

The President's Proposed Amendments to the Job Creation Omnibus Law Regarding Outsourcing and Minimum Wages

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The President of the Republic of Indonesia, Joko Widodo enacted Government Regulation in Lieu of Law No. 2 of 2022 on 30th December 2022 on Job Creation (*Peraturan Pemerintah Pengganti Undang-undang No. 2 Tahun 2022 tentang Cipta Kerja*). This Perppu as we call it in Indonesia, is enacted as the response to the issuance of Decision of the Constitutional Court No. 91/PUU-XVII/2020, which basically decided that the Job Creation Law was valid on condition that rectification took place within 2 years from the date the Decision was granted, which period ends in early November 2023.

The issuance of this Perppu surely does not end the challenges that the Indonesian Government is facing in its attempt to perfect the Job Creation Law, but rather it is the first step of a lot of procedural and administrative work that lies ahead. The most important part of this sequence of work is the part where the House of Representatives grants its approval of the Perppu in order for the Perppu to become law. Without the approval, the Perppu must be revoked and thus the Job Creation Law would become permanently unconstitutional.

It will be interesting to see whether the House of Representatives agrees to the changes that are incorporated in the Perppu, especially with the introduction of new provisions which have never been part of the previous laws. Of the changes that have been made in the Perppu which are related to manpower it is important to note: (1) the reinsertion of the provision regarding outsourcing which was in Manpower Law No. 13 of Year 2003, but was deleted by the Job Creation Law, and has now been reinserted in the Perppu; and (2) the introduction of a new provision whereby in certain conditions (such as a pandemic), the government can set a different formula from the formula given by the Perppu to determine minimum wages.

Granted that implementing regulations have to be issued following the Perppu, the reinsertion of the provision regarding outsourcing should relieve workers since it can no longer be interpreted that all types of work can be outsourced. It is also expected that the implementing regulations will exclude any work related to the core business of the employers from the work that can be outsourced, which will oblige the employers to only use permanent employees to perform such work.

Even though the granting of authority for the government to set a different formula for the minimum wages has only just been introduced in the Perppu, the incorporation of this new provision will hopefully not become a deal breaker for the House of Representatives to grant its approval as we all experienced the difficulties in keeping business afloat during the global pandemic.

We will have to wait and see the fate of this brand new Perppu. Personally, I hope to see it become a law.

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The article above was prepared by Dentons HPRP's lawyers

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