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The Minister of Manpower Issues Guidelines on the Prevention and the Handling of Sexual Violence in the Workplace

Introduction

On May 29, 2023, the Minister of Manpower of the Republic of Indonesia ("MOM") issued Decree No. 88 of 2023 regarding the Guidelines on the Prevention and the Handling of Sexual Violence in the Workplace (the "**MOM Decree**").¹ As the name suggests, the MOM Decree contains technical guidelines (the "**Guidelines**") that must be implemented by Companies so that the prevention and the handling of sexual violence within the workplace can be carried out optimally.

The MOM issued the Guidelines in light of the enactment of Law No. 12 of 2022 on Sexual Violence Crimes ("**Law No. 12/2022**") which regulates sexual violence crimes. Previously, sexual harassment in a workplace was generally stipulated under Law No. 13 of 2003 on Manpower which provides a general protection for employees for safety and health, moral and decency, dignity and religious values. In 2011, the MOM issued Circular Letter No. SE.03/MEN/IV/2011 on the Guidelines on the Prevention of Sexual Harassment in the Workplace ("**2011 Guidelines**"). The 2011 Guidelines only cover sexual harassment which may be in the form of: (i) physical harassment; (ii) verbal harassment; (iii) gesture harassment; (iv) written harassment; and (v) emotional harassment.

The Guidelines were issued due to the necessity to have more robust protection and alignment with Law No.12/2022. Accordingly, the Guidelines refer to a broader scope of "sexual violence" unlike the 2011 Guidelines which only focused on sexual harassment.

The Guidelines set out obligations and key items that must be taken into consideration by the Companies², as we highlight below:

¹The MOM Decree has been in effect since the date of its issuance.

²Based on the Guideline, the term "Companies" mean: (i) every form of business, legal or non-legal entity, individual-owned, partnership, or owned by legal entity, whether it is a private or state-owned enterprise, which employs employees by paying salaries or other forms of compensation; or (ii) social or other businesses with management board and employs other people by paying salaries or other forms of compensation. Meanwhile, the term "workplace" means any room or field, closed or open, movable or immovable, of which employees work or often entered by employees for work/business activity purposes, including every room, field, yards, and surrounding areas that are parts of or related to such workplace.

1. The Obligation to Establish a Sexual Violence Task Force

Under Section V of the Guidelines, a Company is required to establish a specific task force that will be responsible for the prevention and the handling of sexual violence in the workplace (the "**Task Force**"). This Task Force shall at least have three members (there must be an odd number of members) and composed of representatives from the employer as well as the employees or labor unions.

The main duties of the Task Force, among others, are to:

- a. establish and implement programs and activities which refer to the Company's policies regarding efforts to prevent sexual violence in the workplace;
- b. receive complaints of sexual violence in the workplace from the victims and/or the reporting party;
- c. record complaints of sexual violence in the workplace properly;
- d. provide advice/counsel to both the victims and the Company regarding the resolution of the complaints of sexual violence in the workplace; and
- e. provide assistance and advocacy to the victims.

As for its place within the Company's organization structure, if the Company has a Bipartite Cooperation Institution ("**LKS Bipartite**"), the Task Force must be a part of the organizational structure of the LKS Bipartite. Otherwise, the Task Force shall be established based on the decree of the Company's Board of Director.

2. The Scope of Sexual Violence in the Workplace

The scope of sexual violence under Section II.A of the Guidelines refers to Law No. 12 of 2022 on Sexual Violence Crimes ("**Law No. 12/2022**"), namely³:

- a. non-physical sexual harassment;
- b. physical sexual harassment;
- c. forced contraception;
- d. forced sterilization;
- e. forced marriage;
- f. sexual abuse;
- g. sexual exploitation;
- h. sexual slavery; and
- i. electronic-based sexual violence

³Article 4(1) of Law No. 12/2022.

The Guideline further elaborate the types of sexual violence that often occur within the workplace, namely:

- a. non-physical sexual harassment, such as verbal sexual harassment, sexual gestures, and psychological/emotional forms of sexual harassment;
- b. physical sexual harassment; and
- c. electronic-based sexual violence, such as non-consensually recording, capturing, disseminating, and distributing sexual content as well as stalking for sexual purposes.

3. Implementation of Preventive Measures to Deter Sexual Violence in the Workplace

The Guidelines recommend a number of measures to prevent the occurrence of sexual violence in the workplace, namely:

- a. create and implement policies on prevention and handling of sexual violence under the employment agreements, company regulation (peraturan perusahaan), or collective labor agreements (perjanjian kerja bersama);
- b. provide education/awareness training to all relevant parties in the workplace⁴;
- c. increase self-awareness on sexual violence in the workplace;
- d. provide adequate facilities in the workplace (e.g., CCTV in certain areas for monitoring purposes, separate restrooms/lockers, etc.); and
- e. publish anti-sexual-violence-in-the-workplace materials (e.g., banners, pamphlets, etc.).

4. Mechanism of Reporting and Handling of Sexual Violence

Section IV.A of the Guidelines stipulates a more straightforward mechanism on the reporting of sexual violence occurrences. The report can be made by (i) the victim; (ii) family of the victim; (iii) colleague of the victim; or (iv) other related party to (i) the Task Force; (ii) local manpower office in the municipality, city or province; and/or (iii) the MOM. The report can be made by way of online or offline means and can also be reported directly to the police force.

Section IV.B of the Guidelines also provides a more detailed mechanism on the handling of such report. The report shall be handled by (i) the Task Force; (ii) work unit of the local manpower office; and/or (iii) work unit of the MOM. Certain measures can be conducted by the handling parties such as information gathering through the request of information to the relevant parties, CCTV checking and other information sources. The handling parties can also provide recommendations to the victim or the employer (for the employer to impose sanctions against the reported party) and provide assistance (advocacy) to the victim.

5. Victims' Rehabilitation and Sanctions Against Sexual Violence in the Workplace

Based on Section IV.C of the Guidelines, the Company is responsible to conduct rehabilitation measures towards the victims of sexual violence in the workplace, including, among other measures:

⁴The Guideline further mentions that employers must include information on sexual violence in orientations, education, and training programs for employees. Meanwhile, labor unions are also required to convey information on sexual violence in their training programs for their members.

- a. prevent any retaliation against the victim (this may occur if the reported party is the victim's superior), such as by ensuring the victim does not suffer losses due to the sexual violence in the workplace (e.g., demotion or refusal of promotion);
- b. return any sick leave or other leave taken by the victim during the handling of the sexual violence incident;
- c. remove any negative appraisals from the personnel records of the victim added due to the occurrence of the sexual violence;
- d. re-employ the victim if he/she was dismissed inappropriately; and/or
- e. provide compensation such as for medical expenses.

In addition, the Company may also impose a sanction against the perpetrators of sexual violence in the workplace, which may be in the form of: (i) written warning letter; (ii) transfer/assignment to another department/work unit; (iii) partial or overall reduction/revocation of the perpetrator's authority within the Company; (iv) temporary suspension; and/or (v) termination of employment⁵. In this case, the sanction imposed by the Company shall not prejudice the right of the victim to file a criminal report to the police, and the perpetrators will still be subject to legal sanctions in accordance with applicable laws.

Key Takeaways

Employers should be aware of the provisions stipulated under the MOM Decree and the Guidelines. Companies and businesses alike are advised to:

- establish the Task Force as required by the Guidelines;
- stipulate the prevention of sexual violence in the workplace in the employment agreements, company regulations (peraturan perusahaan), or collective labor agreements (perjanjian kerja bersama);
- establish a clear and accessible anti-harassment policy in the workplace; and
- arrange education/training to all relevant parties in the workplace to ensure an equal level of awareness of sexual violence in the workplace among the stakeholders.

If you have any questions in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

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⁵Under Section IV.B.6.b of the Guideline, it is stipulated that the sanction imposed against the perpetrator must be proportionate with the act of the sexual violence, and based on the provisions stipulated under the employment agreement or company regulation.