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Indonesia

EMPLOYMENT & LABOUR LAW

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

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INDONESIA
EMPLOYMENT & LABOUR LAW

1. What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

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.

Several measures were taken in response to the covid-19 pandemic in Indonesia, but were considered purely an emergency response, and were not permanent. The Ministry of Manpower has allowed employers, whose business activities are affected by the government's social restriction policies, to make adjustments to its employee's salaries and the manner of salary payment, with employee consent. Employers are also permitted to pay in instalments or postpone the payment of mandatory religious holiday allowance.

In addition, the government has also implemented several measures to protect employee income by providing:

a. direct cash assistance or a salary subsidy of IDR 600,000 for employees in the private sector whose monthly salary is less than IDR 5 million and are registered with BPJS Ketenagakerjaan; and
b. waiver of payment of income tax for employees, subject to certain criteria.

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 Law No. 11 of 2020 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**").

Article 154A of the Labor Law, in conjunction with Article 36 of GR 35, specifies reasons for employment termination, but covid-19 pandemic is not one of them. Consequently, an employer may not terminate employees solely due to the occurrence of covid-19. The government has also issued regulations to prohibit employers from terminating or reducing the entitlements of employees who quarantine themselves when they contract the covid-19 virus.

Notwithstanding the foregoing, employment may be terminated in the event of company dissolution due to force majeure, company dissolution as it experiences losses for 2 consecutive years, for reasons of business efficiency, or force majeure that does not cause company dissolution. If the company can prove, with strong evidence, that its dissolution or downsizing for reasons of business efficiency is inevitable as it has suffered losses due to the covid-19 pandemic, or the company can prove that the pandemic is force majeure, it may terminate employees.

2. Following the covid-19 pandemic, have new employee rights or protections been introduced in respect of flexible or remote working arrangements?

In order to prevent the spread of covid-19, the central and local government have issued a variety of regulations and policies to limit public activities in Indonesia. The government has required employers to limit employee attendance at their premises (to 25%, 50%, 75%, or 100% of full attendance), depending on the covid-19 transmission level in their locality at the time. The government has also urged and encouraged employers to implement a work-from-home policy for its employees.

Employers must manage and determine the work schedule of their employees (*some may work from home, the others at the office*), provided employee attendance does not exceed the laid-down limits. Employers cannot not oblige employees that contracted

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covid-19 to work in the office.

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

Yes. An employer is prohibited from terminating an employee unilaterally without stating 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;
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.

Notwithstanding the employer's obligations mentioned above, the following reasons for termination do not require an employer to inform employee(s) or their legal heirs, of termination 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.

4. 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, termination should follow the procedure for individual termination as provided under the Labor Law and GR 35. However, should the affected employee be a union member, notice of the termination must be addressed to the union.

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5. 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 are silent in relation to employment termination due to a business sale, as they 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 its continuation. Therefore, if the sale is only related to one or part of the businesses managed by the company, the above reasons for termination will not be applicable.

If the business sale is performed due the employer experiencing losses, or to prevent losses, the employer may terminate the impacted employees for reasons of business efficiency. For termination due to the employer experiencing losses, the employer must be able to prove the losses via internal or external financial audit reports.

To terminate for reasons of 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 (the primary requirement for this type of termination). 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 attached to the business 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 by the seller.

6. 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?

In accordance with GR 35, 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). For employee resignation, written notice must be submitted by the employee at least 30 days before the last day of employment.

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

7. 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. 6, GR 35 requires an employer intending to terminate to serve on the employee 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 provision is mandatory and cannot be waived. Upon receiving the notice, the employee is entitled to object to the proposed termination within 7 business days.

If the employment agreement stipulates 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 mutual employment termination agreement ("**META**"), both parties may waive the notice requirement and the employee will make payment in lieu of notice.

8. 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 the employer pays full employee salary and benefits during that garden leave.

9. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the

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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.

In principle, the prevailing Indonesian laws 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, GR 35 stipulates that 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 and 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 the employment relationship, 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 execution of META and the payment of severance package. Registration of a 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 with 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. The employer should not directly ask an employee to resign, as enforced resignation is explicitly prohibited by 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 terminated by way of mutual agreement, with the consent of both parties.

10. If the employer does not follow any prescribed procedure as described in response to question 8, 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 null and void and order the employer to reinstate the employee to his/her previous position.

11. 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 stipulated under the labor law and regulations. For example, if the CR

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stipulates a formula to calculate severance package, and is more beneficial for employees than the one stipulated under the labor law and regulations, it will prevail.

12. 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 does not require an employer to obtain permission from or inform a third party before initiating termination.

Please be advised, however, that if an employee receives a notice of employment termination and does not object to it, the employer must still report it 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 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.

13. 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 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.

14. 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 ICC, a person who commits an unlawful act that causes harm to another person must compensate that person for the damages caused. In addition, should the employer's discrimination and harassment be classified as a criminal offense, it might also lead to criminal sanction.

15. 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, the 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

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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
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.

16. 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.

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 fixed-term employee, the employer must compensate the employee in an amount equivalent to the remaining salary of the employee until expiry of the fixed-term employment agreement. The obligation shall apply unless termination is for specified reasons under the fixed-term employment agreement, CR, or CLA (e.g., misconduct).

In addition, an employer is also obligated to pay additional compensation, which will be calculated proportionately, based on the employee's period of service. The calculation formula for 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 (base salary and fixed allowances (if any).

(The latter compensation 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.

The Indonesian Civil Code ("**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 the employment, and also to determine the provisions that will apply with regard to that termination.

In light of the foregoing, regardless of the employer's stated grounds for terminating the employee, the relationship between the employer and the employee can be terminated by way of mutual agreement and consent of both parties. The provisions of the validly executed META shall apply and bind the employer and the employee as if it were a statute.

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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 in 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 in 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.

Please note, however, that a challenge to the validity of the 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. 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.

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) of ICC provides that an employer may restrict an employee from performing work in a certain manner after their employment with the employer has ended, and:

a. the agreement is made in writing;
b. a Court nullifies 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 the employer ends the employment relationship: (i) in a way that violates the law; (ii) deliberately, or due to the employer's fault, has provided urgent grounds for the employee to terminate their employment, or (iii) if a court, at the request or pursuant to a claim by the employee, has declared the employment agreement terminated for serious violations alleged by the employee and caused intentionally by or due to the action of the employer.

As provided under Article 1601 (x) ICC, an employee may claim to be unfairly disadvantaged due to a non-competition clause and consequently request that the court nullify it. To the best of our knowledge, the definition of "unfair disadvantage" suffered by an ex-employee has yet to be tested in an Indonesian Court. Also, limited case law confirms court views on whether non-competition clauses conform with the law, general principles, and public order.

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

Yes, 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

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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 an employee violation.

For a permanent employee, even though an employee may have clearly violated the provisions of the employment contract, CR, or the 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 a serious violation 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 can be 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.

In addition to the above, if an employer wishes to terminate employment due to a violation by the employee, the employer must still pay a severance package consisting of half severance pay, full1 time of service appreciation pay, and compensation of entitlements.

23. Are any legal changes planned that are likely to impact on 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?

The Indonesian Government has issued Law No. 11 of 2020 on Job Creation, which amends and eliminates general provisions on termination previously stipulated by the Labor Law. The implementing regulations will specify the general rules provided under the Job Creation Law. It is advisable for companies to prepare amendments to their CR or CLA, as well as their employment agreement templates for new employees, in accordance with the new law and its implementing regulations.

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