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Employment 2023

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Indonesia: Law & Practice

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ABNR Counsellors at Law

INDONESIA



Law and Practice

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ABNR Counsellors at Law was founded in 1967 and is Indonesia's longest-established law firm. ABNR pioneered the development of international commercial law in the country, following the reopening of the Indonesian economy to foreign investment after a period of isolation in the early 1960s. With more than 100 partners and lawyers (including two foreign counsel), ABNR is the largest independent full-service law firm

in Indonesia and one of the country's top three law firms by number of fee earners, giving it the scale needed to simultaneously handle large and complex transnational deals across a range of practice areas. It also has global reach, as it has been the exclusive Lex Mundi (LM) member firm for Indonesia since 1991. LM is the world's leading network of independent law firms, with members in more than 100 countries.

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1. Employment Terms

1.1 Employee Status

Indonesian employment law does not distinguish between blue- and white-collar workers. The only distinction it makes between employees relates to the duration of their employment agreement – ie, whether it is permanent or for a fixed term.

1.2 Employment Contracts

An employment agreement for a specified period (fixed term) must be in writing with a maximum cumulative period of five years (including any extension thereof).

However, an employment agreement for a permanent employee may be made orally or in writing. If the former, the employer must issue a letter to the employee confirming the permanent employment. The appointment letter must contain:

- name and address of the employee;
- starting date of employment;
- type of work; and
- the wage.

The terms and conditions that must be included in an employment agreement include:

- name, address and line of business of the employer;
- name, gender, age and address of the employee;
- title or type of work;
- location of workplace;
- the wage and how it will be paid;
- terms of work, stating the rights and obligations of both employer and employee;
- effective date and validity period of the employment agreement;
- place and date where the employment agreement is made; and
- signatures of the parties.

1.3 Working Hours

Normal working hours are:

- seven hours per day and 40 hours per week for six working days per week; or
- eight hours per day and 40 hours per week for five working days per week.

Flexible working hour arrangements are possible, subject to agreement between the parties.

An employment is considered part-time if the working hours are fewer than seven hours per day and fewer than 35 hours per week. Wages for part-time employees may be calculated on hourly basis.

Overtime work can only be performed on the order of an employer and consent of the employee, which must be given in hard copy or digitally. Overtime can be worked for a maximum four hours per day and 18 hours per week.

Overtime pay is based on hourly rates calculated as $1/173 \times$ monthly wages (basic salary and fixed allowance). Apart from overtime wages, after four hours of overtime or more, employees must be provided with food and beverages with a calorific value of at least 1,400 kcal.

The working hours that exceed the maximum daily and weekly limits are only applicable in specific sectors and for specific positions, including energy and mineral resources, mining, upstream oil and gas, agribusiness and horticulture, and fisheries.

1.4 Compensation

Minimum wages vary between provinces and only apply to employees with service of less than one year with a particular company. Minimum wages are stipulated by the governor of a province based on suggestions and consideration of a wages council. The governor in a province may also set minimum wages for cities or regencies (districts).

There is no mandatory 13th month for employees in the private sector. Further, incentives, bonuses, or reimbursement of work facilities are based on an agreement between an employer and employee, as well as the employer's policy.

No government intervention takes place over compensation, pay increases, etc, apart from the minimum wage stipulation.

Additionally, Indonesian employment law recognises a mandatory religious holiday allowance of one month's wage for employees with 12 months of consecutive service. For those with service periods of one to 12 months, the allowance is paid pro rata. The allowance should be paid at least seven days before the religious holiday.

1.5 Other Employment Terms

Employees are entitled to paid leaves as further explained in **5.2 Sabbaticals**.

No specific regulations exist on confidentiality or non-disparagement under Indonesian employment law. Its applicability depends on the agreement between an employer and employee.

There is no specific limitation on employee liability under the law. Pursuant to the Indonesian Civil Code, employers are liable for losses or damage caused by their employees. However, under the employment law, employers may make a deduction of up to 50% from an employee's salary, to compensate for the loss or damage suffered by the employer.

2. Restrictive Covenants

2.1 Non-competes

Indonesian employment law does not specifically regulate non-compete clauses. Non-compete clauses can be agreed, in practice, by an employer and employee in an employment agreement or termination agreement (as the case may be). Given that there is no specific regulation on non-compete clauses, the validity and enforcement of non-compete clauses

are subject to general contract law. It can be enforced should a breach occur.

2.2 Non-solicits

As with non-compete clauses, Indonesian employment law does not expressly contain non-solicitation clauses. The matter can be agreed upon in an employment agreement or termination agreement (as the case may be). The validity and enforcement of non-solicitation clauses are also subject to general contract law. Non-solicitation can be enforced should a breach occur.

3. Data Privacy

3.1 Data Privacy Law and Employment

There is currently no specific data privacy law or regulation in the employment sphere.

In so far as an individual's private or personal data or information is used, collected, processed, analysed, stored, displayed, sent, shared, destroyed or transferred via electronic media, Law No 27 of 2022 concerning Personal Data Protection (the "PDP Law") as well as Law No 11 of 2008 on Electronic Information and Transactions (the "EIT Law"), as amended by Law No 19 of 2016, applies. The PDP Law and the EIT Law set the principal standard for the handling of general electronic information and data protection.

The PDP Law stipulates that the processing of personal data must be based on a specific lawful basis, including the following:

- consent;
- contractual necessity;
- compliance with a data controller's legal obligations;

- protection of the vital interests of the data subject;
- public interest, for the provision of public services or for the exercise of lawful authority; and
- legitimate interest.

In this regard, depending on the specific purpose of processing, an employer may or may not be required to obtain express consent, which will require further assessment on a case-by-case basis.

An implementing regulation of the EIT Law is Ministry of Communications and Informatics (MOCI) Regulation No 20 of 2016 on Protection of Personal Data in Electronic Systems (the "MOCI Regulation No 20/2016"). Under PDP Law and the MOCI Regulation No 20/2016, every company is required to increase awareness, prevention, and implement organisational steps (internal regulations) to protect the personal data of their employees. This can be done by, among others, conducting training to prevent failure of protection of personal data managed by human resources, and determining the level of security of personal data by its nature and risks.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Expatriates can only be employed under a fixed-term employment agreement, subject to their work permit. Expatriates cannot be employed for multiple positions in the same company, and are prohibited from holding positions that involve responsibility for employment matters. The holding of multiple positions is permissible at different companies, provided the positions are at board of director or commissioner levels.

4.2 Registration Requirements for Foreign Workers

Registration requirements that apply to the use of foreign workers include:

- a written application to the Ministry of Manpower, outlining the:
 - (a) identity of the employer;
 - (b) reasons for use of the expatriate;
 - (c) role or position of the expatriate in the organisational structure;
 - (d) number of expatriates;
 - (e) periods of use of expatriates;
 - (f) identity of local counterpart employees for transfer of knowledge; and
 - (g) annual work plan for deployment of expatriates;
- corporate documents of the employer;
- a draft of expatriate's employment agreement;
- a chart that illustrates employer's organisational structure;
- an undertaking to facilitate Indonesian language lessons for expatriates; and
- the expatriate's personal data.

5. New Work

5.1 Mobile Work

To date, there are no specific regulations and/or restrictions on mobile work in Indonesia. Consequently, whether or not mobile work is to be performed, it would depend on the agreement between the employer and the employee and/or the employer's policies.

Nevertheless, Law No 13 of 2003 on Manpower (as amended) (the "Manpower Law") regulates that an employment agreement must at least include information on the location of the workplace. As such, if mobile work arrangement is

agreed between the employer and the employee, conservatively, it must be specified under the employment agreement.

As for data privacy regulations in relation to mobile work, it will follow the general data privacy regulations, as there are no specific data privacy regulations related to mobile work. Please see **3.1 Data Privacy Law and Employment**.

In terms of occupational safety and health (OSH) in relation to mobile work, there are also no specific regulations and/or restrictions in this regard. General OSH regulations would apply.

Similarly, there are also no specific regulations and/or restrictions for social security in relation to mobile work. Employees on mobile work will also be covered by the Manpower Social Security and the Health Social Security programmes.

What would generally be an issue in mobile work arrangement in relation to OSH and social security would be how to determine work accidents. Under OSH regulations, employers are required to report every work accident that occurs to the authorities. Work accidents will further be covered under the social security programme. Generally, work accidents are:

- accidents that occur due to work and/or at the location of the workplace;
- accidents that occur on the way from home to work or through the usual or a reasonable route;
- accidents that occur while carrying out duties or official business travel on orders and/or for the benefit of the employer or related to work;
- accidents that occur during work hours and break time for doing important and/or urgent work with the permission or knowledge of the employer;

- sickness due to work; and
- sudden death due to work.

With the above definition of work accident in mind, in a mobile work arrangement, it would be difficult to determine a work accident, which will also affect employers' obligation under the OSH regulations.

5.2 Sabbaticals

Indonesian employment law does not specifically recognise the concept of sabbatical leave.

The types of leave that are recognised in Indonesia are as follows:

- Annual leave – employees are entitled to paid annual leave of at least 12 days upon completion of 12 consecutive months of service.
- Long leave – employees may be provided with paid long leave as stipulated in the employment agreement, company regulation, or collective labour agreement. Previously, long leave was only given to employees after six years of continuous service. However, the minimum service period has been removed under the Job Creation Law.
- Menstrual leave – female employees who are in pain during their menstrual period are entitled to two days of paid menstrual leave, for the first and second day of their menstrual period.
- Maternity leave – paid maternity leave lasts for one and a half months before delivery and the same duration after delivery, as estimated by an obstetrician or midwife. In practice, though, most employers will allow maternity leave to be taken as a single period of three months after delivery. Maternity leave may be extended if required, as confirmed in a written statement from an obstetrician or midwife either before or just after delivery.

Paid paternity leave is two days, exclusive of annual leave.

- Leave following miscarriage – female employees who suffer a miscarriage are entitled to one and a half months of paid leave, or a period of leave as recommended in the medical statement issued by the relevant obstetrician or midwife.
- Paternity leave – male employees are entitled to two days of paid paternity leave in the event that their wife gives birth or experiences a miscarriage.
- Prolonged illness – employees may leave due to an illness for a long duration, and a physician's certificate should be presented or required whenever possible. The certificate may be issued by either a private doctor or the employer's doctor. In the event of a prolonged illness, the employee is entitled to the payment of wages in the following amount:
 - (a) first four months: 100% of the wage;
 - (b) second four months: 75% of the wage; and
 - (c) third four months: 50% of the wage;

For each consecutive month exceeding the above period until the employer terminates the employment relationship, the employee continues to be entitled to the payment of their wages, but only 25% of the wage. After this period, the employer may terminate employment by paying the stipulated severance package to the employee.

- Religious obligations – employees are entitled to paid leave due to the performance of a religious obligation (such as performing the Hajj in Mecca). The duration permitted for a religious pilgrimage is determined by the Ministry of Religious Affairs. This obligation to pay wages during leave due to the performance of a religious obligation is applicable

only once for each of the employees during their respective service period.

- Additionally, employees are entitled to paid leave in the event of:
 - (a) marriage of the employee – three days;
 - (b) marriage of the employee's child – two days;
 - (c) circumcision of the employee's child – two days;
 - (d) baptism of the employee's child – two days;
 - (e) death of employee's spouse, parents, in-laws, child or child-in-law – two days; and
 - (f) death of a member of an employee's household – one day.

Other than the above, in practice, employees may also take an unpaid leave based on the employer's policies, at the employer's discretion, or subject to the agreement between the employer and the employee, bearing in mind the principle of "no work no pay" that is recognised under Indonesian employment law.

Thus, sabbatical leave may refer to an extended period of leave such as a paid long leave, unpaid leave, prolonged illness, and/or leave due to religious obligations, with no certain restrictions other than the different leave period as well as the work benefits and the payment of salary (ie paid or unpaid).

5.3 Other New Manifestations

There are currently no possible new manifestations in the field of "new work". It is not foreseen that the government will issue any laws or regulations to this effect.

Even so, companies in Indonesia have introduced the usage of certain new practices, such as desk sharing, clean desk policy, hybrid/remote working, and/or having an office with

open space. As these practices are not regulated, their implementation is subject to each company's internal policies or the agreement between the employer and the employee.

6. Collective Relations

6.1 Unions

Rules related to labour unions are contained primarily in Law No 21 of 2000 on Employees/Labour Unions. In order for a labour union to be recognised, following its establishment, a labour union must:

- register itself in writing with the local office of the Manpower Agency; and
- notify the employer of its establishment and registration number, which the employer is obliged to accept.

A recognised labour union is entitled to:

- negotiate a collective labour agreement with company management;
- represent employees in industrial relations dispute settlements;
- represent employees in manpower institutions;
- establish an institution or carry out activities related to efforts to improve employee welfare;
- carry out other manpower or employment-related activities that do not violate the prevailing law or regulations;
- establish and become a member of a labour union federation; and
- affiliate or co-operate with an international labour union or other international organisation.

6.2 Employee Representative Bodies

Other than labour unions, Indonesian employment law also recognises bipartite co-operation bodies (BCB). Employers that employ more than 50 employees are obliged to establish a BCB.

A BCB functions as a communication and consultative forum between an employer and representatives of a labour union and employees, in order to improve industrial relations.

Members of a BCB comprise representatives of the employer and employees/labour union (with equal composition, and at least six members).

6.3 Collective Bargaining Agreements

Indonesian employment law recognises collective labour agreements as instruments for collective bargaining between a registered labour union or several registered labour unions with an employer, or several employers or employer organisations. Collective labour agreements are valid for two years from execution, extendable for one year. Collective labour agreements must be registered with the Manpower Agency with jurisdiction over the work location.

Collective labour agreements contain the rights and obligations of the employer, labour union and employees, but in more detail. As a general rule, the quality and quantity of the conditions of employment stipulated in the collective labour agreements must not be less beneficial than those regulated under the prevailing laws and regulations.

Although there are some instances where bargaining takes place at industry level, the majority of bargaining over collective labour agreements takes place within companies.

7. Termination

7.1 Grounds for Termination

Reason for termination of employment must be clearly stated in the written notice for termination. An employer may initiate termination of an employee for reasons related to an individual employee or for business-related reasons.

For Reasons Related to an Individual Employee

Employment may be terminated in the following circumstances:

- at the request of the employee for reasons that the employer:
 - (a) assaulted, violently insulted or threatened the employee;
 - (b) persuaded or ordered the employee to act in contravention of the law;
 - (c) did not pay the employee's salary on time for three consecutive months or more;
 - (d) did not perform its obligations to the employee as agreed;
 - (e) ordered the employee to work outside the agreed scope of work; or
 - (f) assigned work that endangered the life, safety, health or morality of the employee, outside the agreed scope of work;
- the existence of a final and binding court decision declaring that the employer did not act as stated in the preceding paragraph, and the employer decided to terminate the employment;
- resignation;
- absence for five consecutive days or more without written notification accompanied by valid evidence, despite being properly summoned by the employer twice;
- violation of the employment agreement, company regulations or collective labour agreements, after having received warning letters;

- detention by the authorities for at least six months;
- prolonged illness or disability due to work accident, for more than 12 consecutive months;
- reaching retirement age; and
- the employee has passed away.

For Business-Related Reasons

Employment may be terminated in the following circumstances:

- merger, consolidation, acquisition or spin-off of the employer, and the employee is not willing to continue the employment, or the employer is not willing to accept the employee;
- redundancy, whether or not followed by closure of the employer's business due to losses or their prevention;
- employer permanently closes down the business owing to continuous losses for two years;
- employer permanently closes down the business owing to force majeure;
- employer is under a state of suspension of payment; and
- employer is declared bankrupt.

There are no different procedures for specific grounds for termination. All terminations will experience the same procedure, including collective redundancy.

7.2 Notice Periods

A written notification of termination must be served by the employer on the employee and labour union (if the concerned employee is a member) at least 14 business days prior to the intended date of termination. The employee may reject the termination in writing, within seven

business days of receipt of the notice of termination.

If, after being notified, the employee rejects termination, settlement must be reached by way of bipartite negotiation. If that fails, it is subject to the industrial relations dispute settlement mechanism under law. These include:

- mediation at the local office of the Manpower Agency or conciliation by a private conciliator; and
- if necessary, court proceedings at the Industrial Relations Court, and, ultimately, at the Supreme Court.

Employees are entitled to compensation upon termination, comprising severance pay, service appreciation pay, and compensation of entitlements. The amount in compensation depends on the length of service and the reason for termination. Employees may be suspended on full pay during a termination process.

7.3 Dismissal for (Serious) Cause

Indonesian employment law recognises termination of employment for reasons of urgency, which must be further detailed in the employment agreement, company regulations or collective labour agreements. Urgent reasons may include serious cause, or even a criminal act.

Unlike regular termination of employment, termination for reasons of urgency does not require a notice of termination or minimum notice period. Employees terminated for urgent reasons will not be entitled to severance pay and service appreciation pay.

7.4 Termination Agreements

Termination agreements are permissible under Indonesian law and, upon execution, must be

registered with the Industrial Relations Court. There are no specific requirements or limitations on the terms of a termination agreement.

7.5 Protected Categories of Employee

There is no specific protection against dismissal for particular categories of employee. However, employees cannot be terminated for the following reasons:

- prolonged illness not exceeding 12 months;
- fulfilment of a state obligation;
- adherence to a religious obligation;
- marriage;
- pregnancy, giving birth, miscarriage or nursing a baby;
- being related by blood or through marriage to another employee in the company;
- establishing, becoming a member or management of a labour union;
- participating in labour union activities outside working hours (or during working hours in accordance with an employment agreement, company regulations or a collective labour agreement);
- reporting the employer to the authorities for crimes allegedly committed;
- differences of opinion, religion, political orientation, ethnicity, colour, race, gender, physical condition or marital status; and
- permanent disability, illness due to work accident, or illness due to occupational disease, for which the period of recovery cannot be ascertained (as attested to by a physician).

8. Disputes

8.1 Wrongful Dismissal

Wrongful dismissal is regarded as termination of employment without valid reasons (as stipulated

under the Job Creation Law) or if the termination is not carried out through proper procedure.

The consequences of wrongful dismissal claims may include:

- payment of the maximum amount of severance package;
- payment of wages during the period between termination and the Industrial Relations Court decision on the case;
- a final and binding court decision being issued; or
- reinstatement of the employee in their previous position.

8.2 Anti-discrimination

Indonesia has ratified ILO Convention No 111 of 1958 on Discrimination in Respect of Employment and Occupation. Thus, discrimination regulated in this Convention is sufficient grounds for an anti-discrimination claim. In other instances, it can encompass:

- discrimination over a job opportunity and equal treatment from an employer;
- discrimination between salary of male and female employees doing the same job; and
- discrimination against an employee with HIV/AIDS.

The burden of proof for anti-discrimination claims follows the general civil procedural law, as it lies with the claimant.

Under the Manpower Law, anyone applying for a job has the same opportunity to obtain the job without being discriminated against on grounds of gender, ethnicity, race, religion, or political orientation, in accordance with the person's interest and capability. Equal treatment also applies to persons with disabilities.

Further, employees have the right to receive equal treatment without discrimination from their employer and employers are obliged to provide their employees with equal rights and responsibilities, free from discrimination on the basis of gender, ethnicity, race, religion, skin colour or political orientation.

Indonesian employment law imposes administrative sanctions on the violation of the discrimination rules. However, it does not specifically stipulate the damages/relief applicable in an anti-discrimination claim. Nevertheless, under general tort provision in the Indonesian Civil Code, a person who commits an unlawful act that causes harm to another person must compensate that person for the damages caused.

Alternatively, if an employee opts to file an employment termination claim with an Industrial Relations Court, they may receive a severance package should the claim be accepted by that court.

8.3 Digitalisation

Electronic court or e-court system has been established in Indonesian courts as a follow-up to Supreme Court Decree No 7 of 2022 on the Amendment to Regulation of the Supreme Court No 1 of 2019 on the Administration of Cases and Legal Proceedings in Courts Via Electronic Means, which stated that the administration and legal proceedings via electronic means shall apply to special civil law cases, including those under the Industrial Relations Court. The regulation of e-court only applies to court proceedings before the Industrial Relations Court and does not regulate further regarding employment disputes undergoing bipartite negotiation, mediation, conciliation, or arbitration.

In practice, the implementation of the e-court proceedings at the Industrial Relations Court of Jakarta is still in development and is generally subject to the discretion of the judges handling the respective cases.

9. Dispute Resolution

9.1 Litigation

Industrial relations disputes are settled via a three-tier mechanism, namely:

- bipartite meeting;
- mediation at the local office of the Manpower Agency or conciliation by a private conciliator; or
- court proceedings at an Industrial Relations Court specifically established to hear and examine industrial relations disputes.

An appeal to the Supreme Court may be filed by any of the parties against a decision of the Industrial Relations Court.

There are no specific rules on class action for an employment dispute, nor has this ever been tested via class action. However, in regular Industrial Relations Court proceedings, there is no limitation on the number of plaintiffs. In practice, it could be hundreds in a mass termination case.

Parties to an industrial relations dispute may act on their own behalf, be represented by attorneys, or by a labour union or an employer's organisation of which they are a member.

9.2 Alternative Dispute Resolution

Arbitration is a possible alternative resolution method for settlement of an industrial relations

dispute. However, specifically, it is only allowed for:

- a dispute on the drafting and amendment of the terms and conditions of work (normally in a collective labour agreement negotiation); and
- a dispute between different labour unions in one company.

As a matter of general Indonesian arbitration law, pre-dispute arbitration agreements are enforceable. Nevertheless, agreements to arbitrate, post-dispute, are also recognised.

9.3 Costs

Attorneys' fees cannot be awarded to the other party; under the civil procedural law, attorneys' fees are borne by those who utilise them.

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