



Indonesian Omnibus Law: Changes to Definite Period Employment Agreements Ikang Dharyanto, Tomoro Yoshimoto, Tomoya Tsuji, Made Grazia Valyana Ustriyana

1. Introduction

In line with the mandate under Law No. 11 of 2020 on Job Creation (“**Omnibus Law**”), the Government of Indonesia issued numerous implementing regulations to the Omnibus Law on 2 February 2021, i.e. exactly three months since the enactment of the Omnibus Law. The implementing regulations were made available to public on 21 February 2021 on the State Secretariat [website](#).

Among the new implementing regulations are four Government Regulations under the manpower cluster, namely:

1. Government Regulation No. 34 of 2021 on Utilization of Foreign Manpower. This regulation is effective as of 1 April 2021.
2. Government Regulation No. 35 of 2021 on Definite Period Employment Contract, Outsourcing, Working Hour and Rest Time and Termination of Employment (“**GR 35/2021**”). This regulation is effective as of the date of enactment, i.e. 2 February 2021.
3. Government Regulation No. 36 of 2021 on Remuneration. This regulation is effective as of the date of enactment, i.e. 2 February 2021.
4. Government Regulation No. 37 of 2021 on Implementation of Loss of Job Guarantee Program. This regulation is effective as of the date of enactment, i.e. 2 February 2021.

This newsletter is intended to only cover GR 35/2021.

2. Definite Period Employment Agreement under the Omnibus Law and GR 35/2021

Generally, employment relationships form based on an employment agreement between an employer and an employee, and may be

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written or oral.¹ Based on duration, an employment agreements may be divided into two types: Definite Period Employment Agreements (“PKWT”) and Indefinite Period Employment Agreements (“PKWTT”).

In relation to this, the Omnibus Law and GR 35/2021 revise the provisions on PKWT which were previously governed under Law No. 13 of 2003 on Manpower (prior to the issuance of the Omnibus Law, the “**Manpower Law**”) and its implementing regulation, under the Ministry of Manpower and Transmigration (“**MOMT**”) Decree No. KEP-100/MEN/VI/2004 on Provisions of the Implementation of Definite Period Employment Agreement (“**Decree 100/2004**”), by amending, omitting and adding few provisions as explained in the comparison table below.²

No.	Type	Manpower Law and Decree 100/2004	Omnibus Law and GR 35/2021
1	Nature of allowed works for PKWT	<p>Under the Manpower Law, a PKWT may not be made for work of a permanent nature.</p> <p>In addition, a PKWT can only be made for certain work, which as to the type and characteristics or work activities concerned will be completed within a certain period of time, i.e.:</p> <ul style="list-style-type: none"> (a) one-time completed type of work or work of a temporary nature; (b) work whose completion is not expected to take a long time and no longer than a maximum of three years; (c) seasonal work; or (d) work relating to new products, new activities, or supplemental products that are still experimental or in exploration. <p>The Manpower Law provides that if a PKWT does not fulfill the condition relating to the nature of work, the employment will be deemed as a PKWTT.</p>	<p>Similar to the limitation in the Manpower Law, under GR 35/2021, a PKWT may not be made for work of a permanent nature.</p> <p>In addition, the PKWT can only be made for certain work, which as to the type and characteristics or work activities concerned will be completed within a certain period of time, i.e.:</p> <ul style="list-style-type: none"> (a) period of time, namely: <ul style="list-style-type: none"> (i) work which is estimated to be completed in a short period of time, maximum of 5 years; (ii) work that is seasonal in nature; or (iii) work related to new products, new activities, or additional products that are still in trial or exploration; or (b) completion of certain works, namely: <ul style="list-style-type: none"> (i) a one-time work; or (ii) work that is temporary in nature. <p>A PKWT based on the completion of certain work must be based on the agreement by the employer and the employee under the PKWT. Such agreement shall include the scope and limitation of the completion of work and the period of the completion of work.</p>
2	Contract Period	<p>Under the Manpower Law, the maximum contract period of a PKWT is two years. This period can be extended once for a maximum of one year.</p> <p>An employer who intends to extend the PKWT must give a prior written notification to the employee at the latest seven days before the expiry date. Subsequently, the agreement can be renewed for another two years, but only after a 30 (thirty)-day break.</p>	<p>GR 35/2021 creates a longer period for PKWT that are based on work periods (up to five years), which is longer than the contract period under the Manpower Law (two years before the extension).</p> <p>If a PKWT based on the period of work reaches its expiration and the work is not complete, the parties may extend such PKWT based on an agreement, provided that the total period of the PKWT along with its</p>

¹ Please, however, note the requirements for written contracts for PKWT as elaborated in No.4 of the table below.

² Pursuant to GR 35/2021, the implementing regulations of the Manpower Law are still valid, so long as it is not contradicting GR 35/2021.

No.	Type	Manpower Law and Decree 100/2004	Omnibus Law and GR 35/2021
		<p>If the requirements in relation to the maximum contract period above (including the obligation of prior written notification before extension of the PKWT) are violated, the employment will be deemed as a PKWTT.</p>	<p>extension shall not exceed five years.</p> <p>In this regard, the period of work for the PKWT, that has been extended as above, shall be calculated since the start of the initial PKWT.</p> <p>Meanwhile, there is no clear provision on the maximum term of PKWT based on completion of certain work. GR 35/2021 only stipulates that the PKWT based on the completion of certain work shall be based on the agreement of the parties set forth in an employment agreement which shall contain:</p> <ul style="list-style-type: none"> (a) the scope and limitations of work to be declared complete; and (b) the length of completion time of the work adjusted to the completion of work. <p>In the event that the certain work that is agreed upon in the PKWT can be completed earlier than the agreed time in the employment agreement, the PKWT shall be terminated by law at the time of the completion of the work. However, in the event that the certain work that is agreed upon in the PKWT cannot be completed in accordance with the agreed time in the employment agreement, the PKWT period shall be extended up to a certain time limit until the completion of the work.</p>
3	Daily PKWT	<p>While it is not regulated in the Manpower Law, Decree 100/2004 allows certain work which period and volume as well as pay may change based on attendance, under a “freelance work agreement”, for a maximum period of work of less than 21 (twenty-one) days in one month.</p> <p>If an employee under this kind of PKWT works for more than the above limitation for three consecutive months or more, such PKWT will automatically convert to a PKWTT.</p>	<p>GR 35/2021 also allows certain work in which period and volume as well as pay may change based on attendance. This type of PKWT may only be made under a “daily work agreement”.</p> <p>The same limitation of period of work of less than 21 (twenty-one) days in one month also applies. Further, violation of such limitation will also change the status of the agreement to a PKWTT.</p>
4	Formality and Mandatory Registration Requirement	<p>The Manpower Law requires that PKWT be made in writing, using the Indonesian language and Latin alphabets. It is possible to have a dual language (e.g. English and Indonesian) agreement. However, the controlling language should be Indonesian.</p> <p>If the PKWT does not fulfill the condition relating to the formality of the agreement above, the employment will be deemed as a PKWTT.</p> <p>Further, the Manpower Law requires employment agreements (i.e., not only PKWT) that are made in writing to include at least the</p>	<p>Similar with the Manpower Law and Decree 100/2004:</p> <ul style="list-style-type: none"> (a) The Manpower Law, as amended by the Omnibus Law, also requires PKWT to be drawn up in writing with Latin alphabets and must use Indonesian language as the prevailing language, if the agreement is bilingual. (b) GR 35/2021 requires a PKWT to at least contains the following information: <ul style="list-style-type: none"> (i) name, address of the employer, and its line of business; (ii) name, gender, age, and address of the employee;

No.	Type	Manpower Law and Decree 100/2004	Omnibus Law and GR 35/2021
		<p>following provisions:³</p> <ul style="list-style-type: none"> (i) name and address of the employer, and its line of business; (ii) name, gender, age and address of the employee; (iii) position or type of work of the employee; (iv) place of work; (v) amount of wage and payment methods; (vi) terms of employment, covering the rights and obligations of the employer and the employee; (vii) commencement date and the period of employment; (viii) place of signing and date of the employment agreement; and (ix) signatures of the parties to the employment agreement (i.e. the employer and the employee). <p>There is no specific sanction prescribed under the Manpower Law for failure to include the above provisions.</p> <p>Generally, Decree 100/2004 requires the PKWT to be registered at the relevant local office of the MOMT. Meanwhile, “freelance work agreement” shall be registered by submitting the list of employees under “freelance work agreement” as prepared by the employer, stating at least, the name and address of the employer and the employee, type of work and wages. Such registration above shall be made within seven working days from the signing of the relevant agreement.</p> <p>There is no specific sanction prescribed for employer’s failure to register a PKWT at the relevant MOMT office. However, MOMT officials may from time to time conduct inspections at employers. Registration of PKWT is typically a subject of scrutiny by the inspecting MOMT officials.</p>	<ul style="list-style-type: none"> (iii) position or type of work of the employee; (iv) place of work; (v) amount of wage and payment methods; (vi) rights and obligations of the employer and employee in accordance with the provisions of laws and regulations and/or employment conditions stipulated in the company regulation or collective labor agreement; (vii) commencement date and the period of PKWT; (viii) place of signing and date of PKWT; and (ix) signatures of the parties to the PKWT. <p>There is no specific sanction prescribed under the Manpower Law as amended by the Omnibus Law and GR 35/2021 for failure to include the above provisions.</p> <ul style="list-style-type: none"> (c) GR 35/2021 also requires the employer to register PKWT with the MOMT. However, it now introduces an online registration which shall be made no later than three working days from the signing of a PKWT. In the event that online PKWT registration is not yet available, then similar to Decree 100/2004 requirement, it is carried out in writing at the regency/city Manpower office no later than seven working days from the PKWT signing. <p>To date, the online system for PKWT registration is not yet implemented. Therefore, an employer shall manually register a PKWT with the relevant manpower office.</p> <p>There is no specific sanction prescribed for an employer’s failure to register a PKWT at the relevant MOMT office. However, MOMT officials may from time to time conduct inspections of employers. Registration of PKWT is typically a subject of scrutiny by the inspecting MOMT officials.</p>
5	Probation Period	A PKWT cannot include a probation period. If a probation period is stipulated in a PKWT, the	Similar with the Manpower Law provision, a PKWT shall not require any probation period,

³ The Manpower Law provides that PKWT can be made verbally but in this case, the employer is obligated to make an appointment letter for such worker/laborer. The appointment letter shall at least contain information on:

- a. the name and address of the worker/laborer
- b. the starting date of work
- c. the type of work; and
- d. the amount of wages

No.	Type	Manpower Law and Decree 100/2004	Omnibus Law and GR 35/2021
		probation period is deemed null and void.	and if a probation period is stipulated in a PKWT, the probation period is deemed null and void. In addition to such provision, GR 35/2021 also stipulates that in the event that a PKWT contains a probation period, the year of service will still be counted and the employee will be deemed to be a non-probationary worker.
6	Compensation	<p>An employee employed under a PKWT and terminated before the contract period of the PKWT expires is not entitled to termination payment that consists of severance pay, long service pay, compensation of rights and separation pay.</p> <p>Instead, any party that terminates a PKWT before expiry is obligated to pay to the other party compensation in the amount equal to the employee's salary up until the PKWT should have expired.</p>	<p>Another new requirement under the Omnibus Law, for employees in a PKWT who have worked for at least one consecutive month, is that the employer shall be obligated to provide compensation money at the expiration of the PKWT or if either party terminates the employment relationship prior to the expiration of the said PKWT.</p> <p>PKWT employees shall be compensated by the company under the following formulation, depending on the period of PKWT. If there is a mid-term termination of a PKWT, the compensation is calculated on the actual number of months of service completed by the employee.</p> <p>(a) 12 consecutive months will be eligible for one monthly wage compensation; and</p> <p>(b) Less than or more than 12 months will be eligible for compensation on a pro-rated basis, as follows:</p> $\frac{\text{working period}}{12} \times \text{one monthly wage}$
7	Sanction	Under the Manpower Law and Decree 100/2004, a PKWT that does not meet the "Nature of allowed works for PKWT", "Contract Period", "Daily PKWT" and "Formality" requirements above will be deemed to be converted into a PKWTT by law.	<p>Aside from the automation conversion of a PKWT to be a PKWTT in the violation of "Daily PKWT" requirement, GR 35/2021 also provides that employer who violates the provisions as stipulated in this regulation regarding "Compensation" shall be subject to administrative sanctions in the form of: (a) written warning, (b) restriction of business activities, (c) temporary suspension of part or all of production equipment, and (d) suspension of business activities.</p> <p>Please note that considering the implementing regulations of the Manpower Law, including Decree 100/2004, are still valid, so long that it is not contradicting GR 35/2021, the "Sanction" mentioned on the left column still applies.</p>

GR 35/2021 provides some new clarity in terms of employment relationships between an employer and its employees. From the employee perspective, one of the most significant changes introduced by GR 35/2021 is that there is an additional protection for PKWT employees that companies must now allocate costs to pay compensation money to their PKWT employees, including if one of the parties ends the employment relationship before the end of the determined period stipulated in the PKWT. Meanwhile, from the

company perspective, there is an extended period of PKWT (based on a time period of up to five years), which is longer than the contract period as previously regulated, although the Omnibus Law and GR 35/2021 fail to address the issue of PKWT renewal based on completion of certain work, i.e. whether it should follow the five year limitation or not.

Companies and employees need to pay close attention to the new rules to understand the rights and obligations of each party.



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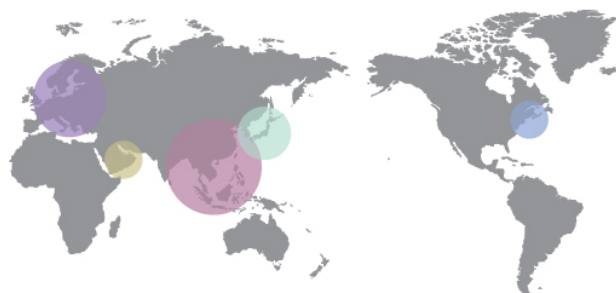
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