



Employment Law: Quarterly Review **Issue VII: Third Quarter 2014 - Indonesia**

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Outsourcing of Labour Supply Restricted to Five Circumstances

Under Section 17(2) of Reg. 19, the type of work that can be delegated to the Labour Supplier must be “supporting services or activities that are not directly related to the main production process”. Section 17(3) states that “supporting services as intended by section (2) shall include (*meliputi*):

- a. Cleaning services;
- b. Catering services for employee/labour;
- c. Security services;
- d. Supporting services in mining and oil industry; and
- e. Transportation services for employee/labour”.

The Ministry of Labour has recently issued a ruling letter to our firm confirming that these are the only circumstances in which outsourcing of labour supply is permitted.

The Ministry of Labour also confirms that any activities outside of these five circumstances can be outsourced through a services agreement arrangement (rather than outsourcing of labour supply) provided that the intended activities fall within the ancillary activities identified in the relevant industry association “Flowchart” and user company’s “Description” as being open to outsourcing by services agreement.

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Limitation Period on Employee Claims Struck Down

The two year limitation period for employees to file claims for wages and benefits under Article 96 of the Manpower Law has been struck down by Constitutional Court Decision No.100/PUU-X/2012. Given the resulting increased risk of old claims, employers are well advised to properly document and process employee terminations.

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Increased Protection for Outsourced Workers: Regulation 19

The Ministry of Labour recently issued Regulation 19 clarifying the restrictions and requirements applicable to the outsourcing of labour supply and subcontracting of work between companies. The focus of attention has been on outsourcing – labour supply. However, all subcontracts of services are also subject to various new restrictions (i.e., non-core activities only), registration requirements for the service contracts themselves, and various supporting documents.

Some industry associations have issued the necessary “Flowchart” describing the core activities in their respective industries in contrast with the ancillary activities that can be subcontracted to service providers. All companies wishing to enter into or continue services agreements after November 19, 2003, must file their own “Description” of core vs. ancillary activities at the Ministry of Labour which must be consistent with the industry Flowchart.

The Ministry of Labour has recently published SE.04/Men/VIII/2013 which was dated August 26, 2013 regarding Guidelines for Implementing Regulation of MOMT Reg. No.19 of 2012. This decree clarifies the procedures and forms to file outsourcing related documents with the Ministry of Labour.

“Controversy Over Outsourcing Regulation in Indonesia: Third-Party Contracting Arrangements”

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New Rules on Hiring Expatriates

Minister of Manpower and Transmigration (“MOMT”) issued MOMT Regulation No. 12 of 2013 regarding Procedures for Employing Foreign Manpower (“MOMT Reg 12”) which contemplates several changes to the previous 2008 regulation and introduces a new mechanism on the temporary hiring of foreign employees.

Requirements to hire a foreign worker

A foreign candidate must meet provide: (i) suitable educational qualifications, (ii) suitable work experience of at least five years, (iii) an undertaking to transfer knowledge to Indonesians, and (iv) be able to communicate in the Indonesian language. The 2008 regulation merely required either point (i) or (ii), whereas the new regulation requires that both requirements be met. The language requirement is not new and there is no indication that there will be any change of policy in that regard. (*cont*)

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Foreign Worker Utilization Plan

The supporting documents now include a written Indonesian Counterpart Mentoring Program Plan (*Rencana Program Pendampingan*) in addition to the appointment letter of the Indonesian counterpart trainee.

Hiring Foreign Worker for Temporary Work

The MOMT Reg 12 provides a new mechanism to obtain a six month work permit for temporary work which is described as (i) work on a project basis, (ii) work that is related to machinery installation, electricity, after-sales service, or products in its business trial stage.

New Regulation Regarding Provisions And Procedures For The Utilization Of Foreign Workers And The Development Of Indonesian Workers In Oil And Natural Gas Business Activities

The Minister of Energy and Mineral Resources ("MEMR") has issued MEMR Regulation No. 31 of 2013 regarding Provisions and Procedures for the Utilization of Foreign Workers and the Development of Indonesian Workers in Oil and Natural Gas Business Activity, which was enacted on 24 October 2013 ("MEMR Reg 31").

MEMR Reg 31 requires that contractors, downstream business entities and service companies prioritize the use of Indonesian workers (*Tenaga Kerja Indonesia* or "TKI"). MEMR Reg 31 provides that in carrying out upstream oil and natural gas business activities, contractors, downstream business entities and service companies can only utilize foreign workers (*Tenaga Kerja Asing* or "TKA") in certain circumstances and positions, namely: (i) to support investment in oil and natural gas business activities, for a position on the Board of Directors and/or Commissioners; (ii) to implement the transfer of technology related to the introduction of new technology for oil and natural gas business activities, for professional positions requiring the mastery of technology and certain skills in the oil and natural gas sector; and/or (iii) to fill certain positions that cannot yet be filled by Indonesian workers due to competency or availability factors.

Positions that may not be occupied by foreign workers are as follows:

- a. Human resources;
- b. Legal;
- c. Health, Safety and Environment (HSE);
- d. Supply chain management, which includes procurement and logistics;
- e. Quality control, including Inspections;
- f. Structural positions in exploration and exploitation activities below the superintendent level or the equivalent structural position.

Contractors, downstream business entities and service companies are prohibited to:

- (i) Employ one TKA for more than one position.
- (ii) Employ a TKA who is employed by another company, except for a TKA who has been appointed to the Board of Directors or Board of Commissioners of other company.

To employ foreign workers, contractors, downstream business entities and service companies must obtain approval from the Director General of Energy and Mineral Resources ("DGEMR") in the form of a recommendation of Foreign Worker Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing* or "RPTKA") and Foreign Worker Employment Permit (*Izin Mempekerjakan Tenaga Kerja Asing* or "IMTA") that is addressed to the Minister of Manpower and Transmigration.

MEMR Reg 31 also stipulates age limits for foreign workers employed in the oil and natural gas sector, which is a minimum of 30 years old and a maximum of 55 years old. This provision shall not apply to TKA holding the position of President Director, General Manager or Commissioner of a PSC contractor, downstream business entity or service company, as well as TKA in an international employee exchange program.

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Based on MEMR Reg 31, the DGEMR will evaluate the application for a RPTKA or IMTA recommendation, taking into account the principles of efficiency, effectiveness and benefit. If necessary, the DGEMR may ask the contractor, downstream business entity or service company to clarify certain points. After the evaluation, the DGEMR will issue its decision either approving or rejecting the RPTKA or IMTA recommendation. The RPTKA or IMTA recommendation shall be the basis of the application to the MOMT.

MEMR Reg 31 further provides that contractors, downstream business entities and service companies must appoint at least one Partner TKI for each employed TKA. This provision does not apply for TKA who are members of the Board of Directors and/or Board of Commissioners.

Contractors, downstream business entities and service companies must conduct transfer of technology and knowledge from TKA to TKI and develop their TKI according to the plan approved by the DGEMR during the granting of the RPTKA recommendation. Contractors, downstream business entities and service companies are required to submit an annual report to the DGEMR regarding the implementation of such transfer of technology and knowledge from TKA to TKI and the development program for the TKI. Contractors, downstream business entities and service companies that fail to with these provisions shall be subject to administrative sanctions in the form of written warnings and/or the revocation of RPTKA and/or IMTA.

The provisions of MEMR 31 also apply to the Representative Offices of foreign companies engaged in oil and natural gas business activities in Indonesia.

Lastly, the utilization of TKA for upstream oil and natural gas business activities without an approved RPTKA or IMTA recommendation from the DGEMR shall result in companies being unable to recover operating costs for such TKA.

New Social Security System In Indonesia (Social Security Organizing Agency-*Badan Penyelenggara Jaminan Sosial* (“BPJS”))

Under Law No. 24 of 2011 regarding Social Security Organizing Body-*Badan Penyelenggara Jaminan Sosial* (“BPJS Law”), effective 1 January 2014, the legal entities that manage social security will be divided into two categories as follows:

a. BPJS for Health

BPJS for Health must organize health security for the entire population of Indonesia. PT Askes, a state-owned health insurance firm, was dissolved on January 1, 2014, and all the assets, liabilities and legal rights and obligations of PT Askes were taken over by BPJS for Health.

The schedule for different segments of society to join BPJS for Health is as follows:

- 1 January 2014: those classified as poor, civil servants, Jamsostek healthcare participants;
- 1 January 2015: employees of state-owned enterprises and private companies;
- 1 January 2016: employees of micro-enterprises; and
- 1 January 2019: non-salaried workers (e.g., consultants or other workers who do not receive a monthly salary) and the self-employed.

Foreign nationals who have resided in Indonesia for a minimum of six months are required to participate in BPJS for Health.

b. BPJS for Manpower

On 1 January 2014, PT Jamsostek became BPJS for Manpower, which shall offer the following programs:

- a. Work Accident Security;
- b. Old Age Security;
- c. Pension Security; and
- d. Death Security.

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BPJS for Manpower will begin full operation on 1 July 2015. Law No. 3 of 1992 regarding Employment Social Security (Jamsostek) will be revoked once BPJS is fully operational. It is important to note that PT Asabri, a company providing lump sum retirement benefits and pensions as well as death and occupational injury insurance for the armed forces and police, and PT Taspen, a company that manages lump sum retirement benefits and pension programmes for civil servants, will be merged into BPJS for Manpower no later than 2029.

Administrative sanctions for not participating in BPJS for Manpower are as follows:

- For Employers: Loss of eligibility to renew licenses (e.g., business permits, expatriate employment permits and building permits);
- For Individuals: Barred from obtaining driver's licenses, land certificate, vehicle ownership certificate, passport or building permit.

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Working Period and Rest Period in Upstream Oil and Gas Business Activities

The Ministry of Manpower and Transmigration ("MOMT") has issued Regulation No. 4 of 2014, which provides specific provisions on overtime, rest and break periods for employees of upstream oil and gas companies and oil and gas auxiliary service companies.

Overtime means working hours exceeding:

- Seven hours in one day and 40 hours in one week for six working days; or
- Eight hours in one day and 40 hours in one week for five working days.

Employers in the upstream oil and gas industry may choose one of the following work schedules based on their operational needs:

NO.	WORK PERIOD	REST AND BREAK PERIOD	WORK DURATION
1.	6 days/week	1 day/week	7 hours/day and 40 hours/week
2.	5 days/week	2 days/week	8 hours/day and 40 hours/week
3.	28 consecutive days	Ratio between work and rest period is 2:1	Work hours must not exceed 11 hours/day (excluding a one-hour break)

However, employees who are responsible for planning, executing and/or controlling a company's business activities and whose work hours cannot be limited according to the work hours stipulated in the company regulations or collective labor agreement shall not be entitled to overtime pay.

In the event of a dispute over the calculation of overtime pay, the party authorized to decide the matter is the Regency/City manpower supervisor.

Indonesian-language copy of the regulation on the website of the Ministry of Manpower and Transmigration.

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List Of Associations That Have Issued And Submitted Flowcharts For Services Subcontracting To Ministry Of Manpower And Transmigration ("MOMT")

Under MOMT Regulation No. 19 of 2012 on the requirements for outsourcing a supply of labour and subcontracting of services (the "Outsourcing Regulation"), industry associations must register "flowcharts" with the MOMT indicating core activities in their business sectors that must be handled "in-house" and non-core activities that may be subcontracted to service providers. The following is a list of major associations that have registered their flowchart with the MOMT:

NO.	NAME OF ASSOCIATION
1.	National Banking Association (PERBANAS)
2.	Indonesian Cement Association (cont)

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3. Food and Beverage Entrepreneur Association (GAPMMI)
4. Indonesian Wheat Flour Producer Association
5. Indonesian National Air Carriers Association (INACA)
6. Indonesian Highway Association (ATI)
7. Indonesian White Cigarette Producer Association (GAPRINDO)
8. Indonesian Wood Producers Association (GPMT)
9. Indonesian Tobacco Community Association (AMTI)
10. Chick Breeding Company Association
11. Indonesian Cosmetics Company Association (PERKOSMI)
12. Car and Motorcycle Equipment Association
13. Train Association
14. Indonesian Mining Association (IMA)
15. Indonesian Coal Mining Association
16. Crop Life Indonesia
17. Indonesian Olefin and Plastic Association (INApIas)
18. PT Kimia Farma
19. PT PLN (Persero)
20. Indonesian Mining Service Association (ASPINDO)
21. Indonesian Life Insurance Association (AAJI)
22. Indonesian Textile Association (API)

There are no sanctions for associations that do not comply with the Outsourcing Regulation and many associations have not yet issued a flowchart. Many associations have also been unwilling to say whether they have issued a work flowchart in accordance with the Outsourcing Regulation.

[More...](#)

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National Holidays and Collective Leave in 2015

The Minister of Religious Affairs, Minister of Manpower and Transmigration, and Minister of State Apparatus Empowerment and Bureaucratic Reform issued a joint decision on National Holidays and Collective Leave in 2015.

Joint Decision of the Minister of Religious Affairs No. 5 of 2014, Minister of Manpower and Transmigration No. 03/SKB/MEN/V/2014 and Minister of State Apparatus Empowerment and Bureaucratic Reform No. 02/SKB/M.PAN/V/2014 ("Joint Decision") stipulates that there are 14 public holidays in 2015, as follows:

DAY	DATE
New Year's Day	1 January
Birthday of Prophet Muhammad	3 January
Chinese New Year	19 February
Hindu Day of Silence	21 March
Good Friday	3 April
International Labor Day	1 May
Ascension Day of Jesus Christ	14 May
Ascension Day of Prophet Muhammad	16 May
Buddhist Waisak Day	2 June
Idul Fitri	17 and 18 July
Independence Day	17 August
Idul Adha	24 September
Islamic New Year	14 October
Christmas	25 December

The observation of holidays that fall on weekends is not moved to the nearest workday. However, the government may declare certain "bridge holidays" (referred to as "collective leave") to extend holidays that fall on the weekend.

There are two collective leaves in 2015, as follows:

DAY	DATE
Idul Fitri	16, 20 and 21 July
Christmas	24 December

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Please note that collective leave is not mandatory. While government offices treat collective leave as mandatory and consequently reduce the annual leave entitlement of their employees, most offices in the private sector do not do the same. Indonesian manpower laws do not impose or recognize collective leave (i.e., forced leave) in the private sector but we are aware of some companies that encourage their employees to take collective leave days. Local management can encourage employees to take their annual leave days between a statutory holiday and a weekend but taking such leave days must be voluntary.

Indonesian-language copy of the regulation on the website of the Ministry of Manpower and Transmigration.

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Recruitment of Foreign Employees and Implementation of Education and Training for Companion Employees

Presidential Regulation No. 72 of 2014 (“Regulation No. 72”) revokes Presidential Regulation No. 75 of 1995 regarding the Employment of Expatriates.

In principle, employers are allowed to employ foreign nationals with due consideration that there are no Indonesians with the necessary skills and/or knowledge for the position offered.

Companies employing foreign workers must appoint Indonesian nationals as understudy workers or trainees to work with the foreign employees for the purpose of training the Indonesians and transferring skills and knowledge. The education and training process for the Indonesian workers can take place in Indonesia or overseas and must be confirmed by a competency/training certificate.

Companies employing foreign workers must submit semester reports to the Ministry of Manpower and Transmigration outlining the following: a) information on currently employed foreign workers; and b) implementation of the mandatory education and training program for Indonesian trainees.

More...

(For more information on the procedures for employing foreign workers.)

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Minimum Wage Increases

Many employers have successfully applied to regional authorities for exemption from the minimum wage increases on financial grounds. Hundreds of these exemption approvals have been recently overturned by the Administrative Court which are now under appeal in the Supreme Court.

The recent Presidential Instruction No. 9 of 2013 dated September 27, 2013 and MOMT Regulation No. 7 of 2013 dated October 2, 2013 regarding Minimum Wage provide that minimum wage decision making by regional governments must take into account “Decent Living Component”, productivity and economic growth.

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