



# NEWSLETTER

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## Replacement of the Omnibus Law - How employment, wages and outsourcing are affected in Indonesia

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### What has happened?

On 30 December 2022, President Joko Widodo issued and enacted an emergency regulation, Government Regulation in lieu of Law (“Perppu”) No. 2 of 2022 on Job Creation (“Perppu 2/2022”).

### Why was Perppu 2/2022 issued?

Perppu 2/2022 was issued to replace the contentious Law No. 11 of 2020 regarding Job Creation (commonly referred to, as the “Omnibus Law”) that the Constitutional Court (“Court”) had declared “conditionally unconstitutional” on procedural grounds<sup>1</sup> on 25 November 2021.

The Court’s decision set a deadline of two years for the People’s Representative Council (“DPR”) to restart the legislative process and amend or replace the Omnibus Law to remedy the unconstitutional defects identified by the Court. Failure by the DPR to do so by 25 November 2023 would result in the Omnibus Law formally being deemed unconstitutional (null and void) and all its derivative implementing regulations invalid. The Court also imposed a moratorium on issuing any new implementing regulations under the Omnibus Law until the Omnibus Law was so amended.

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<sup>1</sup>Such grounds included:

- the formation of the Omnibus Law failed to properly follow definite and standard legislation making procedures, methods and systems, and
- some of the substantive provisions of the Omnibus Law was changed *after* its enactment by the DPR and ratification by the President.

Accordingly, the Court held the formation process of the Omnibus Law violated or failed to satisfy lawmaking principles mandated under the 1945 Constitution and such law must be declared formally defective and unconstitutional.

The Government stressed that, other than for implementing the Court's decision, the emergency rules under Perppu 2/2022 are also necessary as there is an urgent need for legal certainty about the Omnibus Law. The Government's reasons were stated as:

1. the importance of encouraging investment in anticipation of an impending risk global recession;
2. the Russia-Ukraine conflict; and
3. a potential food, energy, financial and climate change crises.

The Government drew criticism from some parties debating that the issuance of Perppu 2/2022, that the Government did not have a clear emergency basis to issue Perppu 2/2022 as argued by the Government. Although Perppu 2/2022 was enacted on and effective as of 30 December 2022, it must be ratified into law by the DPR in its next session in January. If it is rejected by the DPR, Perppu 2/2022 must be revoked and declared null and void and the 25 November 2023 date to restart the legislative process and amend or replace the Omnibus Law becomes crucial again.

#### **Perppu 2/2022 replaces the Omnibus Law**

Although the enactment of Perppu 2/2022 revokes and invalidates the Omnibus Law, all implementing regulations issued pursuant to the Omnibus Law will remain applicable as long as they are not in conflict with Perppu 2/2022. Furthermore, any approval, permit, certification and/or any other form of license issued before enactment of the Omnibus Law will remain valid until its expiration. If, however, there is a pending license application following the promulgation date of Perppu 2/2022 (30 December 2022), the application process will be resumed based on and subject to, the rules under Perppu 2/2022.

The general legislative intent underlying Perppu 2/2022 is broadly similar with that of the Omnibus Law, namely, to boost investment and create jobs by streamlining regulations and simplifying the licensing process. This is apparent from the provisions of Perppu 2/2022 reinforcing the amendment and revocation of the same 78 statutes which were amended or revoked by the Omnibus Law.

## **Changes to Employment law under Perppu 2/2022**

This article focusses on amendments applying to employment matters only. Subsequent articles will focus on other areas of law. Although most of the provisions under Perppu 2/2022 are generally similar to the Omnibus Law, two notable differences are:

- **Outsourcing and subcontracting**

Rules on outsourcing and subcontracting (as regulated under Law No. 13 of 2003 on Employment) that were previously revoked by the Omnibus Law have been reinstated. These reinstated rules and the types of works that can be outsourced will be further regulated in a future government regulation. There is therefore still uncertainty of whether similar limitations on the rules and type of works that will be permitted to be outsourced remains.

- **Minimum wage**

Perppu 2/2022 has introduced a new provision whereby a Regional Governor may determine a higher Regency/City Minimum Wage than the Provincial Minimum Wage. This higher minimum wage will be calculated based on a formula containing a new but undefined variable of “certain indexes”.

Unlike the Omnibus Law, Perppu 2/2022 authorizes the “Government”, in certain circumstances, to determine a different formula for calculating minimum wages. Perppu 2/2022 does not define what such “circumstances” are or which branch or level of Government has been granted such an authority.

## **Upcoming Webinar on Perppu 2/2012**

MKK will be offering an English language seminar on Perppu 2/2022 in the coming weeks following the DPR session. Please let us know if you would be interested in attending this.

We are monitoring developments on this matter. For any questions on how Perppu 2/2022 may affect your business, please contact Made Barata [mb@mkklaw.net](mailto:mb@mkklaw.net) or Craig Heggie [cmheggie@mkklaw.net](mailto:cmheggie@mkklaw.net).