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OUR CONTACT INFORMATION:

Andhika Putra
Managing Partner
andhika.putra@solis.consulting

Mario L. Pangestu
Partner
mario.pangestu@solis.consulting

Jimmy Hutagalung
Partner
jimmy.hutagalung@solis.consulting



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Severance Package and Small and Micro Enterprise in the New Implementing Regulations of Omnibus Law: Where do they stand?

A. General

As of 2 February 2021, the Government of the Republic of Indonesia has enacted 51 (fifty-one) implementing regulations of Law Number 11 of 2020 on Job Creation ("**Omnibus Law**"). 4 (four) of them are specifically regulating the employment sector of Omnibus Law, i.e:

- a. Government Regulation Number 34 of 2021 on the Recruitment of Foreign Workers;
- b. Government Regulation Number 35 of 2021 on Fixed Term Employment Agreement, Outsourcing, Working Hours and Breaks and Termination of Employment Relationships ("**GR 35/2021**");
- c. Government Regulation Number 36 of 2021 on Wages ("**GR 36/2021**"); and
- d. Government Regulation Number 37 of 2021 on the Implementation of the Unemployment Insurance Program.

The above implementing regulations provide further clarity on some matters discussed under the Omnibus Law on employment such as (what appeared to be) flat severance package structure and minimum wage on Small and Micro Enterprises. These are further discussed below.

B. Brief Overview on Severance Package Structure, Small and Micro Enterprise, and Fixed Term Employment under the new Omnibus Law Implementing Regulations

I. Severance Package Structure

As previously discussed in our November 2020 newsletter, Omnibus Law revised the severance package structure into a new (and somewhat appeared to be flat) severance package structure where in the event an employment termination occurs, the terminated employee(s) is entitled for 1 (one) time severance package (only), as provisions on the calculation of severance pay, long service pay, compensation pay of employee(s) in Law Number 13 of 2003 on Manpower ("Manpower Law") is removed by Omnibus Law. The issuance of GR 35/2021 finally provides further clarification on the provisions of severance package structure.

We have compared and summarized some of the provisions of severance package structure as per the termination reason, between GR 35/2021 and the Manpower Law for the readers' reference:

No.	Termination Reason	Severance		Long Service Pay		Compensation	
		Man-power Law	GR 35/ 2021	Man-power Law	GR 35/ 2021	Man-power Law	GR 35/ 2021
1.	Merger, amalgamation or split of the company and the employer is not willing to continue their employment.						
2.	The company is closed not because of losses.						
3.	Termination request by the employee due to the employer behaviour such as abuse, threat towards the employee, persuading the employee to acts against the laws and regulations, etc.	√ 2x	√ 1x	√ 1x	√ 1x	√	√
4.	The company is closed due to force majeure.	√ 1x	√ 0,5x	√ 1x	√ 1x	√	√
5.	The company is closed due to losses.						
6.	Termination request by employee(s) who is/are continuously ill for a long time or disabled as a result of a work accident and unable to work for more than 12 (twelve) months.	√ 2x	√ 2x	√ 2x	√ 1x	√	√
7.	Employee entering the pension age.	√	√	√	√	√	√

		2x	1,75x	1x	1x		
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II. Minimum Wage, Criteria(s) and Compensation Right of Small and Micro Enterprises

Minimum Wage

Before the enactment of the GR 36/2021, the implementation of the exemption of the minimum wage requirement for small and micro enterprises lacked clarity, as we have discussed in our November 2020 newsletter. However, as the awaited implementing regulation on this provision has been issued, the wage requirements, especially for small and micro enterprises, have been set out.

For the exemption of the minimum wage requirement, the government regulation on wages (GR 36/2021) sets out that a wage for small and micro enterprises is subject to the agreement between the employee and the employer, however, it must be at least 50% (fifty percent) of the average society consumption in the relevant province level and the agreed wage must be at least 25% (twenty five percent) above the poverty line in the province level.

Criteria(s)

Government Regulation Number 7 of 2021 on Convenience, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises ("GR 7/2021") sets out that the exemption of the minimum wage would only apply to small and micro enterprises. Under Article 35, the category of small and micro enterprises is required to meet the following criteria:

Micro enterprises

- Business capital up to Rp 1.000.000.000,- (one billion rupiah) (not including land and building); or
- Annual sales up to Rp 2.000.000.000,- (two billion rupiah).

Small enterprises

- Business capital more than Rp 1.000.000.000,- (one billion rupiah) up to Rp 5.000.000.000,- (five billion rupiah) (not including land and building); or
- Annual sales more than Rp 2.000.000.000,- (two billion rupiah) up to Rp 15.000.000.000,- (fifteen billion rupiah).

Compensation Right and Severance Package

In addition to the above, an employee(s) of small and micro enterprises is now entitled for compensation (as set out under Article 16 paragraph (6) of GR 35/2021). However, the amount of the compensation is subject to the agreement between the employer and employee. Further on this, employee(s) of small and micro enterprises also may be entitled to receive severance package if they are terminated by the enterprise (In accordance with Article 59 of GR 35/2021). Under GR 35/2021, the employer is obliged to pay severance package to the terminated employee, which amount is

subject to the agreement between the employee and the employer. If the enterprise does not pay the severance package, they may be subject to administrative sanction as regulated under the applicable laws and regulations.

III. Fixed Term Employment

According to GR 35/2021, a fixed term employment agreement may only be made for a maximum of 5 (five) years. Meaning that previous provision in Manpower Law, which stated that a fixed term employment agreement may be made for 2 (two) years initially - and extendable once for 1 (one) year - and renewable (after 30 (thirty) days rest only once for up to 2 (two) years, is now no longer valid.

It is also worth noting that, regardless that there may be an extension to a fixed term employment agreement, the total work period for a fixed term agreement **may not exceed 5 (five) years** (including the extension period of a fixed term employment agreement).

*The above is a summary prepared by Solis Advisors – Attorneys and Consultants (“Solis”), an Indonesian based Law Firm. It is only intended to inform generally on the topics covered and should **not** in any way be treated as legal advice or relied upon when making investment or business decisions. If you have any questions/comments on the matter set out above, or other subject(s) you wish to inquire, please contact your usual Solis contact or email us at consult@solis.consulting.*
