 17 of 2008 regarding Shipping (the “Shipping Law”). The main changes concern easing the licensing process in the shipping sector and allowing the use of foreign vessels for certain activities in Indonesian waters.

Foreign Vessels in Indonesia

The Omnibus Law adds a provision to the Shipping Law that if Indonesian-flagged vessels are unavailable, foreign-flagged vessels may be used to conduct special activities in Indonesian waters other than carrying passengers and/or goods. The Omnibus Law specifies in its elucidation that “unavailable” in this case refers to when Indonesian-flagged vessels are not available or are not available in sufficient numbers.

This change appears to have been made to make the Shipping Law consistent with regulations enacted by the Minister of Transportation (“MOT”), namely MOT Regulation No. PM 92 of 2018 regarding Procedures and Requirements for the Granting of Foreign Vessel Utilization Approval for Activities Other than Domestic Carriage of Passengers and/or Goods, as amended.

It is worth noting that under the Omnibus Law further provisions regarding the use of foreign-flagged vessels are to be further governed under a Government Regulation rather than a ministerial regulation, as is the case at the moment.

Currently, the ministerial regulation issued by the MOT provides an exhaustive list of the types of activities for which foreign vessels may be used, namely: oil and gas survey, drilling, offshore construction, offshore operational support, dredging, salvage and underwater works, floating power plant, and terminal construction vessel. It is not clear whether the Government Regulation to be issued will provide a similar exhaustive list.

Centralization of Licensing and Certification

A significant portion of the changes to the Shipping Law involve centralizing licensing and certification authority with the Central Government. Previously, licenses/approvals related to the carriage of goods and port activities were issued by the MOT, and vessels operating in Indonesia were required to obtain various certifications related to safety, security and seaworthiness from multiple institutions, including but not limited to the Sub-Directorate of Vessel Pollution Prevention and Safety Management (under the
Directorate of Sea Transportation of the MOT), local port authorities and a classification agency appointed by the MOT. Under the Omnibus Law, these licenses and certifications are now issued by the Central Government (or an institution appointed by the Central Government for certain certifications).

Presently, licensing and some certification is already centralized through the Online Single Submission (OSS) system, pursuant to Government Regulation No. 24 of 2018 regarding Electronically Integrated Business Licensing Service (GR 24/2018). However, the centralization is only regulated under a Government Regulation and various ministerial regulations, in the case of shipping, through MOT Regulation No. PM 89 of 2018 regarding Norms, Standards, Procedures and Criteria for Electronically Integrated Business Licensing Service in the Sea Transportation Sector.

It appears that the Omnibus Law intends to amend the Shipping Law to conform with the already existing regulations on the centralization of licensing services. However, it is not clear which institution shall be appointed by the Central Government to deal with certification issues.

Centralization of licensing means investors can minimize licensing costs (e.g. time and money spent for applications, meetings with officials, facilitation/application fees, renewals or extensions) and engagements with different institutions.

Looking Forward

For the shipping sector, the amendments made to the Shipping Law by the Omnibus Law involve adjustments to conform with government regulations and ministerial regulations already in place to ease investment, including by allowing the use of foreign-flagged vessels and easing the licensing/certification process. However, additional government regulations to be enacted in the future as implementing regulations for the Omnibus Law may provide further details not specified in the Omnibus Law. (November 23, 2020).

For more information, please contact:

Dyah Soewito, Partner
dyahsoewito@ssek.com

Revaldi N. Wirabuana, Associate
revaldiwirabuana@ssek.com

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Indonesia Omnibus Law and the Impact on Tax Laws

The Indonesian Government recently passed Law No. 11 of 2020 regarding Job Creation (the “Omnibus Law”). The stated aim of the Omnibus Law is to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Omnibus Law, among other things, introduces and amends a number of provisions on taxation matters in Indonesia. Specifically, it amends provisions of:

- Law No. 7 of 1983 regarding Income Tax, as amended several times, most recently by Law No. 36 of 2008 (the “Income Tax Law”);
- Law No. 8 of 1983 on Value Added Tax (“VAT”) for Services and Goods and Sales Tax for Luxury Goods, as has been amended several times, lastly by Law No. 42 of 2009 (the “VAT Law”); and
- Law No. 6 of 1983 on General Provisions and Guidelines on Tax, as amended several times, most recently by Law No. 16 of 2009 (the “KUP Law”).

We highlight some of the key changes as follows:

**Income Tax Law**

1. Determination of Individual Tax Subjects:
   - Indonesian citizens outside of Indonesia for more than 183 days can become foreign tax subjects - Under the Omnibus Law, Indonesian citizens who are outside of Indonesia for more than 183 days within a period of 12 months and meet certain other requirements will be determined as foreign tax subjects.
   - Foreigners in Indonesia for more than 183 days will become domestic tax subjects - Foreign nationals who are in Indonesia for more than 183 days within a period of 12 months will automatically become Indonesian domestic tax subjects. To this existing provision, the Omnibus Law further stipulates that foreigners who become Indonesian domestic tax subjects will only be taxed for the income they receive or obtain in Indonesia. These provisions are intended for foreign nationals who have certain expertise, and such treatment will be valid for four years after they are determined as domestic tax subjects. This treatment, however, does not apply to foreigners who take advantage of a Double Taxation Avoidance Agreement.

2. Abolition of Income Tax on domestic dividends and foreign dividends re-invested domestically:
   - Dividend from Domestic Companies - Under the Omnibus Law, if dividends are to be re-invested in Indonesia the tax provisions on dividends will be
amended as follows: (i) for Individual Taxpayers the final income tax of 10% becomes 0%; (ii) for Domestic Corporate Taxpayers the final income tax of 15% becomes 0%; and (iii) for Foreign Taxpayers the final income tax remains 20%, subject to the prevailing Tax Treaty.

- Dividend from Overseas Companies - Similar to dividends from domestic companies, under the Omnibus Law if dividends from overseas companies are to be re-invested in Indonesia and meet stipulated conditions and requirements, they will be subject to 0% tax or not subject to tax. If the dividend remains abroad it will be taxed according to the applicable regulations.

3. Adjustments to Article 26 Income Tax rates on interest for Income Tax rates
Under the Omnibus Law the imposition of a 20% tariff from gross amount as referred to in Article 26(1)(b) of the Income Tax Law on the payment of interest, including premium, discount, and honorarium in relation to a debt repayment guarantee, may be lowered by a Government Regulation.

VAT Law

1. The transfer of Taxable Goods in the context of a business merger, consolidation, expansion, splitting or takeover, or for the purpose of capital replacement for shares, provided that the parties making and receiving the transfer are taxable entrepreneurs, is not included in the definition of delivery of Taxable Goods.

2. Under the Omnibus Law, mining products or drilling products taken directly from their source, excluding coal mining products, are included in the types of goods that are not subject to VAT.

3. The Omnibus Law also introduces several provisions regarding VAT Credit, namely:
- Input Tax that cannot be credited:
  a. Must be paid back to the state treasury by the Taxable Entrepreneur in the event that the Taxable Entrepreneur: (i) has received a refund of the tax overpayment on the said Input Tax; and/or (ii) has credited the Input Tax referred to as Output Tax payable in a Tax Period; and/or
  b. In the event the Taxable Entrepreneur is compensated for the excess tax payment, the Taxable Entrepreneur cannot be compensated in the next Tax Period and an application for refund cannot be submitted after the three-year period ends or at the time of business dissolution or the revocation of the Taxable Entrepreneur.
- The crediting requirements for Input Tax on taxable goods and/or taxable services that were obtained and/or imported taxable goods, as well as for the utilization of intangible taxable goods and/or taxable services from outside the
customs area to inside the customs area, in accordance with the Omnibus Law, are as follows:

a. Before an entrepreneur is confirmed as a Taxable Entrepreneur it can use the guidelines for crediting Input Tax of 80% of the Output Tax that should be collected;

b. Taxable goods and/or services not reported in the VAT Periodic Report that are notified and/or discovered at the time of audit can be credited by the Taxable Entrepreneur as long as it meets the crediting requirements in accordance with the Omnibus Law; and

c. Invoiced with the issuance of a tax assessment can be credited by the Taxable Entrepreneur in the principal amount of VAT contained in the tax assessment, provided that said tax assessment has been paid in full and no legal remedies have been made and it complies with the crediting provisions in accordance with this law.

**KUP Law**

1. The rate for administrative sanctions for rectification or tax payment
   The administrative sanction had been set at 2% interest rate. The Omnibus Law now says the amount will be further regulated by the Minister of Finance (“MOF”).

   The interest rate stipulated by the MOF in the event Taxpayers correct the tax returns themselves, resulting in a bigger tax debt, shall be calculated based on the reference interest rate plus 5% and divided by 12, which is in effect from the date the calculation of the sanction begins. However, if the Director General of Tax (“DGT”) conducts an audit, on the condition that the DGT has not issued a tax assessment, based on a separate report by the Taxpayer regarding the incorrect filling of the Tax Return resulting in a bigger tax debt, the interest rate stipulated by the MOF shall be based on their preferred interest rate added by 10% and divided by 12.

2. Return on interest for excess returns payment of taxes (overpayment)
   The Omnibus Law provides that the interest rate shall be determined by the MOF and is calculated on the preferred interest rate divided by 12, applicable on the date that calculating the interest compensation commences.

3. Termination of investigation of criminal acts in the field of taxation
   Under the Omnibus Law, at the request of the MOF, the Attorney General’s Office may stop an investigation into a criminal offense in the field of taxation within six months from the date of the request letter. Termination is only possible after the taxpayer has paid off the tax debt. The Omnibus Law notes that this will be further regulated by the MOF.
Conclusion

The above amendments to Indonesian tax laws and regulations under the Omnibus Law have a special focus on the rights and obligations of business actors, both domestic and foreign taxpayers. They also increase the attractiveness of Indonesia as an investment destination by decreasing corporate income tax and providing incentives as discussed above. Although technical regulations must still be issued to implement these changes, the amendments proposed by the Omnibus Law would have a significant impact on Indonesian taxation law, especially for business actors. (December 11, 2020).

For more information, please contact:

Rusmaini Lenggogeni, Partner
rusmainilenggogeni@ssek.com

Charvia Tjhai, Associate
charviatjhai@ssek.com

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Indonesia Omnibus Law Update – Amendments to the Trade Law

Indonesia’s groundbreaking Omnibus Law (Law No. 11 of 2020 on Job Creation) amends a significant number of existing laws, one of which is Law No. 7 of 2014 on Trade (the “Trade Law”). Many of the amended provisions of the Trade Law are further regulated under a recently issued implementing regulation, Government Regulation No. 29 of 2021 regarding Implementation of the Trade Sector (“Trade GR”).

Key changes to the Trade Law include the following:

**Trade Law Implementing Regulations**

Provisions under the Trade Law which were previously subject to further ministerial regulation are amended to be further regulated by a Government Regulation (i.e., the Trade GR). At first glance, this approach appears to be the Government realizing its effort to streamline the scattered regulatory framework and simplify licensing procedures to improve the ease of doing business in Indonesia.

Apparently, however, many of the provisions under the Trade GR are still subject to further ministerial regulation. In light of this, we would expect more amendments to the existing ministerial regulations concerning trade or the issuance of new ministerial regulations, as mandated by the Trade GR.

**Provisions on Distribution of Goods**

Previously, the distribution of goods was subject to further regulation by the Minister of Trade (“MOT”), currently by MOT Regulation No. 22/M-DAG/PER/3/2016 regarding General Requirements for the Distribution of Goods, as amended by MOT Regulation No. 66 of 2019 (“MOT Distribution Regulation”). The Omnibus Law amends this so that the distribution of goods is to be regulated by a Government Regulation.

The Trade GR does indeed regulate the distribution of goods.

Overall, the changes in distribution requirements are not significant, but we do note a stark difference between the provisions in the MOT Distribution Regulation and the Trade GR. In outlining the distribution chain, the Trade GR does not make reference to sub-distributors and sub-agents, which are mentioned in the Trade Law and the MOT Distribution Regulation. This indicates that the current regulatory framework no longer recognizes sub-distributors and sub-agents as part of the distribution chain. Additionally, the Trade GR stipulates that a retailer is not allowed to import goods.

The Trade GR, in its transitional provision, provides that the Trade Law implementing regulations in effect prior to the promulgation of the Omnibus Law shall remain valid so long as they do not contravene the provisions under the Trade GR. However, as discussed above, considering that the Trade GR introduce changes to the requirements

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for the distribution of goods, it is expected that the MOT Distribution Regulation, and other MOT regulations that touch on the matter of distribution (such as the MOT regulation on the registration of distributors and agents), will be amended to conform with the changes under the Trade GR.

**Imports and Exports**

The Trade Law as amended by the Omnibus Law provides that the importation and exportation of goods may only be conducted by importers and exporters that have obtained the required licenses from the Central Government. As set forth under the Trade GR, the required licenses to export goods are the Business Identification Number (Nomor Induk Berusaha or “NIB”), exporter registration and/or export approval. The required licenses for importing goods are the NIB, which serves as the Importer Identification Number, or Angka Pengenal Importir, importer registration, producer importer and/or import approval.

Importers and exporters are not required to obtain the above licenses for imports that are not for business purposes. This provision is provided in the Trade Law as amended by the Omnibus Law and is echoed in the Trade GR.

Unfortunately, the Trade Law as amended by the Omnibus Law does not elaborate on what is meant by imports that are not for business purposes. It is therefore unclear whether this exemption is solely for the importation of goods for personal use, or if it applies to importation activities for any other purposes. The Trade GR stipulates that this matter will be further regulated by a ministerial regulation, which hopefully will shed more light on the procedures and/or conditions to qualify for this exemption.

There are several other interesting provisions under the Omnibus Law and the Trade GR:

- The Omnibus Law deletes the provision in the Trade Law that required a certain license to be obtained for temporary imports and exports.;
- In connection with the above, the Omnibus Law also deletes the provision under the Trade Law that allowed the MOT to propose a reduction or increase of import duty for temporary imports; and
- The Trade GR gives the MOT the authority to stipulate exporters and importers with good reputation. Parties stipulated as such may be granted ease of business licensing at the relevant ministries or non-ministerial governmental institutions. The criteria to qualify as an exporter or importer of good reputation are to be further regulated in a ministerial regulation.

**Administrative Sanctions**

The Trade Law as amended by the Omnibus Law lists the types of administrative sanctions that may be imposed for violations of certain provisions of the Trade Law. These administrative sanctions are warning letters, the recall of distributed products,
temporary suspension of business activity, closure of warehouse, fines and/or revocation of business license.
The imposition of the above administrative sanctions is regulated in more detail under the Trade GR.

Criminal Sanctions

The Omnibus Law amends certain provisions in the Trade Law on the imposition of criminal sanctions. For example, the penalty for violation of the obligation to affix an Indonesian-language label on goods is increased from IDR 5 billion to IDR 10 billion.

It also introduces an exception to the imposition of criminal sanctions, namely if the violation is conducted by business actors and/or for business activities with low or moderate risk level, in which case administrative sanctions will be imposed. This exception is provided for violation of the obligation to affix an Indonesian-language label on goods and for trading business activities conducted without appropriate business licenses. Unfortunately, however, the Omnibus Law does not elaborate on the criteria for business actors and business activities to be regarded as having low or moderate risk. It thus remains to be seen how the MOT will interpret this.

Conclusion

Overall, one may view that the amendments to the Trade Law under the Omnibus Law are not as sweeping as changes in some other sectors. Nevertheless, some changes are introduced and more implementing regulations are expected to be issued to regulate in greater detail those changes. (April 19, 2021).

For more information, please contact:

Winnie Yamashita Rolindrawan, Partner
WinnieRolindrawan@ssek.com

Greita Anggraeni, Associate
GreitaAnggraeni@ssek.com

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