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Indonesian Legal Consultants

# Asia Employment Law: Quarterly Review

2020-2021

ISSUE 34: FOURTH QUARTER 2021

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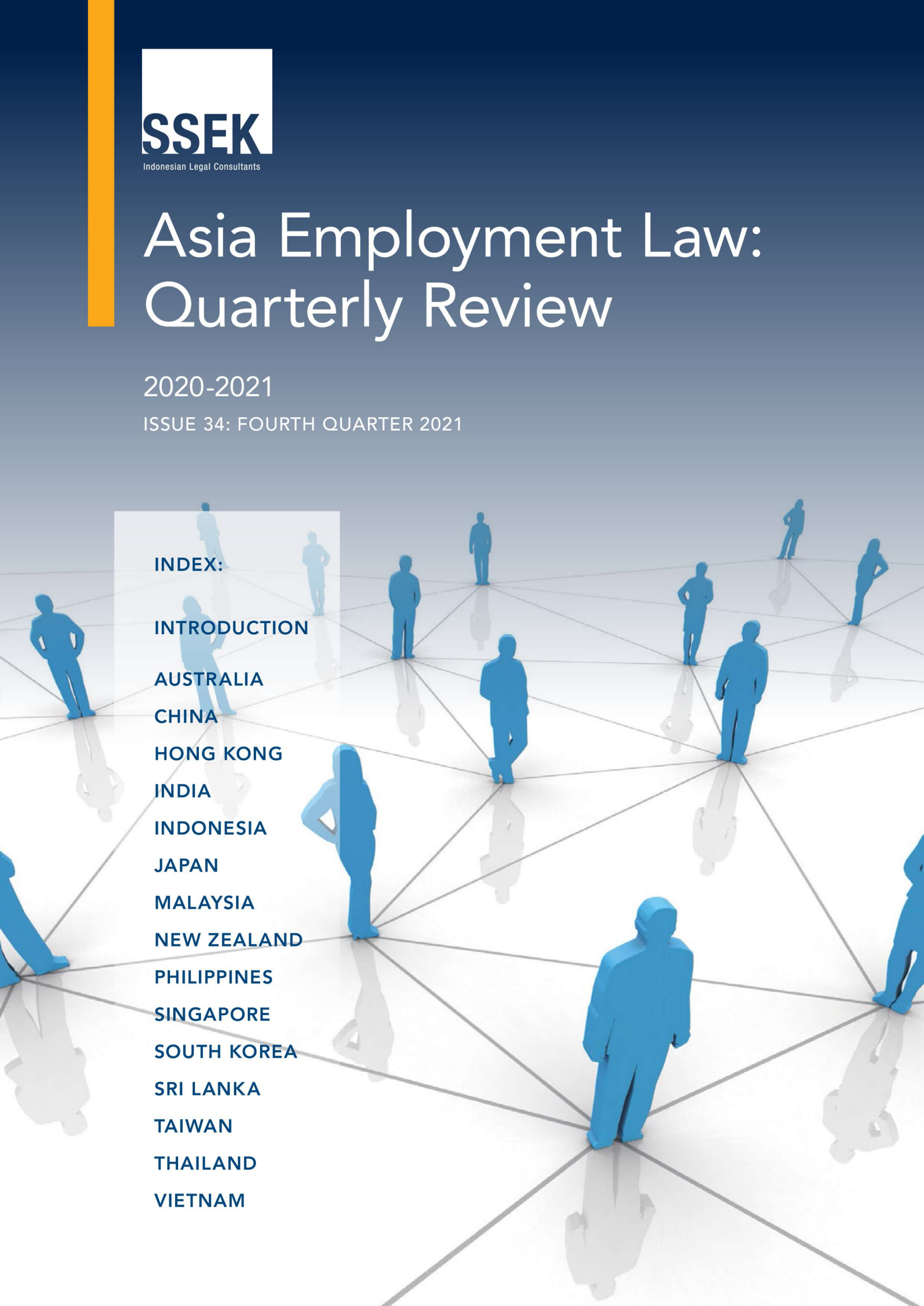
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# Introduction

Asia's legal and human resources advisors are often required to function across multiple jurisdictions. Staying on top of employment-related legal developments is important but can be challenging.

To help keep you up to date, our firm produces the **Asia Employment Law: Quarterly Review**, an e-publication covering 15 jurisdictions in Asia.

In this thirty-fourth edition, we flag and comment on employment law developments during the fourth quarter of 2021 and highlight some of the major legislative, consultative, policy and case law changes to look out for in 2022.

This publication is a result of ongoing cross-border collaboration between 15 law firms across Asia with whose lawyers our firm has had the pleasure of working with closely for many years. For a list of contributing lawyers and law firms, please see the [contacts page](#).

We hope you find this edition useful.



INDONESIA

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## New Wage Rules for Some Labor-Intensive Industries Affected by Covid-19

The Indonesian Minister of Manpower (“MOM”) issued MOM Regulation No. 2 Year 2021 on February 15, 2021, which concerns wages in specific labor-intensive industries (*padat karya*) during the ongoing Covid-19 pandemic. This regulation allows certain labor-intensive industrial companies affected by the pandemic to change how much employees are paid and the method of payment. Such changes, however, can only be introduced through an agreement with the employees.

LOOKING BACK

INDONESIA

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2021

## New Regulation Looks to Ease Hiring Process for Foreign Workers

The Indonesian Government has issued various implementing regulations for the recently enacted Job Creation Law. Among these new implementing regulations is Government Regulation No. 34 Year 2021 dated February 2, 2021 regarding the Utilization of Foreign Workers (“GR No. 34”). GR No. 34 was made available to the public on February 21, 2021 and is expected to come into force on April 1, 2021.

GR No. 34 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. GR No. 34 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 stated aim of GR No. 34 is to simplify the process for hiring expatriate workers in Indonesia and in turn attract more investment into the country.

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## Changes to Employment Termination Process

Another implementing regulation for the Job Creation Law, Government Regulation No. 35 Year 2021 dated February 2, 2021 regarding Fixed-Term Employment, Outsourcing, Working Hours and Rest Times, and Termination (“GR No. 35”) came into effect on February 2, 2021 but was only made available on February 21, 2021. GR No. 35 confirms significant changes to the employment law regime, including:

- new specific requirements for Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu* or “PKWT”);
- new compensation for PKWT workers;
- new protections for workers at outsourcing companies;
- changes to business licensing for outsourcing companies;
- new provisions on working hours, overtime, and rest times for workers;
- new procedures for termination of employment; and
- changes to severance pay, long-service pay, and compensation rights.

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## Regulation on Hourly Wages

Government Regulation No. 36 Year 2021 dated February 2, 2021 regarding Wages (“GR No. 36”) is also an implementing regulation for the Job Creation Law. GR No. 36 came into effect on February 2, 2021 but was only made available to the public on February 21, 2021. GR No. 36 confirms that employers can pay part-time employees by the hour.

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**Important:**  
action likely  
required

**Good to know:**  
follow  
developments

**Note changes:**  
no action  
required

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**New Job Loss Security Program**

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Another implementing regulation for the Job Creation Law is Government Regulation No. 37 Year 2021 dated February 2, 2021 regarding the Implementation of the Unemployment Benefits Program (“GR No. 37”), which came into effect on February 2, 2021 but was just made available on February 21, 2021. GR No. 37 introduces a new job loss security program. The contribution to the Job Loss Security Program is 0.46% of an employee’s monthly salary. This will be paid by the Indonesian Government and the Job Loss Security Program funding resources (sourced from recompositing the occupational accident and death security contributions that are paid by employers). The benefits of this new program comprise cash, access to job market information, and job training.

**Changes to the employment of foreign workers in Indonesia**

INDONESIA

**1 APR**

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The Indonesian Minister of Manpower (“MOM”) issued MOM Regulation No. 8 Year 2021 regarding Implementing Regulation for Government Regulation No. 34 of 2021 regarding Employment of Foreign Workers (“MOM Reg. 8/2021”), which entered into force on April 1, 2021.

MOM Reg. 8/2021 stipulates that employers in Indonesia are required to obtain a work permit for foreign workers. The employer must apply for the work and immigration permit through the TKA Online system (<https://tka-online.kemnaker.go.id/>), which is managed by the Ministry of Manpower.

This new regulation revokes and replaces MOM Regulation No. 10 of 2018 regarding Procedures for the Employment of Foreign Workers (July 11, 2018) (“MOM Reg. 10/2018”).

**New Regulation Lays Out Procedure to Obtain Unemployment Benefits**

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**28 JUL**

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The Ministry of Manpower has issued Regulation No. 15 Year 2021 dated July 28, 2021, regarding Procedures to Obtain Unemployment Benefits (“MOM 15”).

MOM 15 is an implementing regulation for Government Regulation No. 37 Year 2021 dated February 2, 2021, regarding the Implementation of the Unemployment Benefits Program. Under Article 31 of MOM 15, the right to obtain unemployment benefits is lost if the employee does not file a claim within three months of termination of employment, has found a new job, or passes away.

**Indonesia’s Manpower Ministry Issues Guidelines on Employment Relationship during Covid-19**

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**13 AUG**

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The Indonesian Ministry of Manpower has issued a new decree, No. 104 Year 2021 dated August 13, 2021, regarding Implementing Guidelines for the Employment Relationship during Covid-19 (“MOM 104”).

MOM 104 contains instruction on (i) the implementation of work from home and work from office; (ii) the implementation of wages; and (iii) steps to prevent employment termination.

**Retroactive revocation of several manpower regulations**

INDONESIA

**12 NOV**

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With the enactment of Law No. 11 of 2020 dated November 2, 2020 regarding Job Creation, also known as the Omnibus Law, and its implementing regulations, in practice, there were several ministerial manpower regulations whose substance had been regulated under new regulations or which were no longer suitable and therefore needed to be revoked.

On November 12, 2021, the Minister of Manpower (“MOM”) issued MOM Regulation No. 23 Year 2021 regarding the Revocation of MOM Regulations as a result of Law No. 11 of 2020 on Job Creation and its Implementing Regulations (“MOM 23”).

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LOOKING BACK

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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MOM 23 revokes 19 regulations including MOM regulations on termination benefits, investment, and outsourcing. MOM 23 applies retroactively from February 2, 2021.

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**Job Creation Law ruled conditionally unconstitutional and must be revised within two years**

The Indonesian Constitutional Court (*Mahkamah Konstitusi*), in Case No.91/PUU-XVIII/2020, ruled that Law No. 11 of 2020 dated November 2, 2020 regarding Job Creation, also known as the Omnibus Law, is conditionally unconstitutional and must be revised within two) years of the court's decision.

The Omnibus Law amended 78 Indonesian laws, including the Indonesian Manpower Law, with the stated aim of removing barriers to investment in Indonesia. This Constitutional Court decision raises the possibility that the substance of the current Indonesian Manpower Law, as amended by the Omnibus Law, might be changed during the anticipated revision process.

And if the Government of Indonesia fails to implement the revision as ordered by the Constitutional Court, the Omnibus Law (including the Indonesian Manpower Law, as amended by the Omnibus Law) will become permanently unconstitutional and all the earlier laws amended or replaced by the Omnibus Law will become valid again.

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**Important:**  
action likely required

**Good to know:**  
follow developments

**Note changes:**  
no action required

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