



TAPOL

Recent changes to Indonesian labour law: why the country's workers are protesting

On 5 October 2020, the Indonesian Parliament passed an 'Omnibus' law. At the time of writing, the legislation has not yet been signed into law by President Widodo and reportedly has gone through further revisions since being passed by Parliament. The draft law remains the subject of extensive street protests across Indonesia. This was met with a significant security force crackdown in response, including violence committed against demonstrators - labour and environmental activists and students - while making arrests.¹

This law is dressed up as part of a drive for 'job creation'. However, it represents a serious diminution of the current rights of workers. It has wide-ranging provisions across many areas, also including the weakening of environmental protections and indigenous rights which we will focus on in a future briefing. Here, we provide an overview of the proposed labour reforms, including how they set back the reforms achieved over the past 20 years.

The Omnibus law encompasses three main laws, including laws on taxation and 'developing' the economy and the finance sector. The most potentially far reaching, however, is a 'job creation' law (UU Cipta Kerja). This law reduces the severity of sanctions on employers contained in previous labour laws, including those that fail to pay (or underpay) the minimum wage. It reduces limitations on overtime work, makes it much easier for workers to be dismissed, including without recourse to an industrial relations dispute agency, and it effectively permits indefinite contract work.

Furthermore, UU Cipta Kerja generally follows a pattern of returning power to central government. For example, working hours previously were regulated on a sectoral basis by the responsible Minister. Now, decisions on this will be taken at the central government level, as will wage policy² as we discuss further below.

Previous reforms to Indonesian labour law

¹ BBC Indonesia, 'Omnibus Law: Demo tolak UU Cipta Kerja di 18 provinsi diwarnai kekerasan, YLBHI: Polisi melakukan pelanggaran', 9 October 2020. <https://www.bbc.com/indonesia/indonesia-54469444>.

² For the text of the law, we have used a document put before the Indonesian Houses of Parliament in a plenary session (*paripurna*) on 5 October 2020, which can be accessed at https://mmc.tirto.id/doc/2020/10/06/UU_Cipta_kerja_FINAL_Paripurna.pdf (Rancangan Undang-undang Republik Indonesia Paripurna Tentang Cipta Kerja, (hereafter UU CK) article 81, 24, (2)).

During the economic crisis in Indonesia in 1998, the country received support from the International Monetary Fund (IMF), which sought to liberalise Indonesia's economy as a condition for this support. Aside from the attempted break-up of conglomerates run by business people with close connections to leading political figures in the New Order regime (1966-1998), the IMF, investors and other pro-market lobbyists, foreign and domestic, sought to promote liberalisation through the weakening of labour protections. Alongside this, however, the Habibie Government (1998-1999) signed into law four additional ILO (International Labour Organisation) Conventions, meaning that all seven applied in Indonesia. These Conventions theoretically signalled a commitment to labour protections and were translated into three laws.

The first, the Trades Union Law 2000 (*Undang-undang No. 21 tahun 2000 tentang Serikat Pekerja/Serikat Buruh*) was relatively progressive and guaranteed that unions could operate in the workplace, and that workers could determine the form and operation of their union, and it even did not require the workforce to be balloted on strike action.³ Another, signed in 2004, was focussed on industrial dispute resolution.

The Manpower Law passed in 2003 (UU 13/2003), however, had more mixed provisions. The law stipulated a 'decent standard of living' and raised severance pay and long-term leave but also permitted more contract work and outsourcing beyond 'core' activities. Collective bargaining was encouraged at the level of individual firms, but not at the sectoral level.⁴

Yet employers and elements of the Government saw these modest provisions as excessive and in early 2006 President Yudhoyono issued a regulation which aimed to revise the law that year. This was met with resistance including street protests by trade unions and NGOs. The Government climbed down, appointing a committee of university academics to write a report on reform. In 2008, based partly on the report's findings, the Government again attempted to reform the Manpower Law, only to be rebuffed again in street protests.⁵

Another effect of the Manpower Law of 2003 was to formalise a three-tier employment system: permanent workers who had a right to the minimum wage and benefits; contract workers employed by a workplace, often in 'core' professions (for example machine operators in the textile industry); and outsourced workers, employed by employment agencies and not provided with any insurance or benefits. The use of outsourced and contract workers caused the wages of all workers to be increasingly subject to downward pressure. After the 2008 global financial crisis, companies tried to maintain their competitive position by cutting wages and jobs, and employing more outsourced and contracted workers.

The response from labour was to form stronger alliances between trade unions which increasingly carried out industrial action. In October 2012, an alliance of unions began a general strike involving two million workers in 35 cities. The main aim of these actions was

³ B.H. Juliawan, 'Extracting Labor from its owners. Private Employment Agencies and Labor Market Flexibility in Indonesia', *Critical Asian Studies*, vol. 42 no. 1, 2010, 25-52, p.32.

⁴ Juliawan, 2010, op.cit.

⁵ Tjandra, S., 'Labour law and development in Indonesia', doctoral thesis, Leiden University, 2016, pp.93-98.

to ensure that basic provisions of law were met. For example, the Indonesian Employers' Association (Apindo, *Asosiasi Pengusaha Indonesia*) had refused to implement the Government's minimum wage legislation. In addition, the Ministry of Manpower was not providing enough inspectors to ensure that minimum wage and other provisions were being observed. Through factory sit-ins (or 'occupations'), the 2012 general strike succeeded in ensuring that around 100,000 factory workers (many in industrial estates in the Bekasi region east of Jakarta) were recognised as permanent staff rather than contract workers, and won a 48 percent increase in the minimum wage. This increase was essential because the minimum wage had not kept pace with high inflation for several years.⁶

In recent years, the Government has halted further increases in minimum wages and designated industrial estates, often sites of sit-ins, as 'strategic vital objects', effectively preventing strikes there.⁷

Key Provisions of the 2020 'Omnibus' Law relating to employment conditions

Wages

Minimum wages have been altered in key ways in the draft Omnibus law. In general terms, the new legislation abandons the stipulation that a minimum wage should be set with "the aim towards fulfilling a decent life".⁸ Beyond this, it removes specific protections afforded to workers, such as prohibitions on employers underpaying the minimum wage⁹ or fines on employers for late payment of wages.¹⁰ Employers are also no longer subject to penalties if they pay less than union-brokered minimum wage requirements.¹¹ Instead, employers can negotiate contracts with employees individually. As a result, workers' rights to engage in collective wage bargaining will be effectively expunged.

While minimum wages are still set at a provincial and district level, the minimum wage will now depend on a 'formula' to be set out in a later government regulation, which will take into account "the condition of the economy and labour" at the provincial level,¹² which in the Omnibus law is defined as being according to "economic growth and inflation".¹³ This

⁶ F. Panimbang and A. Mufakhir, 'Labour strikes in Post-Authoritarian Indonesia 1998-2013', in J. Novak D. Madhumita and P. Birke, 'Workers Movements in the Twenty-first century: A Global Perspective', Roman and Littlefield 2018, pp.21-29.

⁷ F. Panimbang, 'Indonesia Cracks down on Organised Labour', *New Internationalist*, 11 January 2018. <https://newint.org/features/web-exclusive/2018/01/11/indonesia-labour-crackdown>.

⁸ Undang-undang Republik Indonesia No.13 Tahun 2003 Tentang Ketenagakerjaan (hereafter UU 13/2003), article 89,2; see also deletion of article 97.

⁹ UU 13/2003, 90 (1).

¹⁰ 13/2003, 95. If a company is declared bankrupt, an employer should still pay workers before creditors. RUU CK, 81 [95:2], but there will no longer be a maximum term in which employers must pay outstanding wages (previously it was two years), UU 13/2003, 96.

¹¹ For provisions in the old law, see UU 13/2003, 91 (1).

¹² UU CK, 88C (3).

¹³ UU CK, 88C (4).

provision makes minimum wages very unpredictable because it ties wages to market forces. Although the exact nature of the formula remains to be clarified in the regulations, there will be clear problems with this provision if wages are later deliberately reduced during periods of 'low growth' or high inflation, which are at exactly the time when workers require better wages.¹⁴

Overtime and leave

The new legislation also increases the amount of overtime work that employers can require of workers. Previously the maximum amount of overtime work under law was three hours a day or 14 hours a week.¹⁵ This has now been extended to a maximum of four hours a day or 18 hours a week.¹⁶

Additionally, the right to long paid leave of two months' duration after every six years of continuous service has been abolished. One of the reasons that long leave is important is because Indonesian workers are currently entitled to relatively short periods of annual leave: 12 working days leave during 12 continuous months of work.¹⁷ Long-serving workers may well have relied on this provision as a substitute for the relatively low entitlement to paid annual holidays.

Dismissals

One of the most far-reaching aspects of the new law concerns dismissals. It empowers employers to dismiss workers for a very wide range of reasons, and removes or reduces workers' protections.

For example, the new law essentially eliminates industrial dispute resolution institutions from dismissal processes.¹⁸ There is now no obligation on employers to negotiate their reasons for terminating employment after previous attempts to avoid dismissal (between government, company and union) have been exhausted,¹⁹ and no recourse for workers to demand that their dismissal cases be heard by an industrial dispute resolution agency.²⁰

Employers can now give employees notice of termination of employment merely by providing a 'reason' (*maksud dan alasan*) for it,²¹ and there is no requirement on employers

¹⁴ Employers are "obliged" to set the structure and scale of wages based on the company's "ability (*kemampuan*) and productivity", UU CK, 81, 30. (1) to be reviewed periodically, UU CK, 81 30 [92A].

¹⁵ UU13/2003, 78, 1 (b).

¹⁶ UU CK, 81, 22.

¹⁷ UU 13/2003 79,2 (c).

¹⁸ Employers also no longer need to engage with an industrial dispute resolution agency or pay severance pay to dismissed workers who after 6 months do not attend work due to a "criminal process" in spite of the fact that a worker may be innocent of any crime but unable to attend work. In light of problems with the Indonesian justice system, this provision may well also present problems for workers.

¹⁹ UU 13/2003, 151, 2.

²⁰ Previously, dismissal without agreement of an industrial relations dispute resolution agency (as described in UU 13/2003 151 (3)) was regarded as being "null and void in law" (*batal demi hukum*). This article has now been deleted in UU CK.

²¹ UU CK, 81, 73 (2).

to give employees prior written warnings.²² Employers also do not need to provide a reason to workers for dismissing them by simply not renewing their contract.²³ Indeed, the scope of 'reasons' for dismissal has now been expanded to include amalgamations, takeovers, separation of companies or mergers,²⁴ company closure due to losses,²⁵ and even 'efficiency',²⁶ a very abstract and subjective term which gives employers great leeway to dismiss their workforce and may easily be open to abuse.²⁷

Another set of changes involves severance pay. One notable change is that workers were previously entitled to severance pay according to a benchmark that took into account not only their wages but also any entitlements such as holiday pay. These are now excluded.²⁸ The new provisions for severance pay are also likely to be particularly hard on workers whose primary income is calculated according to units produced ("*satuan hasil*") which applies, for example, to many textile and other manufacturing workers, whether formal or informal. Severance pay for these workers now is not calculated to include any commission earned (*potongan/borongan*) which can be a significant part of these workers' income. It is calculated on the basis of average monthly pay in the previous 12 months, rather than daily wages - inclusive of commission - in the previous 12 months. And whatever that average monthly rate is, it is no longer guaranteed to be at least the provincial minimum wage, but rather a minimum wage where a company is located. This may provide an incentive to companies to relocate to areas with even lower minimum wage levels.

Many changes made in the Omnibus law involve deleting articles of the Manpower Law UU 13/2003 which had obliged employers to pay severance to employees if a company got into financial trouble. Now they are absolved from doing so. In essence, employers can cite "efficiency", "merger", a "company change of status"²⁹ or another aspect of legal or financial change to the company as reason for dismissal, and are now not obliged to pay severance to workers. Employers are not absolved from paying unpaid wages to employees ahead of creditors in the event of liquidation, but workers no longer have the right to sue employers for any outstanding wages.³⁰

Contract work and outsourcing

Previously, contract work was only legally possible in jobs or activities that were non-permanent or seasonal.³¹ Contracted workers could be employed for a maximum of two years, which could be renewed with a maximum of a one year extension.³² The new draft law removes these requirements on employers and allows contract provisions to be

²² Previously, UU 13/2003, 161.

²³ UU CK 81, 38, b.

²⁴ UU CK, 81, 42 a.

²⁵ UU CK, 81, 42 c.

²⁶ UU CK, 81, 42 b.

²⁷ UU CK 81, 42.

²⁸ UU CK 81, 45 [157 (1-4)].

²⁹ Previously, UU 13/2003, 163.

³⁰ Previously UU 13/2003, 171.

³¹ UU 13/2003, 59, 1.

³² UU 13/2-003, 59, (1-2); (5).

applied to any work that is “not fixed” (*tidak tetap*). This will have the effect of formalising contract work indefinitely. Furthermore, it stops the process of making contract workers permanent staff after a period of more than three years, as was the case under the previous law.³³

As noted above, failing to make long-term contract workers permanent staff was the subject of widespread industrial action in 2012 and on other occasions. These very significant changes to Indonesia's labour laws in 2020 are already being met with thousands of the country's workers taking to the streets and solidarity from the global trade union movement.³⁴

³³ UU CK 81, 15. [59].

³⁴ International Trade Union Confederation (ITUC), ‘ITUC denounces Indonesian government’s ‘omnibus’ law’ 5 October 2020. <https://www.ituc-csi.org/indonesia-omnibus-law>