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Company and Tax Law: New Business Incentives

by Melisa Kristian

Image source: https://bbcincorp.com/wp-content/uploads/2020/08/belize-tax-law-on-ibcs.jpg

In October 2020, the Indonesian People's Representative Council passed the omnibus law bill on job creation (the **Omnibus Law Bill**). The Omnibus Law Bill introduces amendments to a number of different regulatory regimes with the aim of stimulating investment and creating jobs. This article will focus on the amendments the Omnibus Law Bill makes to Indonesian Company Law* and Income Tax Law.**

The Omnibus Law Bill introduces the ability of sole shareholders to incorporate micro and small-scale limited liability companies (the **Small Companies**). Under the Omnibus Law Bill, incorporation of Small Companies is less onerous than the incorporation of larger companies. For example, Small Companies do not need a notarial deed for incorporation, unlike larger companies. Small Companies may incorporate based on a statement letter instead, which is easier and more accessible. Further, the Omnibus Law Bill abolishes the minimum authorised capital requirement for the incorporation of Small Companies.***

The Omnibus Law Bill also introduces major changes to the Income Tax Law.

Under the Omnibus Law Bill, Indonesians who live overseas for more than 183 days within a 12-month period and satisfy certain criteria will be deemed as foreign tax subjects and will pay tax accordingly.

The Omnibus Law Bill overhauls tax on dividend income by categorising dividend income earned in Indonesia as non-taxable if earned by local corporate tax subject or by local individual tax subject if invested in Indonesia for a certain period. This significantly overhauls previous system, which stated that the only non-taxable dividend income was that earned by a corporate entity whose share ownership of the relevant company was at least 25% of the entire subscribed capital.

The Omnibus Law Bill also states that certain income (including dividend income) earned outside Indonesia by local corporate and individual tax subjects is also non-taxable if certain criteria are met including if the dividend income is invested in, or used to support, business activities in Indonesia.

* Law No. 40 of 2007 concerning Limited Liability Companies.

** Law No. 7 of 1983 concerning Income Taxes.

*** This abolition was first recommended by Government Regulation No. 29 of 2016 concerning the Amendment of Limited Liability Companies' Authorised Capital.

The Job Creation Bill: A New Perspective on Labour Regulation in Indonesia

by Shaskia Putri Ramadhani

The recent Job Creation Bill (*the **Bill***) has sparked heated debate in Indonesian society. The Bill overhauls many different regulations including the regulatory framework governing the labour sector.

The high unemployment rate, coupled with an increase in employer labour violations (workers being paid below minimum wage) led to the government issuing the Bill, which overhauls the previous regulations on the topic.*

The previous regulations focussed on the welfare of workers and many entrepreneurs were not ready to meet the high standards laid down. Consequently, the Bill has been drafted to balance the needs of both employers and employees.

Consequently, among other things, the Bill sets out:

- minimum terms to be included in employment agreements;
- new working hours;
- broader circumstances for employment termination;
- new wages provisions;
- simpler regulations around the employment of foreign workers and Indonesian migrant workers; and
- a job loss guarantee.

The provisions with the biggest impact on Indonesian society are related to termination of employment. The Bill sets out that a change of control in a company is a legitimate reason for employment termination for both employers and employees. The Bill states that if employment is terminated by either party due to a change of control, the employer must pay a severance pension and/or service pay and compensation for entitlements.

The Bill allows for lesser payment by employers when calculated as a whole and releases employers from being obliged to provide housing and medical services for employees for a certain level.

To balance this reduction in compensation, the Bill introduces a new social security programme – the job loss guarantee. This consists of cash, access to labour market information and 6 months' of job training – to help workers that has lost their jobs to find new jobs as quickly as possible.

The Bill has not yet passed into law and its provisions may yet be amended.

* Law No. 13 Year 2003 concerning Manpower, Law No. 40 Year 2004 concerning National Social Security, Law No. 24 Year 2011 concerning Social Security Administrator, and Law No. 18 Year 2017 concerning Protection of Indonesian Migrant Workers.

Job Creation Bill: Indonesian Condominium Law Updates

by Silvana Jovanka Putri Surbakti


Image source: https://encrypted-tbn0.gstatic.com/images?q=tbn%3AANd9GcT3VImuhier2C4yamQMOmTrECkLMssw56VoSg&usqp=CAU

On 5 October 2020, the House of Representatives has approved the Job Creation Bill (the **Bill**). The Bill overhauls many areas of Indonesian society. This article will focus on the effect of the Bill on Indonesia's real estate sector, specifically, the Condominium Law.*

The Bill centralises the permit system in relation to the construction of real estate, so that under the Bill the central government would have authority over issuing permits. For example, the Bill replaces the Building Construction Permit, issued by the regional government, with a Building Approval - which will be issued by the regional government if the building construction fulfilled the technical standards that have been determined by the central government in advance.

The Bill reaffirm the provisions related to pre-project selling of real estate which previously regulated under the Condominium Law – so that if certain requirements have been met, purchasers may buy a property that has not yet been finished by signing a Sale and Purchase Binding Agreement. The real estate becomes the purchaser's property only once it is completed and the building has been issued all necessary certificates.**

The Bill also introduces foreign ownership of Indonesian real estate, if various conditions are fulfilled. Currently, the foreigners may only buy a "right to use" property for 30 years (which may be extended for another 50 years). This right to use is restricted to those that work or invest in Indonesian and have a residency permit. ***

However, the foreign ownership provisions in the Bill may come up against the right of ownership set out in the Agrarian Law, which states that only Indonesians may own property with the right of ownership. Consequently, more clarification by implementing regulations will be needed.

The Bill has not yet passed into law, and its provisions may yet change.

*Law No. 20 of 2011 on Condominiums.

** Law No. 1 of 2011 on Housing and Tenancy.

***Government Regulation No. 103 of 2015 on The Ownership of Property by Foreign Citizens Domiciled in Indonesia.

Job Creation Bill: Plantation Provisions

by Pratiwi Widyastuti

Image source: https://encrypted-tbn0.gstatic.com/images?q=tbn%3AANd9GcQe0P5H6W59MmMc_p0Tm4IDBSns7zXzaRFA8w&usqp=CAU

The Job Creation Bill has created a storm of controversy in Indonesia over the past few weeks. The Bill overhauls the regulatory regime in many different sectors. This article will focus on the provisions of the Bill and their effect on plantation law.[1]

The Bill sets out the maximum land area that may be used for agricultural plantations. To determine that area, the government must consider a number of issues including monetary policy, industry capacity, technological development, land use, population density, etc. Currently, the government determines maximum land area by looking at the type of plantation and the availability of the land – as such, the Bill introduces a much broader perspective when making this decision.

The Bill places certain limits on plantation companies' transferring the ownership of their land. However, these provisions only apply to plantation companies that partner with local farmers. The current law means that the limitation on transfer of land applies to all plantation companies, regardless of their local connections.

The Bill reduces the time companies may leave the land unplanted from 3 to 2 years. After 2 years, companies must work the land. The Bill also sets out regulations on the distribution of plant varieties, breeding, and licensing.

The Bill transfers responsibility for a number of administrative functions from local to central government including:

- the importation of seeds;
- the transfer of plantation companies with foreign shareholders;
- issuing business licences for plantation land that lies across multiple provinces; and
- issuing technical standards.

One of the most highlighted obligation for plantation companies is that they must set aside a minimum of 20% of their land area for the development of community gardens. This used to apply for all plantation companies, while based on the Bill, this only applies for the companies who acquired non-cultivation rights title and/or from the forest release area.

The Bill also sets out provisions relating to the management of money raised by plantation companies; under the Bill money raised (other than from government) must be managed by authorised entities, in short, held by a reputable bank.

[1] Law No. 39 of 2014.

Omnibus Law Bill: Changes to Capital Investment

by Kemal Rayoza Imansyah

The passing of Omnibus Law Bill* by the Indonesian People's Representative Council will introduce potential changes across many sectors. This article focuses on the effect of the Bill on the Capital Investment Law**, which regulates both domestic and foreign investment in Indonesia.

The most significant change introduced by the Bill is to the business field classification, which determines level of allowable investment in those fields.

Currently, certain fields are either by open to investment, closed or partially open with conditions. Under the new Omnibus Law Bill, the fields are either open, closed or reserved for investment by the Central Government.

The Bill closes six business fields to investment, the rest will likely remain open to investment. The six business fields that are closed to investment are related to narcotics, gambling activities, fishing of certain species***, chemical weapons, and industrial chemicals or materials that destroy the ozone layer.

Investment that is reserved for the Central Government include fields related to state services, defence and security.

The regulatory regime relating to investment by cooperatives, micro, small and medium sized businesses (together, ***Small Businesses***) is also affected by the Omnibus Law Bill. The Bill introduces the opportunity for foreign investment, in conjunction with small businesses, in certain business fields previously reserved exclusively for small businesses.

The Bill also introduces new criteria for the award of Central Government fiscal incentives to investors. Currently, there are a number of criteria that applicants must fulfill prior to obtaining fiscal incentives. The Bill introduces a new criterion – the positive effect on tourism development.

The Bill is intended to stimulate investment in Indonesia while protecting local interests. If passed into law, it will streamline, simplify and centralise investment bureaucracy, taking down the barriers to investment.

* Omnibus Law Bill concerning Job Creation, October 2020 draft.

** Law Number 25 Year 2007 concerning Capital Investment.

*** Listed in Appendix I of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) corals.

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Job Creation Bill: Simplification of Environmental Licensing

by A. A. A. Reditha Saras

Image source: https://encrypted-tbn0.gstatic.com/images?q=tbn%3AANd9GcQvXS9M0_ETyoWsHQ-54hQ7Mf114LIi0KPoYA&usqp=CAU

The House of Representatives has approved the Job Creation Bill. This Bill aims to stimulate job creation in Indonesia by, among other things, streamlining the bureaucracy relating to investment and carrying on business.

The Bill is just over 800 pages long and affects hundreds of prevailing laws.

This article will focus on one aspect of the Bill, that is, its effect on the regulatory regime surrounding the business impact on the environment, specifically, Law 32*. Under the current regime, in order to apply for a business licence, an applicant must already have an environmental permit. Applying for an environmental permit is onerous.

The Bill abolishes the environmental permit and, as a result, significantly streamlines the application process for a business licence. Under the Bill, a business licence applicant must:

- if their planned activities will affect the environment, obtain an Environmental Impact Assessment (*Analisis Mengenai Dampak Lingkungan* or **AMDAL**) and an Environmental Feasibility Decision (Keputusan Kelayakan Lingkungan Hidup) from government;
- if an AMDAL is not required, commit to Environmental Management Efforts and Environmental Monitoring Efforts (*Usaha Pemantauan Lingkungan dan Usaha Pengelolaan Lingkungan* or **UKL-UPL**) and present a Statement of Capability in Environmental Management (*Pernyataan Kesanggupan Pengelolaan Lingkungan Hidup*); and
- if an AMDAL or a UKL-UPL is not required, sign a letter of commitment to environmental management and monitoring (*Surat Pernyataan Kesanggupan Pengelolaan Lingkungan Hidup*); this letter is part of the Single Business Number (*Nomor Induk Berusaha or NIB*) application.

The Bill also provides central government assistance to micro and small businesses to prepare an AMDAL.

The Bill broadens the penalties for breach, which will include the suspension or revocation of business licences.

*Law Number 32 of 2009 concerning Protection and Management of the Environment.