Ethical Tea Partnership

BRIEFING PAPER: OMNIBUS LAW ON JOB CREATION

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Devon Daniel

Background

On 5 October 2020, the Indonesian Parliament passed the Omnibus Law on Job Creation, commonly known as the 'Omnibus Law'. It introduced a new framework intended to simplify business licensing and amends 79 existing national laws, covering a broad range of areas including, environmental protection, infrastructure, special economic zones, land rights, transport, energy, agriculture, and taxation, as well as some controversial amendments to Indonesia's previous labour and social security laws.

Designed to promote foreign investment and economic growth, one of its core aims has been to help Indonesia climb the World Bank's Ease of Doing Business Index ranking. Higher rankings indicate fewer and simpler regulations for businesses starting up or operating in the country. The World Bank initiative was scrapped in 2020, but the law still aims to attract foreign investment by removing unnecessary controls and cutting red tape.

The government hopes that by removing certain worker protections, Indonesia will be better able to compete with other countries in the region in terms of attracting foreign investment – particularly that linked to labour-intensive sectors such as construction or agriculture. However, by focusing on raising GDP through deregulating business, Indonesia risks creating potentially dangerous consequences for its social and environmental standards.

The law – which runs 1,187 pages long and lists more than 1,200 new provisions – has been a challenge for NGOs and policy analysts to assess. Due to its complexity, many would like to see further public consultation and greater transparency from the Indonesian Government. Unions and environmental groups continue to call on the government to abandon the law, but it is unclear whether the government will consider any changes. Only a few organisations have commented; these include Amnesty International, Amfori and Fair Wear Foundation.

The impact on tea workers

The Omnibus Law has introduced various changes to the existing Labour Law of 2003 that threaten worker protection and could negatively impact tea workers in Indonesia. Some of these are detailed below.

Fixed-term contracts: The law removes maximum time limits on fixed-term contracts and all restrictions on the number of times employers can renew temporary contracts. This aims to give employers more flexibility, particularly in seasonal and labour-intensive sectors such as tea. This has the potential to negatively impact tea workers as it enables employers to issue more fixed-term contracts and avoid providing the same entitlements required for permanent work. You can view the differences between temporary and permanent employment in Indonesia here.

Leave entitlements: The implementation of annual leave will be decided through an agreement between workers and companies. This creates a risk of employers replacing annual leave policies with additional pay without consulting workers first.[1] It is also at odds with the 'right to just and favourable conditions of work' outlined by the UN's Committee on Economic, Social and Cultural Rights; which states that legislation should set a minimum of two weeks of paid annual leave and that workers should not relinquish leave in exchange for compensation.[2]

Certain types of leave for which employers are obliged to pay employees have been excluded. These include menstruation leave, leave for family reasons (such as marriage or the death of family members), parental leave, and religious holidays. As well as this, the entitlement of long-service leave for workers who have completed 6 years' service with the same company has also been removed. Long service leave can provide much-needed respite for workers who pick and carry heavy loads of tea each day. Such entitlements are now optional and must be negotiated between employers and employees or through collective labour agreements – although adequate union representation is not guaranteed for tea workers in Indonesia.

Wages: Changes to the way wages are determined are one of the biggest risk areas for tea workers in Indonesia. Small-scale businesses are exempt from paying the minimum wage; instead, wages are agreed between the employer and the employee. The conditions are that the wages agreed on must be at least 25% above the provincial poverty line.[3] However, wages that are 25% above the poverty line do not necessarily guarantee a decent quality of life and there is debate about how poverty lines are set in the first place.

Sector-specific minimum wages will no longer be set, but provincial governments will continue to establish minimum wages for province, district and city levels (Indonesia does not have a national minimum wage). There is concern that the Omnibus Law's wage-setting formula does not consider the inflation rate and instead focuses solely on each province's GDP.[4] Because of this, there is a danger that workers will not be protected from rising costs of living which could negatively impact living standards.

In addition, Article 88B of the Omnibus law allows employers to decide the level of output they would like to see from temporary workers and make it a basis for determining their wages. This is usually referred to as 'piecework' or a 'piece-rate system'. It's unclear whether piece-rate pay will fall below the minimum wage, but there is a risk of employers setting unrealistic targets to be able to pay less than the minimum wage. The argument against piece-rate pay in the tea sector is not new – unions and labour experts have continuously highlighted how wages based on output can result in the exploitation of workers. Not only can it lead to workers risking their health and safety to meet output targets, but it can also result in children being forced to work, therefore increasing the risk of child labour.[5]

Working hours: Standard working hours remain at 40 hours per week (7 hours each day for a six-day working week or 8 hours per day and for five working days). However, subject to further regulations, certain organisations – including those in agribusiness – will be able to employ workers for more than 40 hours per week.[6] The amount of permissible overtime has also increased from 14 to 18 hours per week.[7] This could lead to excessive overtime on tea plantations, especially for temporary workers on piece-rate pay.



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The impact on women

The removal of restrictions on fixed-term contacts will make temporary contracts more common and result in women being employed on this basis for prolonged periods of time. Such insecurity means that women must continuously seek new employment opportunities, increasing the likelihood of them accepting informal employment that does not pay the minimum wage or offer any social security entitlements. Around 70 million people (55% of the workforce) already work in the informal sector; the majority are women, who are the most vulnerable in the labour market.[8]

Furthermore, by eliminating parental leave and increasing the permitted overtime hours (from 14 to 18 hours per week), the law results in employees spending more hours at work and less time with their families. These changes disproportionately affect women as they carry out a range of unpaid care and domestic duties beyond the farm or factory. The removal of menstrual leave creates further challenges for women who need to take leave for health reasons during menstruation.[9]

Environmental standards

In addition to its impact on workers, the Omnibus Law also weakens existing environmental protections to promote economic growth. It removes the requirement for provinces to maintain a minimum forest cover of 30%, which had previously helped mitigate damage caused by common rainfall-related disasters such as flooding and landslides.[10] It also makes it harder to prosecute companies that set fire to their land to clear it for agricultural use. Both changes could cause an increase in the conversion of rainforests to tea plantations, more greenhouse emissions, and threats to biodiversity.

The law also eases the requirements for businesses having to conduct environmental impact assessments as a precondition to obtaining a business license. Ultimately, this could lead to the issuing of business permits to tea producers that harm the environment and may result in a need for increased levels of environmental supply chain due diligence for companies sourcing from Indonesia.

Current status

In the past six months, Indonesia's Constitutional Court has dismissed thirteen applications challenging the law – most of which were lodged by trade unions and individual workers.[11] However, on 25 November 2021, the court held that "procedural flaws" during the law-making process would render the entire legislation unconstitutional if the government fails to make changes within a two-year deadline.

Many changes that should have been repealed after the ruling have already taken place, including those around wage arrangements. This has created legal uncertainty for workers, and It's unclear how these complex changes will be reversed if the two-year deadline is not met.[12]

With this said, on 24 May 2022, the government passed a revision of the 2011 bill on Law-Making. This gives lawmakers the authority to create laws using the "Omnibus method" – effectively making it constitutional to compile a large number of provisions under a single piece of legislation.[13] The Indonesian labour Party, along with the Confederation of Indonesian Trade Unions (KSPI) and the Confederation of Indonesian Prosperity Trade Unions (KSBSI) seek to challenge the court's decision by the end of June 2022. Protests are expected to continue in June, with workers demanding the government scraps the provisions entirely and revert to the previous labour law of 2003.[14]





Rashid F

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