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Indonesia: Law & Practice

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ABNR Counsellors at Law

INDONESIA

Law and Practice

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Contents

ABNR Counsellors at Law is a law firm founded in 1967 and is Indonesia's longest-established law firm. ABNR pioneered the development of international commercial law in Indonesia, following the reopening of the country's 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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Indra Setiawan is a key figure in ABNR's labour and employment practice, and he is listed as a Band 1 lawyer for labour and employment by Chambers Asia-Pacific. He has advised a long list of blue-chip domestic and multinational corporations, as well as Indonesian state-owned enterprises, across the entire spectrum of manpower law. He has in-depth knowledge and extensive experience in developing legal and communication strategies for individual and mass layoffs, and in assisting clients in the execution thereof. He advises clients on the employment aspects of corporate transactions, compliance issues such as workplace fraud, employee transfers and the complex rules governing expatriates and employee benefits.

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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 type of employment agreement (ie, whether it is permanent or fixed-term). The two types of employment agreements differ in various aspects, including the employee's rights and entitlements, the possibility of probation, the duration of employment, the type of work performed by the employee, and entitlements that accrue upon termination.

1.2 Employment Contracts

An employment agreement for a specified period (fixed-term) must be in writing and in Indonesian (or Indonesian should prevail if the agreement is bilingual). It is established based on either the employment period or the completion of specific work. If based on an employment period, the agreement will have a maximum cumulative period of five years (including any extension thereof). If based on the completion of specific work, the agreement must pertain to work that is either completed in a single assignment or is temporary in nature.

However, an employment agreement for a permanent employee may be made orally or in writing. In the former case, the employer must issue a letter to the employee confirming 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 a written 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 the 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

Regular working hours in Indonesia are considered to be:

- 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 consensus between the parties under the employment agreement, employee handbook (also known as company regulation) or collective bargaining agreement.

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

Overtime work can only be performed at the request of the employer and with the employee's consent, which must be provided in either hard copy or digital form. Employees may work a maximum of four hours of overtime per day and 18 hours per week.

Employees subject to overtime work are entitled to receive overtime pay. The amount in overtime pay is based on hourly rates, calculated as 1/173 x monthly wages (basic salary and fixed allowance). In addition to receiving overtime pay, employees must be given sufficient rest opportunities. If employees work overtime for four hours or more, they must also be provided with food and beverages totalling 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.

Exclusion from overtime pay exists for employees in roles such as thinker, planner, implementer or supervisor, whose work hours differ from those of other employees such that they receive a higher wage. These exempted positions must be clearly defined in the employment agreement, employee handbook or collective bargaining agreement.

1.4 Compensation

Minimum wages vary between provinces and sectors of business, and only apply to employees who have been with a particular company for less than one year. The governor of a province stipulates minimum wages based on the suggestions and considerations of a wages council. The governor of a province may also set minimum wages for cities or regencies (districts) under their jurisdiction.

There is no mandatory 13th-month salary 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 with respect to determining the procedure for and amount of compensation, pay increases, etc, apart from the minimum wage stipulation. These matters are left to the discretion of the employer and the terms agreed with the employee.

Additionally, Indonesian employment law recognises a mandatory religious holiday allowance of one month's wages 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 relevant religious holiday (eg, Eid al-Fitr or Christmas, depending on the employee's religion or the employer's policy).

1.5 Other Employment Terms

Employees are entitled to paid leave, as further explained in section **5.2 Sabbaticals**.

No specific regulations exist on confidentiality or non-disparagement under Indonesian employment law; the applicability depends on the agreement between an employer and employee. These obligations are commonly inserted and agreed under the employment agreement or in a separate document (as the case may be).

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 loss or damage suffered by the employer, subject to provisions in the employment agreement, employee handbook or collective bargaining agreement. The deduction can be made from the employee's monthly wages until the loss or damage suffered by the employer is compensated for fully.

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. They can be enforced should a breach occur, according to the dispute resolution terms specified under the agreement and the prevailing Indonesian civil procedural law.

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 as lastly amended by Law No 1 of 2024 (the "EIT Law"), 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 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 the Ministry of Communications and Informatics (MOCI) Regulation No 20 of 2016 on Protection of Personal Data in Electronic Systems ("MOCI Regulation No 20/2016"). Under PDP Law and MOCI Regulation No 20/2016, every company is required to increase awareness and prevention, and implement organisational steps (internal regulations) to protect the personal data of their employees. This can be done by, among other steps, conducting training to prevent the failure to protect personal data managed by human resources, and determining the level of security of personal data based on its nature and associated risks.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Expatriates can only be employed under a fixed-term employment agreement, and such employment is strictly subject to the validity and scope of their work permit issued by the relevant Indonesian government authorities. Expatriates cannot be employed for multiple positions in the same company and are prohibited from holding positions that involve responsibility for employment-related matters.

The holding of multiple positions at different companies is permissible, provided the positions are at the board of director or commissioner level (for a limited liability company); trustee, manager or supervisor level (foundation); or employee level in the context of vocational education and training, the digital economy, or the oil and gas sectors for contractors under co-operation agreements.

No statutory limitations or maximum quotas on the number of expatriates a company may employ. Nonetheless, Indonesian employment law explicitly requires that employers prioritise the hiring of Indonesian nationals, reflecting the government's commitment to support and strengthen the local workforce.

In addition, the company must appoint an Indonesian mentee for each expatriate. The expatriates are required to provide education and training programs to the Indonesian mentees to transfer their knowledge and skills.

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 the 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 the deployment of expatriates;
- corporate documents of the employer;
- a draft of the expatriate's employment agreement;
- a chart that illustrates the 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 depends on the agreement between the employer and the employee and/or the employer's policies.

Nevertheless, the Indonesian employment law stipulates that an employment agreement must at least include information on the location of the workplace. As such, if a mobile work arrangement is agreed between the employer and the employee, conservatively, it must be specified under the employment agreement, employee handbook, or collective bargaining agreement.

Data privacy regulations in relation to mobile work 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, and general OSH regulations would apply.

Similarly, there are also no specific regulations and/or restrictions for social security regarding mobile work. The Manpower Social Security and the Health Social Security programmes will also cover employees engaging in mobile work.

What would generally be an issue in a mobile work arrangement, concerning 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 that are related to work;
- accidents that occur during work hours, or during break times in which important and/or urgent work is being performed 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 would also affect employers' obligation under the OSH regulations.

5.2 Sabbaticals

Indonesian employment law does not explicitly 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, employee handbook 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 Indonesian employment law.
- Menstrual leave – female employees who are in pain during their menstrual period are entitled to two days of paid menstrual leave (ie, the first and second day of their menstrual period).
- Maternity leave – under the Indonesian employment law, paid maternity leave lasts for one and a half months before delivery, and for the same duration after delivery, as estimated by an obstetrician or midwife. In practice, however, 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. In addition, under Law No 4 of 2024 on Maternal and Child Welfare During the First 1,000 days of a Child's Life (the "KIA Law"), maternity leave may be extended for another 3 months in special circumstances, provided that a doctor's certificate supports this.
- 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. Under the KIA Law, when the wife gives birth, the leave may be extended by up to 3 additional days, or as agreed.
- Prolonged illness – employees may leave due to an illness of 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 25% of their wages. 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 the Hajj in Mecca). The duration of leave 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 employee during their respective service period.

Additionally, employees are entitled to paid leave in the event of:

- marriage of the employee – three days;
- marriage of the employee's child – two days;
- circumcision of the employee's child – two days;
- baptism of the employee's child – two days;
- death of employee's spouse, parents, in-laws, child or child-in-law – two days; and
- death of a member of an employee's household – one day.

Other than the above, although not stipulated, in practice, employees may also take unpaid leave based on the employer's policies, at the employer's discretion, or subject to an 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 paid long leave, unpaid leave, prolonged illness, and/or leave due to religious obligations, with no specific restrictions other than those pertaining to the particular leave period as well as work benefits and the payment of salary (ie, paid or unpaid).

5.3 Other New Manifestations

There are currently no new legal developments or anticipated regulatory changes in the field of "new work" in Indonesia. The government is not expected to issue any laws or regulations regarding this matter.

Despite the absence of formal regulation, 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 currently regulated by Indonesian employment law, their implementation is subject to each company's internal policies or mutual agreements between the employer and the employee. This allows employers to have flexibility in having their own work arrangements that best suit their business models, provided such arrangements remain in general compliance with Indonesian employment law.

It is worth noting that, in 2023, the Indonesian Constitutional Court issued Decision No 168/PUU-XII/2023 dated 31 October 2024 ("Decision 168"), which clarifies several provisions of the Indonesian employment law without making any major changes or amendments and suggests that a new employment law will be drafted within two years. In line with this, the proposed amendment has been included in the 2025–2029 National Legislation Program. However, no draft has been released, and no official updates on its progress have been made available to date.

6. Collective Relations

6.1 Unions

Rules related to labour unions are contained primarily in Law No 21 of 2000 on Labour Unions. For a labour union to be recognised, following its establishment, it 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 (subject to certain requirements);
- 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 (BCBs). Employers that employ more than 50 employees are obliged to establish a BCB.

A BCB functions as a communication-and-consultation forum between an employer and representatives of a labour union and employees, 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 bargaining agreements as instruments for collective bargaining between one or several registered labour unions and one or several employers or employer organisations. Collective labour agreements are valid for two years from execution and extendable for one year. Collective labour agreements must be registered with the manpower agency with jurisdiction over the employer's work location.

Collective bargaining 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 the industry level, the majority of bargaining over collective bargaining agreements takes place within companies.

Additionally, despite the similarities, collective bargaining agreements must be differentiated from an employee handbook. A collective bargaining agreement is drafted and agreed upon based on negotiations between the employer and the registered labour union(s). In contrast, the employee handbook is drafted by the employer, taking into account suggestions from employee/labour union representatives, and further approved by the manpower agency with jurisdiction over the employer's work location. Similar to collective bargaining agreements, the employee handbook stipulates the general rights and obligations of the employer and the employee.

A company may maintain only one of these work rules at a time. Collective bargaining agreements will be prepared if there are any labour union(s) in the company that qualify the minimum requirement to initiate a collective bargaining agreement negotiation. An employee handbook must be prepared if the company employs at least 10 employees.

7. Termination

7.1 Grounds for Termination

In principle, the prevailing Indonesian laws discourage termination of employment. Employers, employees, labour unions, and the Indonesian Government are required to make every possible effort to avoid it. If termination seems inevitable despite all of these efforts, it must be effected by following the rules and procedures prescribed in the Indonesian employment law.

Employment termination may not be carried out unilaterally by an employer without stating a reason that has been specified in the prevailing manpower law and regulations, employee handbook, collective labour agreement, or the employment agreement. Consequently, to unilaterally terminate an employee, the employer must be able to identify suitable grounds for termination and prepare sufficient/appropriate justification. The reason for termination of employment must be clearly stated in the written notice for termination (see **7.2 Notice Periods**).

Employment termination may be initiated by either the employer or the 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 because 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;
- employee's voluntary resignation;
- employee's absence for five consecutive days or more without written notification accompanied by valid evidence, despite being properly summoned by the employer twice;
- employee's violation of the employment agreement, employee handbook or collective bargaining agreements after having received warning letters;
- employee's serious violation (gross misconduct);
- detention of the employee by the authorities for at least six months;
- prolonged illness or disability (for more than 12 consecutive months) due to a work accident;
- 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 where 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.

Other than the grounds for termination listed above, an employment relationship can also be terminated by way of mutual agreement (ie, with the consent of both the employer and the employee) via execution of a Mutual Employment Termination Agreement (META) (see **7.4 Termination Agreements**).

Specifically, for a contract employee employed under a definite-term employment agreement, the employer has the right to terminate the employment (before the expiry of the agreement's term) regardless of the grounds for termination. The employer must pay compensation to the employee, the amount of which is equal to the amount of salary that the contract employee would have received until the expiry of the definite-term employment agreement and (only for an Indonesian contract employee) the compensation at the end of the employment, amount of which depends on the employee's length of service.

There are no procedures for specific grounds for termination that differ according to the number of employees that will be terminated (including collective redundancy/mass termination). All terminations will be implemented with the same procedure.

7.2 Notice Periods

If the employer unilaterally terminates the employment, they must provide written notice of termination to both the employee and the labour union (if the employee is a member) at least 14 business days before the intended termination date. For employees in a probationary period, the notice period is seven business days. If the employment agreement, employee handbook or collective labour agreement stipulates a longer notice period, the employer must comply with this specified notice period or make payment in lieu of notice, if permissible. As for termination due to an employee's serious violation (gross misconduct), prior notification is not required; thus, the termination can be effective immediately upon issuance of notice of termination.

The employee may reject the termination in writing, with reasons for rejection, within seven business days of receipt of the notice of termination.

If, after being notified, the employee rejects termination, the employer and the employee will undergo the bipartite negotiation. If the employer and the employee successfully reach a mutual agreement during the bipartite, the parties may settle the issue amicably by entering into a META (see 7.4. Termination Agreements) reflecting the terms of the settlement. However, if that fails, the parties shall undergo the industrial relations dispute settlement mechanism provided under prevailing laws and regulations. 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.

In the event of rejection, the employment relationship will continue until the parties reach a mutual settlement or the issuance of a final and binding court decision declaring employment termination. Consequently, the employer must continue paying the employee's salary until the employment termination date, and the employee must continue to perform their work obligation, unless the employee's suspension is in place.

Employees are entitled to a severance package upon termination, comprising severance pay, service appreciation pay and compensation of entitlements. The amount in the severance package depends on the employee's length of service and the reason for termination. The standard computation to calculate the severance package is stipulated in Article 40 of Government Regulation No 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Work and Rest Hours, and Termination of Employment (GR No 35/2021). This standard computation of the severance package is then increased by the multiplier specified for each reason for termination. Employees may be suspended on full pay during the termination process.

Based on Decision 168, which provides further clarification on how the provisions of the employment law shall be interpreted, the amount of the severance package payable by the employer shall be, at a minimum, in accordance with the relevant provisions of the employment law; by extension, the provisions of GR No 35/2021.

The Indonesian employment law and GR No 35/2021 do not regulate the size of the severance package payable under mutual termination. Therefore, the amount paid is subject to mutual agreement between the employer and the employee. In a META, both parties may also waive the notice requirement, and the employer will make a payment in lieu of notice.

For the termination of a contract employee before the expiry of the contract, the contract employee will not be entitled to a severance package. The employer, however, shall provide compensation in an amount equal to the amount of salary the employee would have received until expiry of the contract's term, unless the termination is for reasons that may cause termination of the agreement as specified in the employment agreement, employee handbook or collective labour agreement. In addition, specifically for an Indonesian contract employee, the employer must also pay compensation at the end of employment, calculated according to the formula stipulated in GR No 35/2021.

External advice/authorisation is not required before an employer terminates an employee or serves written notice. However, the employer must report the termination to the Ministry of Manpower or the manpower agency with jurisdiction over the employee's work location. In the event of mutual termination, the META must be registered with the relevant Industrial Relations Court.

7.3 Dismissal for (Serious) Cause

Indonesian employment law recognises termination of employment for a serious violation (gross misconduct). Unlike regular employment termination, termination for gross misconduct does not require a minimum notice period; thus, the termination can be effective immediately upon issuance of the notice of termination. Employees terminated for gross misconduct will not be entitled to severance pay or service appreciation pay. Instead, they will be entitled to compensation of entitlements and separation pay in the amount regulated under the employment agreement, employee handbook or collective labour agreement.

The notice of termination for gross misconduct can be challenged or objected to by the employee; if challenged or objected to, the employment relationship will continue until both parties reach a mutual settlement or a final and binding court decision is issued declaring the termination of employment. As a result, the employer must continue to pay the employee's salary until the employment termination date, and the employee must continue to fulfil their work obligations, unless the employee is under suspension.

As the law is silent on types of gross misconduct, violations considered gross misconduct must be explicitly stipulated in the employment agreement, employee handbook or collective labour agreements.

For reference, GR No 35/2021 provides the following examples of action that can be classified as gross misconduct (to be further stated in the employment agreement, employee handbook or collective labour agreement):

- committing fraud, theft or embezzlement of company goods or money;
- providing false or falsified information that is detrimental to the company;
- being drunk, consuming intoxicating liquor, or using or distributing narcotics, psychotropic or other addictive substances in the work environment;
- engaging in immoral acts or gambling in the work environment;
- attacking, abusing, threatening or intimidating co-workers or employers in the work environment;
- persuading co-workers or employers to commit acts that are contrary to the law and regulations;
- carelessly or deliberately damaging or placing company property in danger, which causes harm to the company;
- carelessly or deliberately placing co-workers or employers in danger at work;
- revealing or divulging company information that should be kept confidential, except in the interests of the state; and
- committing other acts within a company, punishable by imprisonment of 5 years or more.

Even though it is not expressly required under the Indonesian employment law, if the gross misconduct constitutes a criminal act, the Industrial Relations Court may require a final and binding criminal court decision declaring that the employee has indeed committed a criminal act, as proof of the employee's violation, in relation to their termination.

7.4 Termination Agreements

Termination agreements (or a META, as explained above) are permissible under Indonesian employment laws and regulations, which are usually entered into between the employer and employee if the employment relationship is mutually terminated. The META is usually formed based on the mutual consensus of the employer and the employee, wherein the parties' agreement to enter into a META is done under the principle of freedom of contract provided under the Indonesian Civil Code.

Upon execution, the META must be registered with the Industrial Relations Court having jurisdiction over the META-signing location. A duly executed META is valid and binding upon execution of the META and the payment of the severance package. Registration of META is only a procedural formality.

There are no specific requirements or limitations on the terms of a META, as these will be based on the parties' agreement. In general, the META can stipulate the effective date of termination, the amount in the severance package that the employer will pay to the employee, and even post-employment termination obligations such as non-solicitation, non-compete and confidentiality provisions that the employee shall adhere to for a certain period, provided they do not contravene the law, general principles and public order.

7.5 Protected Categories of Employee

There is no specific protection against dismissal for particular categories of employees. However, employers are prohibited from terminating an employee 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 of or managing a labour union;
- participating in labour union activities outside working hours (or during working hours in accordance with an employment agreement, employee handbook or 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 a 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 Indonesian employment law) or if the termination is not carried out through proper procedure.

The consequences of wrongful dismissal claims may include the following, subject to the consideration and discretion of the court judges on hearing and examining the industrial relations dispute:

- payment of the maximum amount in the severance package;
- payment of wages during the period between termination and the issuance of a final and binding court decision on the case (Industrial Relations Court or Supreme Court decision); and/or
- annulment of the termination and reinstatement of the employee to their previous position.

8.2 Anti-Discrimination

Indonesia has ratified the International Labour Organisation 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 in relation to the 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 Indonesian employment law, anyone applying for a job has the same opportunity to obtain the job without being discriminated against on the 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.

The Indonesian employment law imposes administrative sanctions for violations of the discrimination rules. However, it does not specifically stipulate the damages/relief applicable in an anti-discrimination claim. Nevertheless, under the 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 if the court accepts the claim.

8.3 Digitalisation

An 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 an 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 in Indonesia are settled via a three-tier mechanism:

- 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. The Industrial Relations Court's decision, which is not appealed, and the Supreme Court's decision shall be final and binding on the parties.

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, or be represented by attorneys, by a labour union or by an employer's organisation of which they are a member.

9.2 Alternative Dispute Resolution

The industrial relations dispute settlement mechanism mandates that the employer, employee and labour union (if relevant) first try to settle the dispute through bipartite and/or mediation proceedings, both of which are also considered alternative dispute-resolution avenues, before commencing proceedings in the Industrial Relations Court.

Arbitration is another possible alternative method for resolving an industrial relations dispute. However, it is only allowed for:

- a dispute regarding the drafting or amendment of the terms and conditions of work (normally in a collective labour agreement negotiation); or
- 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. As stipulated under Indonesian Civil Procedural Law, attorneys' fees are borne by those who utilise them.

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