

Key Employment Regulatory Changes upon the Revocation of Law No.11 of 2020 on Job Creation ^{P1}

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On March 31st, 2023, the Government of the Republic of Indonesia issued Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation to Become Law¹ (“**Law No. 6/2023**”) which revoked Law No. 11 of 2020 on Job Creation (“**Law No. 11/2020**”). Despite replacing Law No. 11/2020, Law No. 6/2023 stipulates provisions that are generally similar to those set out under Law No. 11/2020, except for several provisions and adjustments to the use of terms and article references.

For Law No. 13 of 2003 on Employment as lastly amended by Law No. 6/2023 (“**Employment Law**”), in comparison to Law No. 11/2020, Law No. 6/2023 contains the following key differences:

1. Outsourcing Provisions

Previously, before it was amended by Law No. 11/2020 and Law No. 6/2023, Article 64 of Employment Law stated that a company may outsource part of its work to another company under a written chartered employment agreement (*perjanjian pemborongan pekerjaan*) or worker/labor provision agreement (*perjanjian penyediaan jasa pekerja/buruh*). Article 64 of Employment Law was then revoked by Law No. 11/2020.²

Law No. 6/2023, however, reintroduced such provision and now a company is allowed to partially subcontract its work to another company by entering into an outsourcing agreement (*perjanjian alih daya*) in writing. Following the amendment under Law No. 6/2023, an outsourcing agreement is no longer specifically limited to chartered employment agreement or worker/labor provision agreement. Law No. 6/2023 also stipulates that the work criteria that is permitted to be outsourced will be further regulated under a government regulation. Up until the date of this

¹ With the issuance of Law No. 6/2023, the Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation currently remains in force without any amendment made thereto and it shall be an integral part of Law No. 6/2023.

² Article 81 point 18 of Law No. 11/2020.

Legal Alert, the aforementioned government regulation has yet to be issued.

While such new government regulation has yet to be issued, any other implementation rules to the outsourcing arrangement must refer to Government Regulation No. 35 of 2021 on Fixed-Term Employment Agreement, Outsourcings, Working Time and Rest Time, and Termination of Employment (“**GR No. 35/2021**”) that remains in force up until the date of this Legal Alert, as the implementing regulation of Employment Law, so long as it is not contradicting the rules outlined under Law No. 6/2023.³ However, since GR No. 35/2021 does not govern the outsourcing criteria, it is expected that such criteria will be defined under the new government regulation.

2. Minimum Wage Stipulation

Law No. 6/2023 provides several amendments to the stipulation of minimum wage in comparison to the provisions set out under Law No. 11/2020. Law No. 11/2020 previously stipulated that the Governor may determine the regency/city minimum wage based on the regional economic growth or inflation in the regency/city concerned and that such minimum wage must be higher than the provincial minimum wage.

Under Law No. 6/2023, rather than being construed as one of the requirements, the stipulation of a regency/city minimum wage is conducted in the event of the calculation of regency/city minimum wage being higher than the provincial minimum wage. Therefore, the stipulation of regency/city minimum wage is subject to the stipulated amount of provincial minimum wage.

Other than the above, Law No. 6/2023 also added that the minimum wage calculation formula shall also consider certain indices in addition to the economic growth and inflation variables which were required under Law No. 11/2020. Under certain circumstances, the government may determine an alternative formula.

We also note that the Government has previously issued Government Regulation No. 36 of 2021 on Wages (“**GR No. 36/2021**”) as an implementing regulation of Law No. 11/2020, which provides further provisions on the minimum wage stipulation including the formula calculation. Pursuant to Law No. 6/2023, GR No. 36/2021 shall remain in force as the implementing regulation of Law No. 6/2023, if it is not contradictory.

3. Reference and use of terms

Other than the above substantial differences, the changes made under Law No. 6/2023 adjust the use of terms and references in several articles to be in line with the defined terms. This includes the use of the term ‘handicapped (*cacat*)’ that has been changed to the term ‘disability (*disabilitas*)’ under Law No. 6/2023.⁴

³ Article 184 point b of Law No. 6/2023.

⁴ Article 67 of Employment Law.

Although broadly similar, several implementing regulations have been issued under Law No. 11/2020. According to Law No. 6/2023, such implementing regulations of Law No. 11/2020 shall remain in force as long as they are not contradictory with Law No. 6/2023. Upon the changes made under Law No. 6/2023 as stated above, employers, workers and other relevant stakeholders should note and expect upcoming changes to such implementing regulations.

This Legal Alert is only intended to give an overview of several amended provisions and regulations related to employment. It may not cover all updates related to employment. Please do not hesitate to contact us if you need more detailed advice or have specific questions.

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