

AMNESTY INTERNATIONAL

**COMMENTARY ON THE LABOUR
CLUSTER OF THE OMNIBUS
BILL ON JOB CREATION
(RUU CIPTA KERJA)**

**AMNESTY
INTERNATIONAL**



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I. INTRODUCTION

The rights to participate in public affairs, freedom of expression, the right to information, as well as the right to just and favorable conditions at work, are protected by international law. Since all human rights are interdependent, the protection of these rights is essential to the protection of other human rights.

Currently, labour provisions which provide protection for the rights of workers are enshrined in Law Number 13 of 2003 on Manpower, Law Number 40 of 2004 on Social Security, and Law Number 24 of 2011 on the Social Security National Agency. Despite the provisions that uphold these rights within the national law, a number of regulations remain inconsistent with international legal standards. Amnesty International has previously raised this issue with the Government of Indonesia, specifically regarding the conditions of workers' rights in the palm oil sector in our 2016 research report¹. The findings in the report will also be utilized to analyze the substance of the Omnibus Bill in this brief document.

The Government of Indonesia is undergoing a process of producing an Omnibus Bill on Job Creation, which, Amnesty International believes, will weaken protection of existing workers' rights. Aimed to boost investment and making doing business easier,² the Government of Indonesia, along with the parliament has decided to use the Omnibus Bill to revise 79 laws deemed a hindrance to the investment and reorganise them into 11 clusters and 1,244 articles, including the three laws mentioned above related to labour.³

Amnesty International is concerned that the procedure and substance of the Omnibus Bill are not in keeping with to Indonesia's human rights obligations under international human rights law.

The process of drafting this Omnibus was insufficiently open and transparent, as required in Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and Article 107 of the Manpower Law. The Government claimed to have involved 14 trade unions as part of the Public Consultation and Coordination Team on the Omnibus Bill. However, the trade unions denied the claim, saying that they had not been involved at the bill's inception.⁴ The government had not provided an opportunity for public participation even up until the Coordinating Minister for the Economy, Airlangga Hartarto, submitted the bill to the Speaker of the Indonesian Parliament, Puan Maharani, on 12 February 2020.⁵

The substance of the Omnibus Bill is inconsistent with the obligations of the Indonesian Government under international human rights law and standards, and the Omnibus Bill contains regulations that are in violation of the right of everyone to the enjoyment of just and favourable conditions of work and with principles of non-retrogression under international law. It has the potential of causing human rights abuses and providing more space for labour exploitation by employers. Such inconsistency is reflected in at least three laws that are to be amended within the Omnibus Bill: the Manpower Law, the Social Security law, and the Social Security National Agency Law. The problematic articles in the bill are as follows:

¹ Amnesty International, "The Great Palm Oil Scandal", 2016, <https://www.amnesty.org/download/Documents/ASA2151842016ENGLISH.PDF> accessed on 20 May 2020.

² Point (e) of Recital in the Omnibus Bill

³ "Airlangga Call the Omnibus Bill on Job Creation completed," CNNIndonesia.com, 3 February 2020, <<https://www.cnnindonesia.com/ekonomi/20200203124437-532-471103/airlangga-sebut-ruu-omnibus-law-cipta-lapangan-kerja-rampung>> accessed on 24 February 2020.

⁴ "The Government's Authoritative Ways Gets Stamps from Workers in Omnibus Law", CNNIndonesia.com, 18 February 2020, <<https://www.cnnindonesia.com/nasional/20200217174020-32-475439/cara-otoriter-pemerintah-dapat-stempel-buruh-di-omnibus-law>> accessed on 26 February 2020.

⁵ "Coordinating Minister Airlangga Submits the Omnibus Bill on Job Creation to the House of Representatives", CNNIndonesia.com, 12 February 2020, <<https://www.cnnindonesia.com/ekonomi/20200212152021-92-473960/menko-airlangga-serahkan-draf-ruu-omnibus-law-ciptaker-ke-dpr>> accessed on 26 February 2020.

1. The Omnibus Bill revokes Article 59 of the Manpower Law. This revocation eliminates the maximum period for a temporary work agreement, the maximum period of extensions, and other conditions which currently outline conditions which lead to the conversion of a temporary work arrangement to a permanent work arrangement;
2. The Omnibus Bill adds Article 77A, which allows increased overtime work for specific sectors where compensation amounts for extra hours worked will be determined by individual employers through a work period scheme rather than government stipulated rate;
3. The Omnibus Bill adds Article 88C, which removes City/Regency Minimum Wage (UMK) as a basis for minimum wage for workers. Currently, the minimum wage amounts take into consideration inflation and cost of living in particular cities in each province. This provision is going to flatline the minimum wage standard in all cities within a province. The generic provincial minimum wage will be (UMP) determined by the Governor. The introduction of this article also affects the amount of sectoral minimum wage which was previously higher than the city/regency minimum wage. These amendments pose risk of lowering the wage of workers;
4. The Omnibus Bill changes the formula of calculating the minimum wage in Article 88D, eliminating the inflation rate which was previously considered in minimum wage calculations. Inflation rate directly affects the cost of living and purchasing power of workers, thus determining whether the minimum wage level is sufficient to support a decent standard of living for workers;
5. The Omnibus Bill adds Article 88B, which gives employers the freedom to determine the output units assigned to the workers as a basis for calculating wages (piece-rate system); and
6. The Omnibus Bill changes the provision for paid leave in Article 93(2) of the Manpower Law. This amendment eliminates some forms of paid leave including menstruation leave, leave for family occasions (marriage, circumcision, baptism, or death of family members), parental leave, and religious holidays. Currently these forms of leave are in addition to the 12-days of paid annual leave provided to workers.
7. The Omnibus Bill eliminates Article 91 of the Manpower Law. The amendment eliminates the obligation for employers to pay the workers with wage according to the existing legislations in case where wage arrangement between workers and employers are lower than the statutory wage standard.

Amnesty Internasional Indonesia recognizes and welcomes the commitment of the Government of Indonesia which has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) through Law Number 11 of 2005 and the International Covenant on Civil and Political Rights (ICCPR) through Law Number 12 of 2005, as well as Conventions and/or Recommendations of the International Labour Organization (ILO). These commitments also include providing safeguards for labour rights protection including right to just and favourable conditions of work, and freedom of expression in national law, particularly in specific sectors such as labour and environment.

Amnesty International Indonesia is very concerned that in many cases, the current draft of the Omnibus Bill, which was drafted and is being supported by the Government contains provisions that are inconsistent with international human rights standards and if passed, could undermine workers' rights. This commentary examines such inconsistencies based on relevant international human rights standards. The Omnibus Bill used in this document is the newest draft obtained on 12 February 2020. The discussion of labour cluster within this bill will be done last, but it is still ongoing despite concerns of rising unemployment rate as a result of COVID-19 pandemic.

II. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Comments in this brief will be made based on the following international agreements on human rights:

- International Covenant on Economic, Social and Cultural Rights which has been ratified by Indonesia with Law Number 11 of 2005;
- International Covenant on Civil and Political Rights which has been ratified by Indonesia with Law Number 12 of 2005;

The analysis also draws on:

- General Comment Number 25 of 1996 of the Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service;
- General Comment Number 23 of 2016 of the Committee on Economic, Social and Cultural Rights (CESCR) on the right to just and favourable conditions of work;
- General Comment Number 24 of 2017 of CESCR on State obligations in the International Covenant on Economic, Social and Cultural Rights in the context of business activities;
- ILO Minimum Policy Guide
- ILO Convention Number 131 of 1970 on Minimum Wage Fixing (Minimum Wage Fixing Convention), although not ratified by Indonesia but used as a guideline to complement the General Comments

According to Law Number 39 of 1999 on Human Rights, particularly Article 7(2), the provisions within human rights treaties which have been ratified by Indonesia become part of Indonesia's domestic law. Beyond the stated international agreements, the comments in this brief refer to a number of non-treaty standards, which, although not legally binding, represent the consensus among the international community regarding the standards which countries aspire. The non-treaty standards referred to in this brief commentary include the Universal Declaration of Human Rights.

III. PRINCIPLES OF NON-RETROGRESSION

Progressive Realisation and Principle of Non-Retrogression

Progressive realisation is enshrined in Article 2(1) of the ICESCR, meaning that States are obliged to achieve progressively the full realization of economic, social and cultural rights to the maximum of their available resources and by all appropriate means, including particularly the adoption of legislative measures. Furthermore, progressive realisation of ESCR does not mean that governments do not have obligations in terms of these rights until a certain level of economic development is reached but rather that there will be **continual progress** on the status of these rights and therefore states should take deliberate steps immediately and in the future towards the full realization of ESCR.⁶ The **principle of non-retrogressive measures** implies that States should not allow the existing protection of ESCR to deteriorate unless there are strong justifications for a retrogressive measure, after carefully considering all the options, assessing the impact and fully using its maximum available resources.⁷

IV. INCONSISTENCIES OF THE OMNIBUS BILL WITH INTERNATIONAL LEGAL STANDARDS

1. RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS AND RIGHT OF INFORMATION

Article 25 of the ICCPR states that every citizen has the right to participate in public affairs.⁸ ICCPR General Comment Number 25 of 1996, paragraph 5 further explains this provision by extending public participation to the realm of policymaking and implementation at international, national, and local levels.⁹ Also, Article 19(2) of the ICCPR regulates the right to seek, receive, and impart information in any form. General Comment Number 34 of 2011 of the Human Rights Committee paragraph 18 explains that Article 19(2) accommodates the right to information held by a public body or any Institution carrying out public functions.¹⁰ Public institutions are interpreted as state institutions that hold executive, legislative, and

⁶ ESCR-Net, *Progressive Realization and Non-Regression*, <<https://www.escr-net.org/resources/progressive-realisation-and-non-regression>> accessed on 2 May 2020.

⁷ Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on Economic, Social, and Cultural Rights*, <<https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>> accessed on 30 April 2020.

⁸ International Covenant on Civil and Political Rights, art. 25. <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed on 26 February 2020.

⁹ General Comment Number 25 of 1996 on the right to participate in public interests, right to vote, and the right to access public services (Article 25) in paragraph 5 explains that the scope of public interests is very broad and related to the implementation of political authority, especially legislative, executive, and administrative authorities. The consequence of such provision is that citizens have the right to be involved in policy-making process. Such rights should be regulated in the constitution or legislation. See: Comment Number 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment Number 25. (General Comments), Office of the High Commissioner for Human Rights (OHCHR), <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjYoiCfMKolRv2FVaVzRkMjTnjRO%2bfud3cPvrcM9YR0iue72QY8oFmq1RR28eUM15L6J1AOT2xcs2D4FgEFOt2iQW2PD1ZsA%2b80ZwK8QWfZkUhNMfDhFSjgtoCvezhWA%3d%3d>> accessed on 26 February 2020.

¹⁰ General Comment Number 34: Freedoms of opinion and expression (Art. 19): CCPR/C/GC/34, Human Rights Committee, <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdBOH1i5979OVGGb%2bWPAXiks7ivEzdmLQdosDnCG8FaJ7cphK%2fR9YlpwV%2bAPs%2bmcFvCdQgIL4iR9ZkL7Bv4oc2QLZ3AWYcNmMYP3SjhOMZ9>> accessed on 26 February 2020.

judicial functions.¹¹

Amnesty International is concerned that the procedure and substance of the Omnibus Bill are not in keeping with Indonesia's human rights obligations under international law.

The process of drafting Omnibus Bill was insufficiently open and transparent. In their General Comment on the right to public participation the UN Human Rights committee have stressed that the free communication of information and ideas about public and political issues is crucial for that right to be realised.¹² The Office of the High Commissioner for Human Rights has stressed the need for transparency and openness in government; States should support and encourage engagement so that there is an "open and honest interaction between public authorities and all members of society."¹³

Since the draft of Omnibus Bill was handed over by the Coordinating Minister of Economic Affairs, Airlangga Hartarto, to the Parliament in February 2020, no consultation with trade unions was held. The Minister of Manpower claimed to have involved 14 trade unions as part of the Public Consultation and Coordination Team on the Omnibus Bill.¹⁴ However, until early April 2020, the trade unions denied the claim, saying that they had not been involved from the beginning of the drafting process.¹⁵

President Joko Widodo announced his decision to postpone the discussion of Manpower Cluster in the Omnibus Bill through his statement on 24 April 2020¹⁶, while its official decision had only been publicly announced by Ida Fauziyah, The Minister of Manpower on 17 June 2020.¹⁷ Only after the postponement, representatives of trade unions were invited by Mahfud MD, the Coordinating Minister for Political, Legal and Security Affairs to have a dialogue on Manpower Cluster in the Omnibus Bill.¹⁸

Engagement with such groups should have occurred from the beginning, as it is crucial that groups that are to be affected by the Bill are consulted. The government should ensure that labour groups are properly consulted.

Indonesian national law stresses that citizens have the right to be involved in the legislative process. In more detail, Article 96 of Law Number 12 of 2011 on Laws and Regulations states that input in the formation of legislation can be delivered at Public Hearing Meetings (RDPU), work visits, outreach, and/or seminars, workshops, and discussions. The provisions of this article also emphasize that in order to ensure public participation, each draft legislation must be easily accessible to the community.

¹¹ *Op.Cit.*, para 7.

¹² UN Human Rights Committee, General Comment 25, Para 25

¹³ UN Office of the Commissioner for Human Rights, Guidelines for States on the effective implementation of the right to participate in public affairs, page 9

¹⁴ Detik, *Menaker Klaim Sudah Ajak Buruh Bahas RUU Cipta Kerja, Kok Masih Demo?* <<https://finance.detik.com/berita-ekonomi-bisnis/d-4911395/menaker-klaim-sudah-ajak-buruh-bahas-ruu-cipta-kerja-kok-masih-demo>> accessed on 10 July 2020.

¹⁵ Kompas, *Kasbi: Kaum Buruh Sulit Dapat Akses Terkait Pembahasan RUU Cipta Kerja*, <<https://nasional.kompas.com/read/2020/04/09/21443511/kasbi-kaum-buruh-sulit-dapat-akses-terkait-pembahasan-ruu-cipta-kerja>> accessed on 10 July 2020.

¹⁶ Tempo, *Jokowi Tunda Pembahasan Klaster Ketenagakerjaan RUU Cipta Kerja*, <https://nasional.tempo.co/read/1335234/jokowi-tunda-pembahasan-klaster-ketenagakerjaan-ruu-cipta-kerja/full&view=ok>> accessed on 10 July 2020.

¹⁷ Kontan, *Pembahasan Klaster Ketenagakerjaan Ditunda, Kemnaker Dengar Kembali Pendapat*, <https://nasional.kontan.co.id/news/pembahasan-klaster-ketenagakerjaan-ditunda-kemnaker-dengar-kembali-pendapat>> accessed on 10 July 2020.

¹⁸ Detik, *Mahfud MD Undang Pimpinan Serikat Buruh, Bahas RUU Cipta Kerja*, <<https://news.detik.com/berita/d-5048823/mahfud-md-undang-pimpinan-serikat-buruh-bahas-ruu-cipta-kerja>> accessed on 10 July 2020

2. RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

Article 7 of the ICESCR recognises the right of everyone to just and favourable conditions of work, including to fair wages, equal pay for work of equal value, safe and healthy working conditions, reasonable limitations on working hours, protections for workers during and after pregnancy, and equality of treatment in employment. The content of the right to just and favourable conditions of work is articulated in General Comment 23 of the Committee on Economic, Social and Cultural Rights.¹⁹ Many of the provisions in the Omnibus Bill are inconsistent with international human rights standards and the principle of non-retrogression. Such provisions are as follows:

A) MINIMUM WAGE

Paragraphs 18-24 on remuneration and minimum wage in General Comment Number 23 of 2016 clarify the concept of remuneration that provides all workers with a decent standard of living for themselves and their families. Paragraph 21 of the General Comment Number 23 of 2016 specifically mentions that the elements to take into account in fixing the minimum wage must be technically sound, including the general level of wages in the country, the cost of living, social security contributions and benefits and relative living standards. In addition, Paragraph 18 of the General Comment highlights that cost of living and other economic and social conditions shall be referred to in determining “remuneration that provides a decent standard of living” for workers. Every worker also has the right to receive the same wages as other workers who do work with the same value (equal remuneration for work with equal value), as stated in Paragraph 11 of the General Comment Number 23 of 2016.

Furthermore, Paragraph 19 General Comment Number 24 of 2017 on State Obligations under the ICESCR in the context of business activities, highlights that the obligation to protect human rights sometimes necessitates direct regulation and intervention. In light of this States parties should consider establishing a minimum wage consistent with a living wage and fair remuneration, gradually eliminating informal or “non-standard” forms of employment, which often result in denying the workers concerned the protection of labour laws and social security.

The ILO also provided a set of factors to be taken into consideration in determining the level of minimum wage, which acts as a set of guidelines for States. In Article 3 of ILO Convention Number 131, it is stated that those factors are:

- a. The needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; and
- b. Economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Furthermore, Article 4(1) of the Convention stated that “Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.”

Amnesty International is concerned that provisions in the Omnibus Bill do not meet these standards, and in some cases may amount to retrogression and even violations of the rights of just and favourable conditions of work. There are three underlying reasons to this concern. First is the elimination of inflation as a consideration when determining minimum wage.

¹⁹ UN Office of the Commissioner for Human Rights, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work, <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQfoUYU19kME5pOqRba0%2BukB1Kzn1MMnQL24FFvtIIdk%2F%2FR%2FFOGthE%2BTiGSATb%2BUa3WMs0%2F%2BfvfQFg02%2BY%2FTVUqU>> accessed on 20 May 2020.

Second, the revocation of the city or regency specific minimum wage (UMK) which will lead to possibly flatline minimum wage in all cities regardless the different cost of living between different cities in the same province. This will bring down the level of minimum wage and adversely impact the achievement of a decent standard of living for workers. The third reason is the lack of a guarantee that the piece rate system to determine minimum wage in specific sectors would not end up below the minimum wage and if the system would enable workers to achieve a decent standard of living.

In the current Manpower Law, minimum wage calculation includes a national economic growth and inflation rate. However, Article 88D of the Omnibus Bill provides a new formula to calculate minimum wage which entirely eliminates the inflation rate. The new formula only considers the current level of minimum wage and the GDP of each province. Under the ILO Minimum Wage Policy Guide, inflation is proven to erode the real value of minimum wages over time. The ILO's Fundamentals of Minimum Wage Fixing states that "the minimum wage should be set at such a level that inflation does not have a negative effect on workers' purchasing power." Furthermore, it states that "a reference to inflation involves an attempt to avoid the purchasing power of minimum wages from being eroded by price increases."²⁰ Inflation then becomes detrimental in minimum wage adjustment as it will determine whether the minimum wage level is sufficient to cover basic needs of workers and their families.²¹ All in all, eliminating inflation rate will mean that the minimum wage calculation disregards the changes of purchasing power of workers and cost of living, which greatly impacts the standard of living of workers.

Amnesty International is concerned that by using only the GDP of the province and eliminating inflation and cost of living as criteria to determine minimum wage would weaken the minimum wage standards in provinces with economic growth that is close to zero or in the negative, such as Papua,²² although its inflation rate is among the highest compared to other provinces.²³²⁴ Should the Omnibus Bill be enacted in its current form, it will bring down the level of minimum wage and it will not be sufficient to cover daily cost of living of workers.

Another concern in this Omnibus Bill is the revocation of city/regency minimum wage (UMK) under Article 88C. In current regulations, UMK between cities in the same province are different and are higher than provincial minimum wage (UMP) as the cost of living in many cities is higher than in other parts of the province. The revocation of UMK means that the basis of calculating minimum wage of workers will only be based on province minimum wage (UMP), flatlining the minimum wage in all cities regardless its different cost of living and the purchasing power of the workers in each area.

An example of this can be seen in West Java, whose UMP in 2020 is set at IDR 1,810,350 with a different minimum wage in (UMK) in each city or regency. The highest UMK in West Java is that of Karawang Regency as it is a designated industrial area with the amount set at IDR 4,594,324, far more significant compared to Banjar City which has the lowest UMK, set

²⁰ Francois Eyraud & Catherine Saget, "The Fundamentals of Minimum Wage Fixing," *International Labour Organisation*, 2005, <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/meetingdocument/wcms_208814.pdf> accessed on 2 June 2020.

²¹ International Labour Organisation, "Minimum Wage Policy Guide: Chapter 5 – Setting and Adjusting Minimum Wage Levels," <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/genericdocument/wcms_508530.pdf> accessed on 20 May 2020.

²² Economic growth in Papua experienced a decline in the 2015-2019 period. In 2019 alone, economic growth in Papua will contract by -15.72%. See: Papua Economic Growth in 2019, Central Statistics Agency of Papua Province, February 6, 2020, <<https://papua.bps.go.id/pressrelease/2020/02/06/484/pertumbuhan-ekonomi-papua-tahun-2019.html>> accessed on 27 February 2020.

²³ Merauke experienced the highest inflation in all of Indonesia with a value of 1.24%. See: "Merauke Has Highest Inflation in Indonesia", papua.go.id, <<https://www.papua.go.id/index.php/view-detail-berita-4331/merauke-alami-inflasi-tertinggi-di-indonesia.html>>. While inflation in Merauke occupies the 7th position and Jayapura occupies the 16th position at the national level. See: Consumer Price Development / Inflation in Jayapura and Merauke in December 2019, Central Statistics Agency of Papua Province, January 2, 2020, <<https://papua.bps.go.id/pressrelease/2020/01/02/427/perkembangan-indeks-harga-konsumen-inflasi-kota-jayapura-dan-merauke-bulan-desember-2019.html>> accessed on 27 February 2020.

²⁴ "March Gini Ratio Recorded at 0.382", National Statistics Agency, 15 July 2019, <<https://www.bps.go.id/pressrelease/2019/07/15/1630/gini-ratio-maret-2019-tercatat-sebesar-0-382.html>> accessed on 27 February 2020.

at IDR 1,831,884.²⁵ If Omnibus Bill is enacted, the minimum wage for workers in Karawang Regency and Banjar City will be the same and will likely be brought down to the UMP. Workers in Karawang will therefore potentially earn far less in the future compared to their UMK in 2020, putting them at high risk of being unable to meet the needs given the high cost of living in the industrial area.

Aside from UMK, current regulations also regulate sectoral minimum wage for certain sectors, one of which is palm oil sector. The amount of city/regency sectoral minimum wage (UMSK) is higher than the UMK; while the amount of province sectoral minimum wage (UMSP) is higher than the UMP. The revocation of UMK would mean that it could potentially affect sectoral minimum wage for workers in certain sectors. Removal of the UMK raises concerns that the sectoral minimum wage will also be revoked and will potentially cause workers to have lower wage and earn far lesser than their current wage.

Based on this example, Omnibus Bill will likely reduce the minimum wage of workers and lower the minimum wage standard, which could negatively affect their right to an adequate standard of living. This is inconsistent with international human rights standards and may amount to retrogression from the previous regulation.

Another provision to highlight in the Omnibus Bill is the piece rate system for temporary workers. The Omnibus Bill allows employers to decide the output unit assigned to workers and make it a basis of determining the provision of wages for temporary workers. It is unclear whether the piece rate pay for temporary workers will fall below applicable minimum wage. Amnesty International is concerned that this will likely result in employers setting unrealistic targets in order to be able to pay less than the stipulated minimum wage. Determination of wages based on the unit of output also could result in workers risking their health and safety in order to meet output targets to receive minimum wage.

According to ILO Minimum Wage Policy Guide, “piece rate systems should be transparent, reward employees according to the difficulty and quality of their work and ensure that motivated workers can earn substantially more than the minimum wage. If a larger group is not making the minimum wage, it usually means the piece-rate pay is set too low, and workers’ efforts are being undervalued.” On the other hand, ILO also states that “In various countries, the legislation stipulates that pieceworkers’ wages may not be lower than the applicable minimum wage. In these countries, at the very minimum, workers under a piece rate system should earn the minimum wage.”²⁶ Although piece rate system is allowed, States should ensure that it should not fall below applicable minimum wage, as it will have a detrimental effect on the workers.

In 2016, Amnesty International issued a report on workers’ conditions in palm oil plantations. The report states, “Workers may experience a reduction in their salary for failing to meet their targets, which makes their salary below the minimum wage.” The report also highlighted Article 17 of the Minister of Manpower Decree Number 7 of 2013, prohibiting the calculation of wages based on a piece-rate below the applicable minimum wage. In reality, many employers provide unrealistic targets for each worker, and these workers can only get a minimum wage after fulfilling the targets assigned to them.²⁷

Moreover, the report also mentions, “to meet the targets given and avoid punishment, workers on the plantations under investigation say that they are forced to get help from their spouses, children or others to complete certain tasks.” The practice of child labour could recur should the Omnibus Bill be enacted in its current form, since employers are given a considerable

²⁵ Circular Letter Number 561/75/Yanbangsos the Government of West Java Province.

²⁶ International Labour Organisation, “Minimum Wage Policy Guide,” <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_508566.pdf> accessed on 12 May 2020.

²⁷ “The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names,” Amnesty International 2016 <<https://www.amnesty.org/download/Documents/ASA2151842016ENGLISH.PDF>> accessed on 27 February 2020.

discretion to determine wages based on output unit for temporary workers. That being said, the Omnibus Bill could have a retrogressive effect as the previous regulation has set that piece rate should not be lower than applicable minimum wage and that its implementation should be ensured by the Government.

The Omnibus Bill also includes the addition of Article 88E, which creates a different level of minimum wage for workers in labour-intensive industries, with different formula for the calculation. The level of minimum wage for labour-intensive workers will be determined by the Governor and will further be elaborated in the Government Regulation.

In 2017, the West Java Governor determined the level of minimum wage for garment industries in 4 areas, Purwakarta Regency, Bogor Regency, Bekasi City, and Depok City through the issuance of Governor Regulations. The labour-intensive minimum wage was lower than the applicable UMK in each region. In Purwakarta Regency, the labour-intensive minimum wage was set at IDR 2,546,774 while the UMK was set at IDR 3,169,549; and this also happened in three other cities.

Paragraph 23 of General Comment Number 23 of 2016 stipulates that, “the minimum wage might apply generally or differ across sectors, regions, zones and professional categories so long as the wages apply without direct or indirect discrimination and ensure a decent living.” Amnesty International concerned that Article 88E would allow for driving down minimum wages in labour-intensive sectors and would not fulfill the decent living standard of labour-intensive workers.

The Omnibus Bill also eliminates Article 91, which provides that the wage arrangement between employers and workers should not be lower than the statutory minimum wage. Article 91 also provides that in cases where such wage arrangement is lower than the minimum wage, the employers are required to pay the workers according to the minimum wage.

Paragraph 24 of the General Comment No. 23 of 2016 provides that, “The failure of employers to respect the minimum wage should be subject to penal or other sanctions.” Amnesty International is concerned that eliminating this Article would result in the lack of employers’ compliance to the statutory minimum wage. In other words, it is likely that employers would give lower wage for workers and do nothing about it as there is no more sanction that requires them to do so.

B) EMPLOYMENT STATUS

Paragraph 19 General Comment Number 24 of 2017 relates to state obligations under the ICESCR in business activities and states that States are obliged to “gradually eliminate informal or “non-standard” forms of employment, which often result in denying the workers concerned the protection of labour laws and social security.” In addition, Paragraph 53 of General Comment Number 23 of 2016 provides that “States parties must also combat all forms of unequal treatment arising from precarious employment relationships.”

The Omnibus Bill contains a provision which eliminates the maximum period of temporary work agreement and conditions that automatically change the status of temporary workers to permanent workers. There is concern that with this provision, temporary workers will remain temporary for indefinite periods of time and exempt employers from their obligation to change the temporary status of workers. This will most likely deny temporary workers adequate protection under labour laws and social security, such as pension, 12-days annual leave (for temporary workers working under a year), compensation for employment termination.

In the previous Manpower Law, temporary work agreements were only permitted for certain jobs, such as work that can be completed in one period of time or is temporary in nature; work that is estimated to be completed in a maximum of three years; seasonal work; or work related to new products and activities that are being tested or explored. The legislation also provides

that a temporary work agreement can only be made for maximum two years, to be extended once for a maximum period of one year. Employers wishing to extend the temporary work agreement will need to send a written notice to the workers no later than seven days before the work agreement expires. Renewal of temporary work agreement can only be carried out after exceeding the grace period of 30 days after the previous work agreement expires.

Despite this limitation, there are many cases where employers arbitrarily extend the temporary work agreement indefinitely. One example is the case of 300 workers in a Bekasi-based company who were allegedly unlawfully laid off in December 2012 without severance pay, after the company was reported to have continuously extended their 3-month work agreement for more than three years. According to media reports, the company insisted that the workers were laid off because they had come to the end of the contract.²⁸ If these allegations are correct, the employers would have violated the maximum period for temporary work agreement under the Manpower Law under which they should have automatically become permanent workers. Eliminating the maximum period of temporary work agreement and conditions that automatically change the status of temporary workers to permanent workers is feared to exacerbate current practice where workers are put under temporary contract indefinitely, making them unable to access their rights as given to permanent workers. Amnesty International is concerned that this Omnibus Bill will perpetuate non-permanent work and reinforce unfair treatment arising from precarious employment. This amounts to retrogression from existing legislation and international human rights standards.

Omnibus Bill also includes Article 61A which requires employers to pay compensation for temporary workers whose employment is terminated. This compensation is only given to temporary workers who have worked for more than a year. However, it is unclear whether the compensation amount will be calculated based on the total working period that the temporary workers have worked, or it will be a flat rate for all temporary workers, regardless of their different working periods.

C) LIMITATION FOR WORKING HOURS

Paragraph 35 of General Comment Number 23 of 2016 stipulates that working days in all activities should be limited to a specified number of hours. It is added that “While the general daily limit (without overtime) should be eight hours, the rule should take into account the complexities of the work place and allow for flexibilities, responding, for example, to different types of work arrangements such as shift work, consecutive work shifts, work during emergencies, and flexible working arrangements.” It is then emphasized that such exceptions are very limited and must be based on consultation between employers, workers, and their representative organisations. Paragraph 36 then reiterates that “legislation should establish the maximum daily hours of work and they could differ in light of the exigencies of different employment activities but should not go beyond what is considered a reasonable maximum workday.”

Within the current Manpower Law, the maximum working time is eight hours per day and 40 hours per week, with overtime limited to three hours per day and 14 hours in one week. It is also regulated that such overtime work shall be compensated for all sectors, and the decision for over time must be based on an agreement between employers and workers. The Omnibus Bill amends the overtime limit to four hours per day and 18 hours per week and maintains the obligation for employers to compensate the overtime. However, the Bill adds Article 77A which deals with overtime in specific sectors. In these sectors, employers will be given the discretion to create a work period scheme to calculate the compensation. The details of work period scheme and sectors eligible to implement this has not been articulated and will be elaborated through a government regulation.

²⁸ “Kasus : Perjuangan Buruh Kontrak (Kasus pekerja kontrak di PT Framas Indonesia”, TURC, <<https://www.turc.or.id/kasus-perjuangan-buruh-kontrak-kasus-pekerja-kontrak-di-pt-framas-indonesia/>> diakses pada 27 Februari 2020

The huge discretion for employers to determine the working hours and compensation for workers – if not monitored by States – is already problematic in certain cases. One of the workers at an ice-cream company in Cibitung, Bekasi,²⁹ admitted that he was given only one day off every three weeks. Meanwhile, the company only paid him IDR 2,700,000, far below the 2016 minimum wage in Bekasi Regency, set at IDR 3,000,000. Along with other workers, they were forced to do other work beyond the maximum working hours, especially during the expansion process of the company. They worked as construction workers while they also worked on other things, only to be paid with IDR 50,000 per day. The workers worked for 49 hours per week while only being paid with overtime costs, which were not in accordance with the agreement.³⁰

Amnesty International is concerned about the distinction between sectors on overtime work and its compensation, and is concerned that giving discretion to employers in determining the work period scheme could disadvantage workers in certain sectors as they could be required to work longer hours and receive lesser payment for overtime than workers in other sectors. According to Paragraph 35 of General Comment Number 23 of 2016, “Where legislation permits longer working days, employers should compensate longer days with shorter working days so that the average number of working hours over a period of weeks does not exceed the general principle of eight hours per day.” That being said, the Government should ensure that the average number of working hours for workers in specific sectors, as determined in the work period scheme does not exceed the general principle of eight hours per day.

D) REST, LEISURE AND HOLIDAY

Paragraph 41 of the General Comment Number 23 of 2016 provides “All workers, including part time and temporary workers, must have paid annual leave. Legislation should identify the entitlement, at a minimum, of three working weeks of paid leave for one year of full-time service. Workers should receive at least the normal pay for the corresponding period of holidays. Legislation should also specify minimum service requirements, not exceeding six months, for paid leave. In such situations, the worker should nonetheless enjoy paid leave proportionate to the period of employment. Leave due to illness or other justified reasons should not be deducted from paid annual leave.” In addition, Paragraph 43 of the General Comment states “The timing for taking paid annual leave should be subject to a negotiated decision between the employer and the worker; however, legislation should set a minimum period of ideally two weeks of uninterrupted paid annual leave. Workers may not relinquish such leave, including in exchange for compensation. Upon termination of employment, workers should receive the period of annual leave outstanding or alternative compensation amounting to the same level of pay entitlement or holiday credit.”

The Omnibus Bill provides that the implementation of annual leave is based on agreement between workers and companies, consistent with the 2003 Manpower Law. However, there are cases where companies impose policies of replacing leave with compensation to force workers to continue working rather than taking their leave, promising them “additional money” without any consultation with the workers. In a media report, one of the leaders of the labour movement in Bekasi revealed that companies had replaced the leave policy with money. A statement published by the company said that this replacement was to increase the income of workers.³¹ This is inconsistent with Paragraph 43 of General Comment Number 23 of 2016, which states that “Legislation should set a minimum period of ideally two weeks of uninterrupted paid annual leave. Workers may not relinquish such leave, including in exchange for compensation.”

The Omnibus Bill also eliminates some forms of leave where employers are obliged to give

²⁹ “Work Exploitation at Aice Ice Cream Factory, Sponsor of the 2018 Asian Games,” Tirta.Id, 4 December 2017, <<https://tirta.id/eksploitasi-kerja-di-pabrik-es-krim-aice-sponsor-asian-games-2018-cA7h>> accessed on 27 February 2020.

³⁰ *Ibid.*

³¹ *Ibid.*

payment, as regulated in the Manpower Law under Article 93. Such leave includes menstruation leave, leave for family reasons (such as marriage, circumcision, baptism, or death of family members), parental leave, and religious holidays, as an addition to the 12-days of annual leave for workers. Amnesty International is concerned that the removal of menstruation/menstrual leave would create barriers for women who need to take time off on health grounds during menstruation, to do so.

According to General Comment 23, parental and paternity leave is integral for guaranteeing just and favourable conditions of work.³² It also notes that legislation should identify other forms of leave, in particular entitlements to maternity, paternity and parental leave, to leave for family reasons and to paid sick leave. Workers should not be placed on temporary contracts in order to be excluded from such leave entitlements.³³

Amnesty International also stresses that eliminating these forms of paid leave under Article 93 creates uncertainty as to whether employers will still be obliged to pay their workers and give them the benefits they are entitled to. This may amount to a retrogression from the Manpower Law as there is a possibility that the Omnibus Bill takes away the benefits that workers used to have. By eliminating parental and paternity leave, the Bill undermines a key element of the right to just and favourable conditions of work as enshrined in Article 7 of ICESCR.

The lack of clarity on the right of workers to paid leave in the Omnibus Bill appears to be problematic. This will potentially force workers to continue working to prevent any wage reduction or refrain from being sanctioned. The gaps may be used by employers to implement harmful policies for workers. This is inconsistent with Paragraph 34 of the General Comment Number 23 of 2016, stating that in the context of rest and leisure and paid holidays, “Though States parties have flexibility in light of the national context, they are required to set minimum standards that must be respected and cannot be denied or reduced on the basis of economic or productivity arguments”

³² UN Committee on Economic, Social, Cultural Rights, General Comment No. 23, Para. 6

³³ UN Committee on Economic, Social, Cultural Rights, General Comment No. 23, Para. 44

V. CONCLUSION AND RECOMMENDATION

The drafting of the Omnibus Bill shows the weak commitment of the Indonesian Government to fulfill its obligations as a State Party to the ICCPR, ICESCR, and the ILO, being insufficiently transparent in the process of drafting the bill. In their General Comment on the right to public participation the UN Human Rights committee have stressed that the free communication of information and ideas about public and political issues is crucial for the right to be realised.³⁴ Substantially, the provisions of the Omnibus Bill also have the potential to erode human rights and violate the principle of non-regression under international law, especially on the right of workers to just and favorable conditions at work regulated in the ICESCR or by ILO Conventions and Recommendations.

In light of the above, Amnesty International makes the following recommendations:

1. The Government and the House of Representatives of the Republic of Indonesia should ensure transparency in the submission and discussion of the Omnibus Bill and should involve the participation of all stakeholders directly affected by this regulation, especially trade unions, other non-governmental organisations, and the media;
2. The Government and the House of Representatives of the Republic of Indonesia must immediately review the articles of the Omnibus Bill that have the potential to violate human rights and have a regressive effect with reference to Indonesia's international human rights obligations regarding the right to work and rights at work.
3. The following are the main issues that need to be addressed:
 - a) Ensure that minimum wage is determined taking into consideration inflation rates and costs of living among other considerations as highlighted in the ILO Minimum Policy Guide and supports the decent living standards for workers. This could be done by continuing with city-based minimum wage calculations (UMK) rather than a single provincial minimum wage calculation (UMP) which will not factor in the variable cost of living in cities;
 - b) With regard to the piece rate system, it should be ensured that the piece rate system is not lower than applicable minimum wage in the particular city/province. The related Government authority should also ensure that employers do not set unrealistic targets in order to be able to pay less than the stipulated minimum wage, and ensure that workers are not put in a position where they risk their health and safety in order to meet output targets to receive minimum wage;
 - c) Ensuring that the special formula to calculate the level of minimum wage for labour-intensive workers is sufficient for a decent standard of living for workers according to international human rights standards;
 - d) At the very least, maintain the current limit on the period of time for temporary contract extensions to ensure that beyond this period, temporary contracts have the same protections, benefits and job security as those on permanent contracts.
 - e) Clarifying the terms which will determine the compensation amount for temporary workers who are terminated and whether this will be calculated

³⁴ UN Human Rights Committee, General Comment 25, Para 25

based on the total working period that the temporary workers have worked instead of implementing a flat-rate system;

- f) Ensuring that the average number of working hours for workers in specific sectors, as determined in the work period scheme does not exceed the general principle of eight hours per day, and the compensation and working hours for overtime work is based on consultation between employers and workers with a view to ensuring that the rights of workers are guaranteed;
 - g) Ensuring that workers will still be entitled to the minimum of 12 days of uninterrupted annual leave, paid sick leave and parental leave while also ensuring that the consultation between employers and workers in determining compensation for annual leave not taken is being implemented, and it is not used by companies as a justification to force workers to gain more income;
 - h) Ensuring that the Omnibus Bill does not eliminate the obligation of employers to give payment for workers taking their leave as listed in Manpower Law aside from the annual leave, and ensuring that the benefits will still be given for workers taking religious holiday's leave, and other forms of leave according to international standards;
4. The President of the Republic of Indonesia and the House of Representatives must ensure that Government Regulations governing technical matters related to workers' rights (minimum wages, working hours, work status and rest or rest days) are in accordance with international human rights standards;
 5. The Indonesian Ministry of Manpower to create stronger oversight mechanisms to ensure that the workers' rights are protected in line with national law and international human rights standards;
 6. The Indonesian Ministry of Manpower to establish accessible mechanisms for grievance redressal and ensure that workers have information about these where they can bring irregularities to the attention of oversight bodies; payment for piece-rate workers and workers; and
 7. The Government and the House of Representatives of the Republic of Indonesia to actively and progressively seek to abolish the contract work system, outsourcing and other forms of precarious employment and provide a more secure employment status for workers.
