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THE NEW REGULATION ON THE UTILIZATION OF FOREIGN WORKERS: THE SIMPLIFICATION OF LICENSING PROCEDURES FOR THE EMPLOYMENT OF EXPATRIATES



WHAT IS NEW IN PR 20?

The following is the main provisions of PR 20 along with a comparison to PR 72 and its implementing regulations:

- PR 20 emphasizes the employment of expatriates must take into account the Indonesian national job market in addition to the existing provision in PR 72 stating that the employment of expatriates must only be for a certain position and a certain period of time. This additional condition could give rise to confusion since PR 20 is silent on the criteria for the Indonesian national job market.
- PR 20 states that expatriates are not allowed to be hired in the position of personnel manager and certain positions as provided Minister of Manpower and Transmigration (“**Minister**”) Decree No. 40 of 2012 concerning Certain Positions Expatriates are Prohibited to Occupy. In relation to the foregoing, it is possible that the Minister will issue another decree prohibiting certain positions for expatriate employment, if other ministries forward conditions or restrictions on expatriate employment to the Minister for his further action.

On 26 March 2018, the President of the Republic of Indonesia, Joko Widodo, promulgated Presidential Regulation No. 20 of 2018 concerning the Utilization of Expatriates, which will officially come into force 3 (three) months after the promulgation, i.e. from June 2018 (“**PR 20**”). As from the effective date of PR 20, it will revoke Presidential Regulation No. 72 of 2014 concerning the Utilization of Expatriates and the Implementation of Education and Training for Indonesian National Associate Workers (“**PR 72**”). All of the implementing regulations of PR 72 will remain valid provided that such regulations are not deemed to contradict PR 20.

- PR 20 allows employers of expatriates to employ expatriates who are in the employ of another employer of expatriates for the same position (double employment). This employment must end in accordance with the period of employment with the first employer of expatriates. The positions, sectors, and mechanisms for double employment will be provided in a Ministerial regulation.

Formerly, pursuant to the Minister Decree No. 16 of 2015 as amended by Minister Decree No. 35 of 2015 concerning the Procedure of the Utilization of Expatriates (“**Implementing Reg.**”), only expatriates who are members of boards of directors or boards of commissioners were permitted to work for more than one employers of expatriates.

- PR 20 obliges every expatriate employer to have an Expatriate Employment Plan (*Rencana Penggunaan Tenaga Kerja Asing* (“**RPTKA**”)) ratified by the Minister or an appointed official. For certain emergency and urgent work, PR 20 allows an employer of expatriates to apply for the RPTKA at the latest 2 days after the employment of the expatriate. This is different from the previous situation where PR 72 and the Implementing Reg. obliged every employer of expatriates to have an RPTKA prior to the employment of the expatriate.

- Interestingly, PR 20 also exempts an employer who employs its foreign shareholder as a member of the board of directors or the board of commissioners in the company of the employer of expatriates, a foreign representative employing e.g. diplomatic and consular officials; an expatriate employed for a type of work needed by the Government, international boards, or Government institution, from the obligation to have an RPTKA, as was previously the case in PR 72. However, it is not further stated whether such exemption also applies to the employment of an expatriate who is an employee of a shareholder in the form of an entity.
- PR 20 sets out that a RPTKA will be valid for a period in accordance with the period of the expatriate employment plan, while PR 72 provided that a RPTKA was valid only for a maximum period of 5 (five) years, and able to be extended for 5 (five) years depending on the Indonesian national employment market.
- Next, PR 72 used to require an employer of expatriates to obtain an Expatriate Employment License (*Izin Mempekerjakan Tenaga Kerja Asing* (“**IMTA**”)), but PR 20 states that the ratification of RPTKA constitutes the license to employ expatriates. Accordingly, it can be concluded that the obligation of an employer of expatriates to obtain an IMTA no longer exists and the ratification of the RPTKA constitutes the new expatriate employment license.

While the IMTA was formerly stated as a requirement for visa application in the Implementing Reg., PR 20 requires the expatriate employer to submit the following data on the prospective expatriate to the Minister or its appointed official:

- i. name, gender, place and date of birth;
- ii. nationality, passport number along with its period of validity and location of issuance;
- iii. position and period of employment;
- iv. statement of guarantee from the expatriate employer (i.e for the Manpower Social Security (*Jaminan Sosial Ketenagakerjaan* (**Jamsostek**)) for an expatriate with a minimum period of work of 6 (six) months and/or an insurance policy from a local insurance company); and
- v. educational certificate and statement of working experience or competence certificate.

The Minister or its appointed official will further issue the employer of expatriates with a notification of receipt of the data (“**Notification**”).

- With regards to the expatriate employment compensation (“**Compensation**”), PR 20 states that the Compensation must be paid annually during the period of employment, simplifying the provision of the Implementing Reg. that required monthly payment of the Compensation
- To apply for a Limited Stay Visa (*Visa Tinggal Terbatas* (“**Vitas**”)), an employer of expatriates must attach the Notification and the receipt of the Compensation. PR 20 also provides that the application for Vitas can be filed simultaneously with an application for a Limited Stay Permit (*Izin Tinggal Terbatas* (Itas)).
- PR 20 provides an additional obligation for the an employer of expatriates to facilitate the education and training of Bahasa Indonesia to expatriates, and mandating the appointment of an associate Indonesian national employee, who will receive education and training in accordance with the qualifications for the expatriate’s position.
- The employer of expatriates must report the employment of expatriate to the Minister annually, pursuant to PR 20. PR 72 had previously set a report period of 6 (six) months. Furthermore, on expiration or termination prior to the expiration date of an employment contract, PR 20 requires the employer of expatriates to report such matters to the Minister and the chief of immigration office in the domicile of the expatriate.
- PR 20 makes the employment of expatriates and the performance of education and training for the associate Indonesian national workers easier by using data sharing and an integrated online system.
- RPTKA existing prior to PR 20 will still be deemed valid until their expiration and the completion of RPTKA applications commenced prior to the promulgation of PR 20 will be based on the provisions of PR 20.

The Implication of the Promulgation of PR 20

The promulgation of PR 20 is like a double-edged sword for the nation, as there is possibility that there will be a significant increase in the number of expatriates in Indonesia and instead of expanding the working opportunity for Indonesian national workers as it is planned to be, it may decrease the working opportunity and harm the position of Indonesian national workers.

Notwithstanding the above, the Minister may need to look carefully at the loopholes in PR 20, such as the Indonesian national job market, double employment, and the additional exemption from having a RPTKA and coordinate with other ministers to determine the conditions or restrictions on expatriate employment for each business sector in order to attain an equilibrium between increasing the number of expatriates and protecting local employees.

Lastly, as the promulgation of PR 20 surely brings significant changes in the procedures and mechanisms for the utilization of expatriates in Indonesia, e.g. the function of the legalized RPTKA as a license to employ expatriates, which in previous regulations was given in the form of the IMTA and the simultaneous applications for Vitas and Itas, the Minister may need to issue a new implementing regulation for PR 20 or amend and/or to replace the prevailing implementing regulations as deemed necessary, in order to provide a clear and detailed guidance for, and legal certainty in, the implementation of the new PR 20.

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