

INDONESIA



Difficult labour: controversy over outsourcing regulation

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Outsourcing has become a hot-button issue in Indonesia, with labour unions leading large demonstrations in Jakarta against the practice. The unions claim that about 16 million Indonesians, or roughly 40 percent of the country's formal workforce of 40 million, are outsourced employees, hired on short-term contracts and paid daily wages without health care or termination benefits.

As a rule of thumb, companies in Indonesia can delegate part of their work to be performed by other companies, known as subcontractor companies and/or labour suppliers. Such delegation is commonly known as outsourcing. And while Law No. 13 of 2003 regarding Manpower, dated March 25th, 2003 (the Manpower Law), requires companies only to outsource noncore functions, there remains a great deal of ambiguity around the practice. A recent Constitutional Court decision and a ministerial regulation have sought to clear up this ambiguity and tighten the rules surrounding outsourcing, though it remains to be seen whether this will satisfy the unions or what kind of effect it will have on business.

Recent Developments

On November 19th, 2012, the Ministry of Manpower and Transmigration enacted Regulation No. 19 of 2012, on the requirements for subcontracting work to another company (the Outsourcing Regulation). It sought to clarify the rights and obligations of the 'user company' receiving services or employees in relation to the 'subcontractor company' and/or the 'labour supplier'.

Under the Outsourcing Regulation, a user company can delegate work to a subcontractor company only under certain conditions. These include that the delegated work is separate from the user company's main activities and the work does not directly affect the production process, meaning that if the work is not performed by the subcontractor company, the production process at the user company will continue as normal.

User companies can delegate only limited types of work to a labour supplier. These are cleaning services; catering services for employees; security services; support services for the mining and oil industry; and transportation services for employees.

To engage a subcontractor company, the user company must prepare a description of the type of supporting work that will be

delegated and register this description with the local manpower office where the work will be performed. The user company cannot engage the services of a subcontractor company prior to obtaining approval from the manpower office. Failure to comply with this requirement means that, by law, the employees of the subcontractor company will automatically become employees of the user company.

Once the user company and the subcontractor company or labour supplier have signed a written agreement, that agreement must be registered with the manpower office where the contracted work will be performed at the latest 30 business days before the work begins. It is important to note that labour suppliers must prepare written employment agreements with their employees. These employment agreements must be registered with the local manpower office where the work is conducted.

In the event that the user company terminates the labour supply agreement and transfers the work to a new labour supplier, this new supplier must honour the previous labour supply agreement and all existing provisions. The service period of the employees under the previous labour supplier must be taken into consideration by the new labour supplier.

Outlook

User companies, subcontractor companies and labour suppliers have 12 months to comply with the Outsourcing Regulation. If subcontractor companies and labour suppliers are unable to comply in this time, they will still be legally responsible for fulfilling all the provisions of their respective employment agreements. Beyond this, however, are two larger questions that at this point remain unanswered. The first question is whether the Outsourcing Regulation sufficiently clarifies for business what types of work can and cannot be delegated, and the process for such outsourcing. And the second question is whether unions and workers will decide that the Outsourcing Regulation goes far enough in protecting their rights, or whether they will continue to demand a total ban on the practice of outsourcing.

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