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Indonesia

EMPLOYMENT AND LABOUR LAW

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Indonesia.

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INDONESIA
EMPLOYMENT AND LABOUR LAW

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

In principle, the prevailing Indonesian labor law and regulations discourage termination of employment. Employers, employees, labor 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 Law No. 13 of 2003 on Manpower, as amended by Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation ("Labor Law"), Law No. 2 of 2004 on Industrial Relations Dispute Settlement ("Industrial Relations Dispute Settlement Law"), and Government Regulation No. 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Work and Rest Hours, and Termination of Employment ("GR 35").

According to the provisions of the Industrial Relations Dispute Settlement Law, employment can be terminated by virtue of a mutual agreement between the employer and the employee as a mutual employment termination agreement ("**META**"), regardless of the parties' reasons and considerations in reaching the mutual agreement. If the employer wishes to terminate an employee, termination must be for a reason specified in the prevailing labor law and regulations, Company Regulation ("**CR**"), Collective Labor Agreement ("**CLA**") or employment agreement.

Article 154A of the Labor Law, in conjunction with Article 36 of GR 35, specifies the following reasons for termination of employment:

a. The company has entered into a merger, amalgamation, acquisition, or separation and the employee is not willing to continue employment, or the company is not willing to accept the employee. The employee is entitled to request termination if the corporate action as mentioned above causes decrease the employee's wages and benefits;
b. The company implements: 1) measures to improve business efficiency, but this is followed by closure of the company; or 2) business efficiency measures not followed by closure, but the company experiences losses or seeks to prevent them;
c. Dissolution of company as the company experiences losses for 2 consecutive years;
d. Dissolution of company due to force majeure;
e. The employer is placed under suspension of payments procedure;
f. The employer is declared bankrupt;
g. An employee requests termination of employment on the grounds that the employer has:
    1. persecuted, insulted, or threatened the employee;
    2. persuaded or ordered the employee to act in contravention of the applicable law and regulations;
    3. not paid the employee's salary in a timely manner for 3 consecutive months or longer;
    4. not fulfilled promises made to the employee;
    5. ordered the employee to work beyond the agreed scope of work; or
    6. ordered the employee to do work that is injurious to the employee's life, safety, healthy, or dignity, and such work is not specified in the employment agreement.
h. An industrial relations court decision declares that the employer did not commit an act referred to in point (g) above but it decides to terminate the employee anyway;
i. The employee resigns voluntarily;
j. The employee is absent from work for 5

consecutive business days or more without written notification supported by valid evidence, and has been summoned to work twice by the employer properly, and in writing;

k. The employee violates the provisions of the employment agreement, CR or CLA, and has been served with first, second, and third written warnings consecutively. Each warning is valid for up to 6 months unless stipulated otherwise in the employment agreement, CR, or the CLA;
l. The employee was unable to work for 6 months due to being held in police detention for an alleged criminal offense;
m. The employee suffers long-term sickness or disability due to a work accident and could not work for more than 12 months;
n. The employee has reached pensionable age; or
o. The employee has passed away.

GR also stipulates an employer's right to terminate an employee due to expiry of a definite-term employment contract, or if the employee commits an act of gross misconduct.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

Indonesian labor law and regulations do not specifically regulate the procedure for mass employment termination. Therefore, mass termination should follow the procedure for individual termination.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

The Labor Law and GR 35 only cover termination for reasons of merger, consolidation, acquisition, or spin-off of the employer that causes an employee to terminate employment, or the employer to reject continuation of employment.

If the sale is only related to one or part of the businesses managed by the employer, the above reasons for termination will not be applicable. If the business sale constitutes sale of a majority of the shares of a company (share acquisition), the employees can be terminated if the employer no longer intends to continue their employment, or if the employees opt not to continue working for the buyer, for which employees are entitled to a severance package.

If the business sale is performed for the employer experiencing losses, or to prevent losses, the employer may terminate the impacted employees for reasons of business efficiency. For efficiency due to the employer experiencing losses, the employer must be able to prove the losses via internal or external financial audit reports. With regard to efficiency to prevent losses, the employer must be able to prove that there is potential for reduced productivity or profit that will impact the employer's operations. GR 35 does not provide examples of proof that must be produced by the employer. This allows each employer to self-evaluate their circumstances and provide proof that is relevant to their business and operations.

In practice, employees who are affected by a business sale will either be offered: (a) a new position in the seller's company, (b) transfer of employment to the purchaser (new owner of the business) or (c) mutual termination with the seller.

4. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

GR 35 stipulates that if an employer wishes to terminate an employee, it must serve on the employee and the labor union (*if the employee is a member*) written notification of its intention and the reason(s) for termination, at least 14 business days before the intended termination date, or 7 business days if termination is during a probationary period. The employee may reject the termination by serving on the employer a letter stating the employee's rejection with reasons within 7 business days of receiving notice of termination.

For employee resignation, written notice must be submitted by the employee at least 30 days before the last day of employment.

The Labor Law and GR 35 do not specify categories of employee entitled to a longer notice period. However, if the employment agreement, CR or CLA requires a longer notice period, the employer or the employee must comply with the required notice period.

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

As described in our response to Question No. 4, GR 35 requires an employer intending to terminate to serve on the employee a written notice of termination at least 14 business days before the intended date, or 7 business days if the termination is to be made during the probationary period. The above notice requirement is mandatory and cannot be waived, except for termination for the following reasons where an employer is not required to serve notice of termination on the employee or their legal heirs:

If the employee:

a. has voluntarily resigned;
b. is contracted to work for a definite period and the period has expired;
c. has reached retirement age;
d. was terminated due to gross misconduct; or
e. has passed away.

If the employment agreement, GR or CLA stipulate a longer notice period and the employer's right to make payment in lieu of such notice, the notice period can be shortened to 14 business days (or 7 days if termination is during a probationary period), while a payment can be made in lieu of the notice period that remains.

Notwithstanding the foregoing, if the employer and the employee agree to mutually terminate their employment relationship by signing a META, both parties may waive the notice requirement and the employer will make payment in lieu of notice.

6. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

Yes, Indonesian labor law and regulations allow an employer to require an employee to take garden leave (*suspension of employment*) during termination process, provided that the employer pays full employee salary and benefits during the garden leave.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Yes, an employer must follow a prescribed procedure to achieve effective termination of the employment relationship. Procedures for termination of employment are stipulated in the Labor Law, the Industrial Relations Dispute Settlement Law, and GR 35.

GR 35 stipulates that if employment termination seems inevitable, the employer must serve on the employee and the labor union (*if the employee is a member*) written notification of its intention and the reason(s) for it at least 14 business days before the intended termination date, or 7 business days if termination is during the probationary period.

If the employee receives notification and does not object to it, the employer must report the proposed termination to the Ministry of Manpower or Manpower Office with jurisdiction over the employee's work location. On the other hand, should the employee object to termination, the dispute must be resolved through bipartite negotiation between the employer and the employee (or the labor union). The employee's objection to the proposed termination must be conveyed to the employer in writing with reasons, within 7 business days of receiving notice of termination.

The main purpose of a bipartite negotiation is to resolve a termination of employment dispute. If the employer and employee agree to mutually terminate their employment, it is formalized as a META. The executed META is then registered with the relevant Industrial Relations Court. A duly executed META is valid and binding upon its execution and the payment of severance package. Registration of META is purely a procedural formality.

Should the employer and employee fail to reach agreement, the employer must undergo the termination of employment procedure stipulated in the Industrial Relations Dispute Settlement Law: mediation at the local Manpower Office and court proceedings at the Industrial Relations Court or, in certain cases, the Supreme Court.

Mediation will be carried out with the assistance of a Manpower Office mediator. If it is successful, the parties should execute a META. If not, the dispute may be submitted to the relevant and competent Industrial Relations Court, and ultimately, the Supreme Court, for termination approval. The Industrial Relations Court or Supreme Court may either: (a) approve the termination proposal and determine the amount of severance package; or (b) reject termination and order the parties

to continue the employment.

Termination of employment not mutually agreed between the employer and the employee (*an employee is deemed to have agreed to termination if they do not submit written rejection of the termination notice within the specified time limit*), or made without the required court approval, will be deemed null and void by operation of law.

Notwithstanding the foregoing, please be advised that regardless of an employer's stated grounds for terminating an employee, the relationship between the employer and the employee can be at any time terminated by way of mutual agreement, with the consent of both parties.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

If the employer does not follow the prescribed procedure, the validity of the employment termination may be challenged by the terminated employee. In the event of challenge, if the court discovers that employment termination was not carried out in accordance with the prescribed procedure, the court will declare that the termination is null and void and order the employer to reinstate the employee to his/her previous position.

9. How, if at all, are collective agreements relevant to the termination of employment?

We assume that "collective agreements" means the CLA or CR: the regulation applied within the company that stipulates the rights and obligations of the company and the employees, their conditions of service, and rules of conduct. The CR is drafted by the company and ratified by the Manpower Office, whilst a CLA is an agreement by and between the Labor Union and the company, and is subsequently registered with the Manpower Office.

The CR or CLA may regulate procedure for employment termination as well as the calculation of severance package. The provisions, however, should not violate the employment termination procedure as stipulated under the labor law and regulations. For example, if the CR stipulates a formula to calculate severance package and it is more beneficial for employees than the one stipulated under the labor law and regulations, it will prevail.

10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

No, the labor law and regulations do not require an employer to obtain permission from or inform a third party before initiating employment termination. Please be advised, however, that there are reporting or registration requirements following the employment termination.

If an employee receives a notice of employment termination and does not object to it, the employer must report the termination to the Ministry of Manpower or Manpower Office with jurisdiction over the employee's work location. The report is purely a procedural formality and does not affect the validity of the termination.

If the employer and employee agree to mutually terminate their employment relationship by signing a META, it must be registered with the relevant Industrial Relations Court. A duly signed META is valid and binding upon its signing and the payment of severance package. Registration of a META is purely a procedural formality.

If the employee objects to the notice of employment termination or refuses to sign a META, termination will necessitate court approval. Otherwise, employment termination will be deemed null and void by operation of law.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

The Labor Law guarantees protection from discrimination for any reason. All employees are entitled to fair treatment by an employer. The Labor Law also prohibits an employer from terminating an employee for discriminatory reasons, such as a difference in belief, religion, political orientation, ethnicity, colour, race, group, sexual orientation, physical condition or marital status. The Labor Law also regulates that an employee may apply for termination of employment to the relevant institution if the employer has physically abused, insulted or threatened the employee.

12. What are the possible consequences

for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

In the event of alleged discrimination or harassment by an employer, an employee may submit a request for termination of employment to the Industrial Relations Court and, ultimately, the Supreme Court. A discriminatory act by an employer might also lead to administrative sanction of a rebuke, warning letter, limitation or suspension of business activities, revocation of approval or registration, a temporary halt to part or all of the production machinery, or revocation of business permit.

The Labor Law does not specifically stipulate the damages/relief applicable in an anti-discrimination claim. Nevertheless, under a general tort provision in the Indonesian Civil Code ("**ICC**"), a person who commits an unlawful act that causes harm to another person must compensate that person for the damage caused. In addition, should the employer's discrimination and harassment be classified as a criminal offense, it might also lead to criminal sanction.

In the context of employment termination, if an employee is terminated for discriminatory reasons, the employee may challenge the validity of the employment termination. If the discrimination can be proven, the employment termination will be declared null and void, and the employer will be ordered to reinstate the employee to their previous position.

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

According to Article 153 of the Labor Law, an employer is prohibited to terminate an employee because the employee:

a. could not perform work due to illness, confirmed by a doctor, for a period of less than12 consecutive months;
b. could not perform their work as they had to fulfil state obligations in accordance with applicable law and regulations;
c. has engaged in acts of religious observance;
d. gets married;
e. becomes pregnant, experiences a miscarriage, or is breastfeeding;
f. has blood ties or marital ties with the other employee of the employer;
g. establishes, becomes a member or administrator of a labor union, and carries out labor union activities outside working hours, or during working hours as agreed by the employer or in accordance with the provisions stipulated in the employment agreement, the CR, or the CLA;
h. lodges a criminal report/complaint against the employer with the authorities over criminal action allegedly committed by the employer;
i. has a different understanding, religion, political orientation, race, skin colour, community group, gender, physical condition, or marital status; and/or
j. suffers permanent disability, sickness due to working accident, or sickness due to an employment relationship as confirmed by a doctor, recovery from which could not yet be confirmed.

Employment termination carried out for one of the above reasons shall be deemed null and void, and the employer is obligated to reinstate the employee to their previous position.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

In general, Law No. 13 of 2006 on Protection of Witnesses and Victims protects an employee who becomes a witness in a case (in the public interest). The law stipulates that anyone who causes a witness, a victim or their family to lose their job because the witness or victim testifies in a court proceeding can be held criminally liable. Sanctions of imprisonment and fines might be imposed on the person.

Specifically, under the Labor Law, if an employee lodges a criminal report/complaint against the employer to the authorities with regard to criminal actions allegedly committed by the employer, the employer is prohibited from terminating the employee for that reason.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less

favourable terms?

In the event of financial difficulties, if the employer needs to perform business efficiency due to experiencing losses, or to prevent losses, the employer may terminate its employees for reasons of business efficiency. For efficiency due to the employer experiencing losses, the employer must be able to prove the losses via internal or external financial audit reports. As for efficiency to prevent losses, the employer must be able to prove that there is potential for reduced productivity or profit that will impact the employer's operations. In this employment termination, the employees will be entitled to receive severance package. There is no provision under Indonesian labor law and regulations prohibiting the employer from rehiring the employees.

Alternatively, the employer and the employee may mutually agree on lower wages or less favourable terms by making and entering into an amendment of employment agreement. To implement this approach, however, the employee's consent is crucial.

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions?

Indonesian labor law and regulations are silent on the use of artificial intelligence. It is possible that an employer, at its own discretion and consideration, decides not to recruit new employees or to recruit fewer employees if some parts of the employer's operations or activities can be completed with the use of artificial intelligence. Specifically on employment termination, the use of artificial intelligence is not specified as a valid reason for an employer to terminate. Therefore, an employer cannot use this reason to terminate its existing employees.

17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

In the event of termination of a permanent employee, the employer is obliged to pay a severance package, which comprises: (a) severance pay; (b) service appreciation pay; and (c) compensation of entitlements. The calculation of each must be made by using the formulas stipulated under GR 35 as a minimum, the amount of which will vary depending on the reason for termination, length of service, latest salary, fixed allowance, and balance of annual leave. The employer may opt to use its own formula as regulated in the employment agreement, CR or CLA, provided that the formula is more beneficial to the employee than that stipulated in GR 35.

In the event of termination of a definite-term employee, the employer must compensate the employee in an amount equivalent to the remaining salary of the employee until expiry of the definite-term employment agreement. On the other hand, this payment obligation shall also apply for the employee if the termination is initiated by or based on the request of the employee. This payment obligation, however, can be waived and will not be applicable for certain conditions and events as stipulated under the employment agreement.

In addition, the employer is also obligated to pay an additional compensation, which will be calculated proportionately, based on the employee's period of service. The calculation formula for this additional compensation is:

a. 1 month's salary if an employee has worked for 1 year;
b. If less or more than 1 year, proportionately as follows: (years of service (*in months*)) ÷ 12) × 1 month salary (basic salary and fixed allowances (if any)).

The additional compensation, as mentioned above, is not applicable to foreign employees.

18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Indonesian law (ICC) recognizes the concept of freedom of contract and provides that an agreement validly entered into by the parties shall bind the parties as if it were a statute (also known as *pacta sunt servanda*). The labor law and regulations also allow the employer and employee to reach a mutual agreement to terminate their employment, and also to determine the provisions that will apply with regard to that termination. The mutual agreement will be formulated in the form of a META.

The META can set forth all of the matters mutually agreed to by the employer and the employee upon the successful conclusion of the bipartite meeting, including the amount of severance package, waiver of notice

period and payment in lieu of notice, clauses on confidentiality, non-competition, non-solicitation, effective termination date, and release of claims by the employee.

The Labor Law and GR 35 do not stipulate the amount of severance package payable under mutual termination. Therefore, the amount is a matter for mutual agreement between the employer and employee.

19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Yes, it is possible, provided it is agreed by the employer and the employee in the employment agreement, a separate non-competition agreement, or the META. It can be enforced should a breach occur.

The Labor Law is silent on non-competition obligations on employees and does not prescribe whether such an obligation could be inserted into an employment agreement or the META. The legality of non-competition obligations is generally regulated under the ICC.

In general, Articles 1338 and 1337 ICC allow parties to a contract to agree on matters they wish to be bound by, to the extent that such provisions do not contravene the law, as well general principles or public order (*principle of freedom of contract*). Consequently, the employer and employee should not be prevented from agreeing to include a non-competition clause in an employment contract or META, provided it does not contravene the law, general principles and public order.

Article 1601 paragraph (x) ICC provides that an employer may restrict an employee from performing work in a certain manner after their employment with the employer has ended, provided that the agreement is made in writing. Court may nullify all or part of the agreement if a claim is made by an employee, on grounds that, after comparison between the interests of the employer to be protected and those of the employee, the employee has been unfairly disadvantaged by such agreement.

Article 1601 paragraph (x) ICC further stipulates that the employer cannot enforce its rights under the written agreement if: (a) the employer ends the employment relationship in a way that violates the law; (b) the employer, deliberately or due to the employer's fault, has provided urgent grounds for the employee to terminate their employment; or (c) if a court, at the request or pursuant to a claim by the employee, has declared termination of the employment agreement for urgent reasons given to the employee caused intentionally by or due to the fault of the employer.

Based on the foregoing, we may conclude that a challenge to the validity of a non-competition clause may be made on grounds that the clause contravenes the law, general principles and public order, and in particular, that the employee has been unfairly disadvantaged by an agreement that contains a non-competition clause. To avoid this, we suggest that the agreement clearly stipulate the validity period of the non-competition clause, the territory, the list of prohibited actions, as well as the types of company deemed competitors. The employer may also consider providing financial compensation during the validity period of the non-competition clause.

Moreover, if the clause is to be included in the employment agreement, it needs to survive termination of that agreement. This is to avoid a misunderstanding that all clauses of the employment agreement are terminated because the employment relationship itself has ended.

20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes, based on the provisions of Article 1601 ICC, an employer may require an employee to maintain the confidentiality of information relating to the employer after employment termination, provided it is agreed by both employer and employee in an employment agreement, separate non-disclosure agreement, or the META.

If the confidentiality clause is to be included within an employment agreement, it must survive termination of the agreement. This is to avoid a misunderstanding that all clauses of the employment agreement are terminated because the employment relationship itself has ended.

21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

The Labor Law is silent on this matter. Therefore, provision of a reference would be at an employer's absolute decision.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

The most common difficulty faced by employers when terminating employment is inflexibility and the time to complete termination in Indonesia, especially in cases that involve employee violation.

For a permanent employee, even though an employee may have clearly violated the provisions of the employment contract, CR or CLA, before termination, the employer must serve: (i) first, second, and third written warnings consecutively or (ii) first and final written warnings, on the employee. Each warning is valid for up to 6 months unless stipulated otherwise. GR 35 allows termination with immediate effect for gross misconduct by the employee. This provision, however, has not yet been tested in court, so its implementation is still unclear.

If the employer terminates an employee by way of serving a termination notice, the employee may still reject it. In the event of rejection, termination must follow the procedures stipulated in the Industrial Relations Dispute Settlement Law: bipartite mediation at the local Manpower Office, and court proceedings at the Industrial Relations Court or, in certain cases, the Supreme Court.

If the employee's violation is considered a criminal offense (embezzlement, fraud, theft, etc.), the Industrial Relations Court may require a final and binding criminal court decision as proof of the employee's violation.

To mitigate the above risks, we suggest that the employer should: (a) have a valid CR or CLA, which clearly and expressly stipulate the reasons of employment termination, which have not yet been specified under the Labor Law and GR 35; and (b) have HR Team understanding the employment termination procedures and implementation, so that the employer can correctly interpret the regulations and implement the employment termination properly.

23. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

Upon the enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, which amends and eliminates general provisions on employment termination previously stipulated under the old Labor Law, as well as GR 35, which stipulates in detail the employment termination procedures, it is advisable for companies to amend their CR or CLA, as well as their employment agreement templates for new employees, to comply with this new law and its implementing regulations.

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