



# Omnibus Law Newsletter

March 2021 / No. 01

Labour Law Cluster  
Summary of Governmental Regulations  
34 of 2021, 35 of 2021, 36 of 2021, and  
37 of 2021

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# Omnibus Law Newsletter

## Labour Law Cluster

**On February 2, 2021, several regulations related to the Labour Law Cluster of Law Number 11 of 2020 regarding Job Creation (“UU 11/2020”) were promulgated: the Government Regulation Number 34 of 2021 regarding Utilization of Foreign Worker (“PP 34/2021”), the Government Regulation Number 35 of 2021 regarding Fixed-Term Employment, Outsourcing, Working Hours, Breaks and Employment Termination (“PP 35/2021”), the Government Regulation Number 36 of 2021 regarding Wages (“PP 36/2021”), and the Government Regulation Number 37 of 2021 regarding Job Loss Security (“PP 37/2021”).**

Those regulations are issued to implement the provisions of Articles 81, 82 and 185 point (b) of UU 11/2020 and aim to make the Indonesian labour market more flexible and attractive for investors, while still protecting Indonesian workers’ rights at the same time.



We summarize in this newsletter some of the key points of those 4 Government Regulations, which became effective on February 2, 2021, except for PP 34/2021 which will be effective on April 1, 2021.

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### **PP 34/2021 – Utilization of Foreign Worker**

#### **1. Possibility for Foreign Workers to Hold Several Positions (Article 5 of PP 34/2021)**

Foreign worker who works under one employer can be now employed by other employer (after approval from the first employer) for the same position, as director or commissioner, vocational foreign worker at educational sector and vocational training, digital economic sector, and cooperation contractor in oil and gas sector. Each employer must obtain ratification of Foreign Manpower Utilization Plan (RPTKA) from selected Ministry.

#### **2. Exemption to Requirement of Transfer of Expertise (Article 7 of PP 34/2021)**

Employers of foreign worker are required to appoint Indonesian employees to accompany the foreign worker for transferring technology and expertise. This requirement does not apply to directors and commissioners, head of the representative office, coaches, administrators, and supervisors of a foundation and temporary foreign worker.

#### **3. Mandatory Registration of Foreign Worker to National Social Security Program (Article 8 of PP 34/2021)**

Employers of foreign worker are obliged to register foreign worker in national social security program for employment of more than 6 months or in the employer's insurance program for employment less than 6 months which should include at least work accident protection.

#### **4. Exemption of Foreign Manpower Utilization Plan (Article 19 of PP 34/2021)**

Ratification of RPTKA must be obtained from the Ministry, except for the following: director and commissioner with certain ownership in the company employing them (PP 34/2021 doesn't clarify further and refers to other prevailing regulations), diplomatic staff and counsellor of foreign country representative office, and foreign worker needed on type of industry that has stopped due to emergency situation, vocational and tech start-up company, business visit and temporary research.

RPTKA is not necessary to hire foreign worker at tech start-up company. The exception of RPTKA only applies if the period of employment of the foreign worker at tech start-up company is maximum 3 months. Otherwise, RPTKA must be obtained by employer.

#### **5. Exemption of Payment of Foreign Worker Compensation Fund (Article 25 of PP 34/2021)**

Employer of foreign worker must pay foreign worker compensation fund (DKPTKA) except for government institution, foreign country representative, international bodies, social institutions, religion institution and certain position in educational institution as determined by the Ministry.

#### **6. Permits Required for Foreign Worker (Article 27 of PP 34/2021)**

Foreign worker must hold stay permit. Type of stay permit and procedure to obtain stay permit refer to prevailing immigration regulations. PP 34/2021 suppresses the requirement of working permit for foreign worker, and refers only to RPTKA.

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### **PP 35/2021 – Fixed-Term Employment, Outsourcing, Working Hours, Breaks and Employment Termination**

#### **1. Fixed-Term Employment**

##### **1.1 Duration of Fixed-Term Employment (Article 8 of PP 35/2021)**

Fixed-Term Employment (FTE) agreement can be entered into for a maximum period of 5 years, including any extension to the initial term of the FTE agreement.

##### **1.2 Automatic Termination of Fixed-Term Employment (Article 9 of PP 35/2021)**

When work for which FTE agreement has been entered into has been completed, FTE ends automatically even if the agreed duration of the FTE has yet to be completed.

##### **1.3 Use of Fixed-Term Employment (Article 10 of PP 35/2021)**

FTE can be implemented only for activities that are not permanent (temporary work) or that vary in terms of time and volume of works (seasonal work).

Daily FTE can be made if employee works less than 21 days per month. Non respect of the 21-day limit for 3 months in a row will automatically change the fixed-term employment into permanent employment.

##### **1.4 Registration of Fixed-Term Employment Agreement (Article 14 of PP 35/2021)**

Any FTE agreement must be registered online by employer to the Ministry of Manpower by the latest 3 days after the signing of the agreement. PP 35/2021 doesn't stipulate any sanction in case of non-respect of this requirement.

##### **1.5 Compensation Due to Employee under Fixed-Term Employment (Articles 15, 16 and 17 of PP 35/2021)**

Employer must pay compensation fee for fixed-term employee who has worked for a minimum period of 1 month. The compensation fee shall be paid when the agreement ends and/or when the work is completed with the following calculation:

$$\frac{\text{Employment period in months}}{12} \times 1 \text{ month salary}$$

Salary components used to calculate the compensation fee are basic salary and fixed allowance.

Furthermore PP 35 /2021 stipulates that should any party ends the FTE before its end, employer must pay compensation fee to employee based on the number of months the employee has worked up to termination, as per the formula above.

Any ongoing FTE can be continued, and the employment period due for calculating the compensation fee is starting when PP 35/2021 becomes effective (February 2, 2021).

Foreign workers under FTE are not entitled to compensation.

#### **2. Outsourcing**

Law Number 11 of 2020 regarding Job Creation has removed restrictions on the activities that could be outsourced (in previous regulatory framework, only non-core activities could be outsourced).

PP 35/2021 provides protection of rights for outsourced employees, especially in case of change of employer for employees under FTE.

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### 3. Working Hours and Overtime

PP 35/2021 reaffirms working hours stated in the Labour Law (40 hours per week, with 5 worked days of 8 hours or 6 worked days of 7 hours).

Under PP 35/2021, overtime is extended to a maximum of 4 hours per day and 18 hours per week (it was 3 hours per day and 14 hours per week maximum under Labour Law). Should the employee working overtime for 4 hours or more, employer must provide employees with food and drink (with minimum 1,400kcal), this cannot be replaced with any form of payment.

Overtime calculation is also regulated by PP 35/2021.

### 4. Long-Rest

Labour Law was giving rights to employees to take long rest (at least 2 months) after having worked more than 6 years with the same employer. PP 35/2021 stipulates that long-rest should be regulated by employment agreement, company regulation or mutual agreement with employee, and does not specify what should be the duration of the long rest.

### 5. Employment Termination

#### 5.1 Causes for Employment Termination (Article 36 of PP 35/2021)

The grounds for employment termination are stipulated in PP 35/2021:

1. The company carries out a merger-consolidation, acquisition, or divestment;
2. The company is doing efficiency;
3. The company is closed due to continuous losses for 2 years;
4. The company is closed due to force majeure;
5. The company is in suspension of debt payment obligations (PKPU);
6. The company goes for bankruptcy;
7. The company commits act detrimental to employees;
8. A court decision rejecting employee's allegation of detrimental act committed by the company;
9. The employee's voluntary resignation;
10. The employee absence for 5 days with no written notice sent to the company and the company has sent 2 official written summons already;
11. The violation of employment agreement or company's regulations after employee has been given 1st, 2nd and 3rd notices of violation;
12. The employee's incapacity to work for 6 months due to arrest for criminal act;
13. The employee experiencing prolonged illness or disability due to work accidents and cannot carry out his/her work after exceeding the 12-month limit;
14. The employee's retirement;
15. The death of the employee.

PP 35/2021 recognizes more reasons for termination by employer than the Labour Law: company spin-off, force majeure and suspension of debt payment obligation are added.

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### 5.2 Employment Termination Procedure (Article 37-39 of PP 35/2021)

Under PP 35/2021, company can do termination of employment by giving at least 14-day notice to employee before the end of the employment (no court ruling required anymore as in Labour Law). If termination occurs during the probation period, notice to employee must be given 7 days prior the termination of the employment.

If employee accepts the termination, employer must submit termination report to the Ministry of Manpower or district's manpower official.

If employee rejects the termination, both parties should enter negotiation. If it fails, mediation should be conducted to the Manpower Agency. If no settlement is reached, dispute should be brought to the Industrial Relations Court.

### 5.3 Compensation Payment for Termination

PP 35/2021 defines 3 components of compensation, similar to the Labour Law, to be paid to employee in case of termination: severance pay, long service pay and compensation rights. PP 35/2021 modifies the components of compensation rights.

- Severance Pay

Severance Pay is based on length of service of employee and entitlement is calculated as follows:

Service Period	Entitlement
Less than 1 year	1 month of salary
1 year but less than 2 years	2 months of salary
2 years but less than 3 years	3 months of salary
3 years but less than 4 years	4 months of salary
4 years but less than 5 years	5 months of salary
5 years but less than 6 years	6 months of salary
6 years but less than 7 years	7 months of salary
7 years but less than 8 years	8 months of salary
8 years or more	9 months of salary

The entitlements based on service period remain unchanged compared to Labour Law.

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- Long Service Pay

Long Service Pay is based on length of service of employee and entitlement is calculated as follows:

Service Period	Entitlement
3 years but less than 6 years	2 months of salary
6 years but less than 9 years	3 months of salary
9 years but less than 12 years	4 months of salary
12 years but less than 15 years	5 months of salary
15 years but less than 18 years	6 months of salary
18 years but less than 21 years	7 months of salary
21 years but less than 24 years	8 months of salary
24 years or more	10 months of salary

The entitlements based on service period remain unchanged compared to Labour Law.

- Compensation of Rights

Compensation of Rights encompasses the following elements:

1. Annual leaves not taken by the employee.
2. Travel expenses for the employee and his/her family.
3. Other elements stipulated in employment agreement and company regulation.

All employees are entitled to compensation of rights, regardless of their length of service.

PP 35/2021 does not include housing and medical elements in the definition of compensation rights. Under Labour Law, this element was deemed to represent 15% of the total of severance pay and long service pay.



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### 5.4 Employee Entitlement for Termination

Under PP 35/2021, entitlements for compensation based on the reason of termination are as follows:

Termination Reason	Entitlement
1. The company carries out a merger consolidation, acquisition or divestment and terminate employee.	<ul style="list-style-type: none"> <li>▪ 1 x severance pay (previously 2 x severance under Labour Law)</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
2. The company carries out a merger consolidation, acquisition or divestment and employee is not willing to continue the employment	<ul style="list-style-type: none"> <li>▪ 0.5 x severance pay (previously 1x severance under Labour Law)</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
3. For efficiency purposes as the company is suffering loss	<ul style="list-style-type: none"> <li>▪ 0.5 x severance pay</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
4. For efficiency purposes to avoid making loss	<ul style="list-style-type: none"> <li>▪ 1 x severance pay</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
5. The company is closing due to continuous or non-continuous losses for 2 years	<ul style="list-style-type: none"> <li>▪ 0.5 x severance pay (previously 1 x severance under Labour Law)</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
6. The company is closing due to non-financial reason	<ul style="list-style-type: none"> <li>▪ 1 x severance pay (previously 2 x severance under Labour Law)</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
7. Due to Force Majeure and the company is closing	<ul style="list-style-type: none"> <li>▪ 0.5 x severance pay</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
8. Due to Force Majeure reason but the company is still running	<ul style="list-style-type: none"> <li>▪ 0.75 x severance pay</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
9. The company is in suspension of debt payment obligations (PKPU) due to loss	<ul style="list-style-type: none"> <li>▪ 0.5 x severance pay</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
10. The company is in in suspension of debt payment obligations (PKPU) not due to loss	<ul style="list-style-type: none"> <li>▪ 1 x severance pay</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
11. The company has started bankruptcy process	<ul style="list-style-type: none"> <li>▪ 0.5 x severance pay</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>
12. As request of employee because the company committed an act that is detrimental to employee	<ul style="list-style-type: none"> <li>▪ 1 x severance pay (previously 2x severance pay under Labour Law)</li> <li>▪ 1 x long service pay</li> <li>▪ 1x compensation of rights</li> </ul>



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Termination Reason	Entitlement
13. As request of employee following allegation that the company committed act detrimental to employee but court found that company did not commit such act	<ul style="list-style-type: none"> <li>• 1x compensation of rights</li> <li>• Separation payment as agreed in employment agreement, company's regulations, or mutual agreement</li> </ul>
14. Voluntary resignation of employee	<ul style="list-style-type: none"> <li>• 1x compensation of rights</li> <li>• Separation payment as agreed in employment agreement, company's regulation or mutual agreement</li> </ul>
15. The employee is absent for 5 days with no written notice given to company and company has sent 2 official written summons	<ul style="list-style-type: none"> <li>• 1x compensation of rights</li> <li>• Separation payment as agreed in employment agreement, company's regulation or mutual agreement</li> </ul>
16. Employee violates employment agreement or company's regulations and company has sent 3 notices of violation	<ul style="list-style-type: none"> <li>• 0.5 x severance pay (previously 1 x severance pay under Labour Law)</li> <li>• 1 x long service pay</li> <li>• 1x compensation of rights</li> </ul>
17. Employee violates employment agreement or company regulations due to gross misconduct *Company is allowed to do terminate employment agreement without prior notice	<ul style="list-style-type: none"> <li>• 1x compensation of rights</li> <li>• Separation payment as agreed in employment agreement, company's regulation or mutual agreement</li> </ul>
18. The employee cannot work for 6 months due to arrest for criminal act and it has caused loss for the company	<ul style="list-style-type: none"> <li>• 1x compensation of rights</li> <li>• Separation payment as agreed in employment agreement, company's regulation or mutual agreement</li> </ul>
19. The employee cannot work for 6 months due to arrest for criminal act and it has not caused loss for the company	<ul style="list-style-type: none"> <li>• 1 x long service pay</li> <li>• 1x compensation of rights</li> </ul>
20. Termination by employer or termination as requested by employee when employee experiencing prolonged illness or disability due to work accidents and cannot carry out his/her work for more than 12 months	<ul style="list-style-type: none"> <li>• 2 x severance pay</li> <li>• 1 x long service pay</li> <li>• 1x compensation of rights</li> </ul>

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Termination Reason	Entitlement
21. Employee's retirement *if company has registered the employee to pension program, the company's contribution to this pension program can be taken into account as calculation of severance pay and long service pay. When the amount of company's contribution of pension program is less than the severance pay & long service pay, company must pay the remaining balance.	<ul style="list-style-type: none"> <li>• 1.75 x severance pay (previously 2 x severance pay under Labour Law)</li> <li>• 1 x long service pay</li> <li>• 1x compensation of rights</li> </ul>
22. Employee's death	<ul style="list-style-type: none"> <li>• 2 x severance pay</li> <li>• 1 x long service pay</li> <li>• 1x compensation of rights</li> </ul>
23. Micro business company and entrepreneur	Severance pay, long service pay and compensation of rights are computed as agreed between employer and employee

PP 35/2021 introduces more favourable conditions for employer facing financial difficulties and financial losses in case of termination. It also reduces entitlements due to employees in case of consolidation and reorganization of companies. Entitlements at retirement are also reduced which should have direct impact on obligations recorded in the statement of financial position of companies in Indonesia in 2021.

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### PP 36/2021 – Wages

#### 1. Non-Wage Income (Article 11 of PP 36/2011)

Under PP 36/2021, incentive is included as one of non-wages income for employee to be regulated in the employment agreement, the company regulation or the collective agreement. PP 36/2021 lists the following types of non-wages income:

1. Festive allowance
2. Incentive
3. Bonus
4. Work facility allowance
5. Service allowance for certain type of industry (regulated further by Ministry)

#### 2. Determination of Wage (Article 14 of PP 36/2021)

Wages are determined based on work duration (hourly, daily, or monthly) or work result.

Formula to determine hourly wage	Formula to determine daily wage	
	6 working days/week	5 working days/week
Hourly wage = $\frac{\text{Monthly wage}}{126}$	Daily wage = $\frac{\text{Monthly wage}}{25}$	Daily wage = $\frac{\text{Monthly wage}}{21}$

Wages based work result must be determined based on the agreed work result between the company and employee.

#### 3. Structure and Scale of Wage (Article 20 of PP 36/2021)

Company must set and implement wage structure and scale and report it to the Manpower office when submitting ratification and renewal of company's regulation (Peraturan Perusahaan or PP) or when ratifying and renewing collective agreement.

Employees must be made aware at least of the structure and scale of salary for their position.

#### 4. Minimum Wage (Article 25 of PP 36/2021)

Minimum wage consists of:

1. Provincial minimum wage;
2. District/city minimum wage.

Minimum wage per sector doesn't apply anymore with UU 11/2020.

Governors are allowed to set a district/city minimum wage based the following conditions:

1. The average of economic growth for the last 3 years at the district/city level is higher than the economic growth at provincial level.
2. The economic growth value after inflation in the city/district level for the last 3 years is always positive and higher than the economic growth value at province level.

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### **PP 37/2021 – Job Loss Security**

PP 37/2021 establishes a new social net for employees losing their jobs, the Job Loss Security program (Jaminan Kehilangan Pekerjaan or JKP).

#### **1. Registration to JKP (Article 2 of PP 37/2021)**

It is mandatory for company to register their employees to JKP through the Social Security Agency (BPJS Ketenagakerjaan) by the latest 30 days after the employees start working in the company.

Foreign workers are not required to register to JKP.

#### **2. JKP Premium (Article 11 of PP 37/2021)**

JKP premium is paid on a monthly basis. The premium is equal to 0,46% of the employee's monthly wage. It is funded by the central government (0,22%) and by recomposing contribution of other BPJS Ketenagakerjaan programs, JKK (work accident security) & JKM (death security):

1. Recompositing of JKK percentage, hence the JKK premium for each level of risk group is changed to:
  - Very low risk : 0,10% of employee's monthly wage
  - Low risk : 0,40% of employee's monthly wage
  - Mid risk : 0,75% of employee's monthly wage
  - High risk : 1,13% of employee's monthly wage
  - Very high risk : 1,60% of employee's monthly wage
2. Recompositing of JKM percentage, hence the JKM premium is changed to 0,20% of employee's monthly wage.

The maximum monthly wage for the computation of JKK is IDR 5,000,000, to be revised every 2 years.

#### **3. Benefits of JKP (Articles 18 and 19 of PP 37/2021)**

In case of job loss, JKP will provide the following benefits to employees:

1. Cash benefit;
2. Access to job information;
3. Job trainings.

The job loss security program is designated to employees affected by termination in fixed-term employment (PKWT) as well as permanent employment (PKWTT) status. Employees must be willing to work again.

Benefits can be claimed by employees who have been registered in JKP program at least for 12 months within last 24 months and for which JKP premium has been paid for 6 months in a row prior to their termination.

#### **4. Eligibility to JKP (Article 20 of PP 37/2021)**

To be eligible to claim JKP benefit, the employment termination must be officially proven by providing the following documents:

1. Employee's acknowledgment acceptance of termination;
2. Receipt of employment termination report from the district manpower official;

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3. Collective agreement that has been registered to Industrial Relation Court and official deed of its registration; or
4. A lawful confirmation from Industrial Relation Court in case of dispute.

JKP benefit cannot be claimed for one of the following reasons:

1. Voluntary resignation;
2. Permanent total disability;
3. Retirement; or
4. Employee's death.

For employee under fixed-term employment, JKP benefit can be claimed only when the company terminates the employment before the end of the agreement period.

### 5. Cash Benefits of JKP Program (Article 21 of PP 37/2021)

Cash benefits are capped to maximum of 6 months of wage with following conditions:

1. 45% of wage for first 3 months of payment;
2. 25% of wage for the next 3 months of payment.

Cash benefit is based on the employee's last wage before termination with a cap of IDR 5,000,000.

If the employee's actual wage is higher than the one reported by the company to BPJS, the company must pay the remaining cash benefit directly to the employee at a one-time payment.

### 6. Job Information Benefits of JKP Program (Article 25 of PP 37/2021)

Job information access benefits are in the forms of:

1. Job market information (job vacancies portal);
2. Coaching (self-assessment and/or career counselling).

Those benefits will be provided by government through Employment Information System (Sistem Informasi Ketenagakerjaan). Once employee has accepted a new job through this program, he/she must report the placement confirmation through Employment Information System at the latest 7 days after starting new employment.

### 7. Limits of Claim (Article 35 of PP 37/2021)

JKP benefits can be claimed at the maximum 3 times during working life with the following provisions applicable:

1. 1st claim of JKP : after being registered to JKP program at least for 12 months within last 24 months and for which JKP premium has been paid for 6 months in a row prior to termination;
2. 2nd claim of JKP : minimum 5 years after the 1st JKP claim; and
3. 3rd claim of JKP : minimum 5 years after the 2nd JKP claim.

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### **8. Company Responsibility for Employees not Registered to JKP Program (Article 37 of PP 37/2021)**

If companies does not register their employees to JKP and subsequently terminated them, they are obliged to provide those employees with cash benefits as discussed above and job training.

This Newsletter is a summary of some of the key provisions of Presidential Regulations Number 34 of 2021, Number 35 of 2021, Number 36 of 2021 and Number 37 of 2021. It is therefore not comprehensive and does not constitute professional advice. Prevailing laws and regulations are subject to changes.

For any inquiries regarding this newsletter, do not hesitate to contact us.

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