



**Legal Alert** 

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# Perppu 2/2022: Amendment to Manpower Law

## **Perppu 2/2022: Amendment to Manpower Law**

The Indonesian government officially enacted the Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang*) No. 2 of 2022 on Job Creation ("**Perppu on Job Creation**") on 31 December 2022. The Coordinating Minister for Economic Affairs has stated that the issuance of the new regulation is in the spirit of anticipating the various economic and geopolitical challenges posed by the current global dynamics.<sup>1</sup>

Additionally, the regulation is issued to revoke the Law No. 11 of 2020 on Job Creation ("**Job Creation Law**"). This is due to the mandate of the Constitutional Court Decision No. 91/PUU-XVIII/2020 ("**Constitutional Court Decision**") which declared the Job Creation Law as "conditionally unconstitutional" and shall be corrected and/or amended within the 2 years after the issuance of the Constitutional Court Decision. The Perppu on Job Creation in total contains a range of articles that encompasses similar matters under the Job Creation Law.

### **I. GENERAL OVERVIEW**

As we have previously mentioned, the enactment of the Perppu on Job Creation revoked the Job Creation Law, which upon its implementation stipulates the following transitional consequences:

1. Any business licensing documents and/or certificates that were issued based on Job Creation Law will remain valid until their expiration dates;
2. Any approvals, sectoral licenses, certificates and/or other forms of licenses that were issued by the central government and regional governments prior to the enforcement of the Job Creation Law will remain valid until their expiration dates;
3. Any business entities that were established based on the Job Creation Law will remain legal until the end of their establishment periods;
4. Any legal actions that have been taken by the Indonesian Government and any agencies that have been established based on the Job Creation Law will remain valid, provided that they are still in accordance with general good governance principles;
5. Any ongoing business licensing applications will be processed in accordance with the provisions set under the Perppu on Job Creation;

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<sup>1</sup> Cabinet Secretariate of the Republic of Indonesia, "*Pemerintah Terbitkan Perpu Cipta Kerja*", dated 30 December 2022, See: <https://setkab.go.id/pemerintah-terbitkan-perppu-cipta-kerja/>.

6. The Indonesia Investment Authority, as established based on the Job Creation Law, will continue to operate in accordance with the provisions set under the Perppu on Job Creation; and
7. Any implementing regulations to laws that are amended by the Perppu on Job Creation, as well as any implementing regulations to Job Creation Law, will remain valid, provided that they do not contravene any of the provisions set under the Perppu on Job Creation.

## II. ANALYSIS

In this Legal Alert, we will focus our discussion on the highly debated amendment to the laws in the manpower sector.

Similar to the Job Creation Law, Article 80 of Perppu on Job Creation provides that in order to strengthen the protection of workers/laborers and to increase their welfare as well as to support the investment ecosystem, the newly enacted law amends the following existing laws in manpower sector:

- a. Law No. 13 of 2003 on Manpower ("**Manpower Law**");
- b. Law No. 40 of 2004 on the National Security System ("**National Security System Law**");
- c. Law No. 24 of 2011 on the Social Security Agency ("**Social Security Agency Law**");
- d. Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers ("**Protection of Migrant Workers Law**").

Kindly note that the amendments to the National Security System Law, Social Security Agency Law, and Protection of Migrant Workers Law are identical to the amendments made by Job Creation Law. However, the Perppu on Job Creation introduced a number of other amendments and new provisions that differs from the Job Creation Law.

### OUTSOURCING

<b>MANPOWER LAW</b>	<b>JOB CREATION LAW</b>	<b>PERPPU ON JOB CREATION</b>
Article 64  A company may subcontract part of its work to another company under a written agreement of working contract or a written agreement for the provision of worker/labour.	Article 64  Job Creation Law removed this Article.	Article 64  1. A company may subcontract part of its work to another company under a written outsourcing agreement. 2. The government will determine the part of the work referred to in paragraph (1).

		<p>3. Further provisions on the determination of the part of work referred to in paragraph (2) will feature under a forthcoming Government Regulation.</p>
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Article 64 of the Manpower Law provides that outsourcing may be conducted by a company as long as it is regulated under an agreement. However, the Article was removed by the Job Creation Law.

However, the Perppu on Job Creation revived the outsourcing provision by adding that the government will determine the part of the work allowed for outsourcing. Further, the added article addressed the term "part of the work" will be regulated under a forthcoming Government Regulation.

### **MINIMUM WAGE**

<b>MANPOWER LAW</b>	<b>JOB CREATION LAW</b>	<b>PERPPU ON JOB CREATION</b>
<p>Not Regulated</p>	<p>Article 88C</p> <ol style="list-style-type: none"> <li>1. Governors must stipulate a provincial minimum wage.</li> <li>2. Governors may stipulate a minimum wage at the regency/city level <b>in line with certain conditions.</b></li> <li>3. The minimum wage, as referred to in paragraph (1) and paragraph (2), should be based on economic and manpower conditions.</li> <li>4. Certain conditions, as referred to in paragraph (2), should cover regional economic growth and inflation in the relevant regency/city.</li> <li>5. The minimum wage at</li> </ol>	<p>Article 88C</p> <ol style="list-style-type: none"> <li>1. Governors must stipulate a provincial minimum wage.</li> <li>2. Governors may stipulate a minimum wage at the regency/city level.</li> <li>3. <b>The stipulation of the minimum wage, as referred to in paragraph (2), should be implemented if the calculation of the regency/city level minimum wage is higher than the calculation of the provincial minimum wage.</b></li> <li>4. The minimum wage, as referred to in paragraph (1) and paragraph (2), should</li> </ol>

	<p>the regency/city level, as referred to in paragraph (2), should be higher than the relevant provincial minimum wage.</p> <p>6. The economic and manpower conditions, as referred to in paragraph (3), should use data that are sourced from an agency that is authorized within the statistics sector.</p> <p>7. Further provisions on procedures for the stipulation of the minimum wage, as referred to in paragraph (3) and certain conditions, as referred to in paragraph (4), are to be addressed under a forthcoming Regulation of the Government.</p>	<p>be based on the relevant economic and manpower conditions.</p> <p>5. The economic and manpower conditions referred to in paragraph (4) should use data that are sourced from an agency that is authorized within the statistics sector.</p> <p>6. If a regency/city has not stipulated a minimum wage and intends to stipulate a minimum wage, then the stipulation of the minimum wage must fulfill certain conditions.</p> <p>7. Further provisions on procedures for the stipulation of the minimum wage, as referred to in paragraph (4) and certain conditions, as referred to in paragraph (6), will be addressed under a forthcoming Regulation of the Government.</p>
<p>Not regulated</p>	<p>Article 88D</p> <p>1. The minimum wage, as referred to in Article 88C paragraph (1) and paragraph (2), should be calculated through the use of a minimum wage calculation formula.</p> <p>2. The minimum wage calculation formula,</p>	<p>Article 88D</p> <p>1. The minimum wage, as referred to in Article 88C paragraph (1) and paragraph (2), should be calculated through the use of a minimum wage calculation formula.</p> <p>2. The minimum wage calculation formula,</p>

	<p>as referred to in paragraph (1), should contain variables that relate to economic growth <b>or</b> inflation.</p> <p>3. Further provisions on the minimum wage calculation formula will be addressed under a forthcoming Regulation of the Government.</p>	<p>as referred to in paragraph (1), should contain variables that relate to economic growth, inflation <b>and certain indices.</b></p> <p>3. Further provisions on the minimum wage calculation formula will be addressed under a forthcoming Regulation of the Government</p>
Not regulated	Not regulated	<p>Article 88F</p> <p>Under certain circumstances, the government may stipulate a minimum wage calculation formula that differs from the minimum wage calculation formula referred to in Article 88D, Paragraph (2).</p>

With regards to minimum wage, the Manpower Law does not originally provide any provisions regulating the matter, however, the Job Creation Law provide that provincial minimum wage must be stipulated by the Governor. Furthermore, the Governor may stipulate regency/city-level minimum wage based on certain conditions such as: (i) regional economic growth; and (ii) inflation within the relevant regency/city.

The Perppu on Job Creation removed the phrase “certain conditions” to stipulate minimum wage in regency/city-level, rather provide that the stipulation of minimum wage in regency/city-level shall be implemented if the calculation of regency/city-level minimum wage is higher than the calculation of the provincial minimum wage. Indeed, while the Perppu on Job Creation still requires regency/city-level minimum wages to be stipulated in line with certain conditions, said conditions do not include regional economic growth and inflation within the relevant regency/city.

Furthermore, the Perppu on Job Creation introduce a new variable in the calculation of minimum wage, which was previously only variables that relate to economic growth or inflation, now becomes “variables that relate to economic growth, inflation and certain indices”. This extends the calculation

variable which formula will be addressed under a forthcoming Government Regulation.

Please note that prior to the issuance of Perppu on Job Creation, the Minister of Manpower issued Regulation No. 18 of 2022 on the Determination of Minimum Wages 2023, which used such an index as a part of the calculation formula for the determination of the 2023 minimum wage.

### **SHORT TERM EMPLOYMENT AGREEMENT (*PERJANJIAN KERJA WAKTU TERTENTU* "PKWT")**

In addition to the amendments and new provisions, the Perppu on Job Creation retained the previous regulations under the Job Creation Law regarding the PKWT.

Essentially, Job Creation Law removes several provisions under the Manpower Law regarding PKWT, such as: (i) threshold time period of the types of work for PKWT; (ii) work types, natures or activities that are non-permanent; (iii) time period for the validity, extension, and renewal of PKWT; (iv) criteria of permanent and non-permanent work; (v) period limitation of PKWT.

The no amendments made by the Perppu on Job Creation has resulted in rejection from many parties, one of them being the Indonesian Trade Union Confederation/ *Konfederasi Serikat Pekerja Indonesia* ("**KSPI**"). The President of KSPI has voiced their rejection to the lack of stipulations for the time period for the validity, extension, and renewal of PKWT, in which he stated may cause employment contact to be made repeatedly.<sup>2</sup>

### **III. CONCLUSION**

The above analysis on the Perppu on Job Creation and Job Creation Law have shown that the adjustments made, especially on Manpower Law, does provide substantial changes, particularly on the revival of the previously removed articles on outsourcing and the introduction to new provisions on minimum wage.

Despite the issuance was aimed to strengthen the protection and increase the welfare of workers/laborers while simultaneously support the ecosystem for investment, it has met rejection by laborers' organisation. In that sense, we view that businesses may want to ensure that their internal human resources' regulations to adhere to the new provisions stipulated under the Perppu on Job Creation.

Further, it is worth noting that even though Perppu on Job Creation has been issued and applies, the People's Representative Council of Indonesia ( *Dewan*

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<sup>2</sup> Kompas.com, "Ketentuan PKWT dalam Peprpu Cipta kerja yang Ditolak Buruh", dated 3 January 2023, See: <https://www.kompas.com/tren/read/2023/01/03/060000565/ketentuan-pkwt-dalam-perppu-cipta-kerja-yang-ditolak-buruh?page=all>.

*Perwakilan Rakyat, "DPR")* has yet to approve it in order for the Perppu on Job Creation to become law.

We will be closely monitoring any further update re. the approval from DPR and provide the relevant update through separate legal alert.

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