

NEW PRESIDENTIAL REGULATION FOR EXPATRIATE WORKER AND THE EMPLOYER

An Overview

On 29 March 2018, the President of Indonesia signed Presidential Regulation No. 20 of 2018 on Expatriate Manpower Utilization (“PR 20/2018”). While the regulation provides a variety of facilities for easing the process of employing expatriate manpowers and simplifying the related immigration issues, it also obscures several requirements that were previously clearly regulated.

PR 20/2018 revokes Presidential Regulation No. 72 of 2014 on Expatriate Manpower Utilization and the Implementation of Education and Training of Companion Workers (“PR 72/2014”), which is considered unbefitting with the government’s ambitious plan to increase the overall foreign investment and development in Indonesia. PR 20/2018 will be effective on 29 June 2018.

Background

The regulations related to the utilization of foreign workers in Indonesia are essentially inseparable from the government’s plan to increase the foreign investment activities in Indonesia. Though often shunned based on a strict nationalistic view, it cannot be denied that there is still a growing demand for foreign workers’ service.

Yet, opening opportunities for expatriate workers is quite a sensitive issue due to the public perception that for each new foreign worker, there is also one less job for Indonesian workers. As such, historically speaking, a lot of efforts were made to control the utilization of expatriate workers, through, among others, the obligation of employers to obtain foreign worker permit (*Izin Menggunakan Tenaga Kerja Asing* / “IMTA”) and foreign worker utilization plan (*Rencana Penggunaan Tenaga Kerja Asing* / “RPTKA”), and the obligation of the foreign worker to have limited stay visa (*Visa Izin Tinggal Terbatas* / “VITAS”) and limited stay permit (*Izin Tinggal Terbatas* / “ITAS”) during their stay in Indonesia.



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Main Provisions

There are at least 6 important changes brought by the issuance of PR 20/2018.

1. **Permission for expatriate workers to hold dual position in different companies**

PR 20/2018 stipulates that the employer in certain sectors may employ expatriate workers who have already been employed by other employer in similar position on the condition that the permit can only be applied until the expiry of the expatriate workers' contract with the first employer. This indeed raises the question on whether the scheme can be applied repeatedly or limited only to the first dual position. The types of positions, sectors, and procedures for the use of foreign workers shall be further regulated at the ministerial level.

To give context, under Minister of Manpower Regulation No. 16 of 2015 on the Procedure of Expatriate Manpower Utilization ("**Manpower Reg. 16**"), employers are prohibited to employ expatriate workers who have been employed by other employer, except for the positions of directors, commissioners, or supervisors appointed in a general meeting of shareholders of a company. The provision of PR 20/2018 will basically override the provision of Manpower Reg. 16 and allows dual position for expatriates in Indonesian companies other than the above managerial positions (though this provision can only be applied for the same exact position in two separate companies).

2. **Administration of RPTKA and IMTA**

There are at least two major changes regarding this issue. First, the validity of RPTKA has been amended from initially 5 years (as stipulated in PR 72/2014) to become a certain period as specified in the RPTKA proposed by the employer and approved by the Ministry of Manpower. Theoretically speaking, this could mean that employers can obtain a longer period for employing their expatriates or vice versa depending on the approval from the Ministry.

Second, PR 20/2018 no longer regulates the Expatriate Manpower Employment License (*Izin Mempekerjakan Tenaga Kerja Asing*/"IMTA") which previously was a requirement to employ an expatriate worker. Once RPTKA is approved, the employer will only be required to report to the Ministry of Manpower for realization of the expatriates' employment.

3. RPTKA obligation for foreign shareholders which are titled as Director or Commissioner

An employer is no longer required to obtain RPTKA for its expatriate directors and/or commissioners as long as those expatriate directors and/or commissioners are also shareholders of the employer. At first blush, this provision seems to give more leniency to employers for having expatriate directors and/or commissioners, however such benefit only affects a PMA company (as the employer) that has individual foreign shareholders. After all, under Indonesian laws, a legal entity cannot become the director and/or a commissioner of another company.

4. Emergency work

For emergency and urgent work, an employer may immediately employ the relevant expatriate worker and then apply for ratification of RPTKA to the Ministry of Manpower or another appointed officer no later than 2 days after the expatriate worker undertakes the emergency and urgent work. The specification of emergency work will be regulated further in a Ministry of Manpower regulation.

Indeed, regardless of the simplified process to obtain foreign working permits under PR 20/2018, the process still takes time. As the needs of the business world frequently require immediate actions, the new provision is important to avoid any violation of employment requirements by companies that need to hire expatriates on an urgent basis. Of course, this will significantly depend on how the Ministry of Manpower interpret the meaning

of urgent and therefore, we will still have to wait for the exact implementing regulation.

5. **ITAS (Limited Stay Permit)**

PR 20/2018 simplifies the stages for expatriates to apply for their stay permit in Indonesia by allowing the application for VITAS and ITAS to be submitted at the same time. Previously, expatriates are required to apply for VITAS and *Tanda Masuk Sementara* first before he can apply for ITAS which is a permit given to expatriates to stay in Indonesia. ITAS is valid for 2 years and can be extended.

6. **BPJS Ketenagakerjaan (Manpower Social Security Insurance)**

PR 20/2018 strictly requires the employer to register its foreign employees in BPJS Ketenagakerjaan program if the expatriates are working for more than 6 months in Indonesia. This requirement is absent in Manpower Reg.16. Law No. 24 of 2011 on BPJS, however, only requires registration of expatriates working in Indonesia for more than 6 months in BPJS program without imposing the registration requirement specifically to the employer.

Closing

The Indonesian government's efforts to simplify the process for employing expatriate workers, especially in the matter of dual position, RPTKA approval process, revocation of IMTA, immigration permit, and employment of expatriates in an emergency and urgent condition, are much appreciated. The key challenge lies with the Ministry of Manpower as it has a lot of homework to adjust, implement and clarify the new provisions in PR 20/2018 through its own regulations.

Given the broad language of the presidential regulation, a different interpretation or approach at the ministerial level might significantly alter the key concepts introduced in PR 20/2018. In such circumstances, we will still need to closely follow the progress of this new policy in the next few months.

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