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The Global Employer: Indonesia 2021

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Indonesia Guide 2021

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**Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law*

About the guide

This guide is intended to provide employers and human resources professionals with a comprehensive overview of the key aspects of Indonesian labor law. It covers the entire life cycle of the employment relationship from hiring through to termination, with information on working terms and conditions, family rights, personnel policies, workplace safety and discrimination. The guide links to our global handbooks, which include information for Indonesia on immigration and data privacy. The guide also contains information on the employment implications of share and asset sales.

Save where otherwise indicated, law and practice are stated in this guide as at September 2021.

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1 Overview

1.1 General overview

Labor matters are very highly regulated in Indonesia and many of the requirements are very different from those found in other countries. In addition, labor laws and regulations in Indonesia are generally very pro-employee and most Indonesian employees are aware of their rights and entitlements.

1.2 General legal framework

1.2.1 Sources of law

The sources of labor laws in Indonesia are widely dispersed among national laws and regulations, presidential decrees, ministerial decrees and circular letters. Some of these sources are relatively recent, while others are quite old, with some even having been issued during the colonial period.

In an effort to synthesize the diverse body of laws and regulations on the protection of employees, the Indonesian government enacted a labor law in 2003, which was amended in 2020 ("**Labor Law**"). The Labor Law contains a significant number of provisions and also combines a large portion of the various previous labor laws and regulations into one single main law. Some previous laws do remain effective, however, to the extent that they do not contravene the Labor Law.

In general, labor laws and regulations are applicable to all "employees," regardless of their position (i.e., whether they are managerial or non-managerial employees) or their status (i.e., whether they are indefinite-term or fixed-term employees). However, there are some provisions that exempt certain groups of employees from receiving certain benefits, e.g., employees in managerial positions are not entitled to overtime.

1.2.2 Collective labor agreements

If an employer has a labor union, it may have a collective labor agreement (CLA). A CLA is an agreement resulting from the negotiations between a union or several unions and the employer. A CLA must contain the rights and obligations of both parties and be registered with the relevant office of the Ministry of Employment (MOE).

The Labor Law does not require a company that has a labor union to have a CLA in place. Although there is no provision in the Labor Law or labor regulations in Indonesia that prohibits an employer from proposing a negotiation of a CLA, if an employer receives a request from a union to negotiate a CLA, the employer must entertain such request if:

- the union is registered in accordance with the law on labor unions ("**Labor Union Law**")
- the union fulfills the requirements set out under the Labor Law

The Labor Law requires that each company can only implement one CLA, which is applicable to all employees in the company. However, if a company has branches in multiple locations, it is possible to have one "master" CLA, containing general provisions that are applicable in all branches, and individual "derivative" CLAs, containing provisions that specifically apply to particular branches according to the conditions in the relevant branch.

Labor unions and CLAs are more common in companies with a large number of employees. This is because the larger the numbers, the more likely it is that employees will decide to unionize and request that the company negotiate a CLA.

1.2.3 Court framework

The Indonesian legal system is a civil law system. In a civil law system, the courts are not bound by previous decisions of other courts. Courts in Indonesia have wide discretion to determine cases brought before them.

1.2.4 Litigation considerations

The law on the settlement of industrial relations disputes ("**IR Disputes Law**") recognizes four types of disputes as follows:

- **dispute over rights**, i.e., a dispute that arises because certain rights are not fulfilled due to discrepancy in the implementation or interpretation of the laws and regulations, employment agreement, company regulations or CLA
- **dispute over interests**, i.e., a dispute that arises in an employment relationship due to a difference of opinion in the drafting and/or amendment of the terms of work stipulated in the employment agreement, company regulations or CLA
- **termination of employment dispute**, i.e., a dispute that arises due to a difference of opinion in the termination of an employment relationship conducted by a party
- **inter-union dispute**, i.e., a dispute between one labor union and another labor union within one company, due to discrepancy in the interpretation of membership requirements, implementation of rights, and labor union obligations

The types of settlement processes in industrial relations disputes under the IR Disputes Law are the following:

- bipartite negotiations, i.e., negotiations between the employee/labor union and the employer/company to settle an industrial relations dispute
- mediation, i.e., settlement of disputes through deliberation mediated by a neutral mediator who is an official of the local office of the MOE
- conciliation, i.e., settlement of disputes through deliberation conciliated by a neutral conciliator who is not an official of the MOE or its local offices, but is registered as a third-party conciliator at the MOE or its local offices
- arbitration, i.e., settlement of disputes in which the disputing parties agreed in writing to an out-of-court settlement by submitting the dispute to an arbitrator (a list of arbitrators are available at the MOE or its local offices), whose award is final and binding
- court proceedings at the Industrial Relations Court ("**IR Court**")

Not all types of industrial relations disputes can be settled through all methods of settlement, although all disputes must first go through the bipartite negotiations process. The following chart explains the types of disputes and the applicable methods of settlement:

No.	Types of disputes	Settlement methods				
		Bipartite negotiations	Mediation	Conciliation	Arbitration	IR Court
1.	Dispute over rights	✓	✓	-	-	✓

No.	Types of disputes	Settlement methods				
		Bipartite negotiations	Mediation	Conciliation	Arbitration	IR Court
2.	Dispute over interests	✓	✓	✓	✓	✓
3.	Termination of employment dispute	✓	✓	✓	-	✓
4.	Inter-union dispute	✓	✓	✓	✓	✓

Set out below is the formal process for the resolution of disputes in relation to employment matters under Indonesian labor laws and regulations.

Bipartite negotiations

The IR Disputes Law requires all industrial relations disputes to be first resolved through bipartite negotiations in a consultative manner in order to reach a consensus.

The IR Disputes Law further requires all bipartite negotiations to be properly recorded in the form of minutes of the meeting. The minutes of the meeting must at least include:

- full name and address of the parties
- date and place of negotiations
- principal topics or reasons underlying the dispute
- the positions of each party
- conclusion or the results of the negotiations
- date and signature of the parties involved in the negotiations

If the bipartite negotiations manage to resolve the dispute, then the parties will draw up and sign a joint agreement. This joint agreement is final and legally binding and must be implemented by the parties.

The joint agreement should be registered by the signatories in the IR Court whose jurisdiction covers the place where the parties executed the agreement.

Settlement of disputes through bipartite negotiations must be reached no later than 30 working days from the time the negotiations commenced. If within that timeframe one of the parties refuses to negotiate or the negotiations do not result in an agreement, then the bipartite negotiations will be considered to have failed.

If bipartite negotiations fail, then one or both parties can report their dispute to the relevant local office of the MOE, attaching proof that efforts to resolve the dispute through bipartite negotiations were conducted, i.e., minutes of the meeting of the bipartite negotiations. The local office of the MOE is then obligated to offer the disputing parties the option of settling their dispute through conciliation (if applicable — see the table of settlement methods above). If the parties do not choose conciliation (or if the type of dispute is a dispute over rights), then the local office of the MOE will transfer the settlement of the dispute to a mediator.

Mediation or conciliation

If the bipartite negotiations do not reach an agreement, one or both disputing parties can report their dispute to the relevant local office of the MOE by attaching the minutes of the bipartite negotiations.

The local office of the MOE is required to offer both parties the method of settlement through conciliation or mediation (note that if the type of dispute is a dispute over rights, conciliation is not an applicable settlement method).

The process for mediation or conciliation is more or less the same. The difference is to be found in the use of either a mediator or a conciliator. The mediator is an official of the local office of the MOE who is appointed by the local office of the MOE to mediate the case. The conciliator is a private person (not a government official) whose name is listed as a conciliator at the local office of the MOE.

If within seven working days the parties do not choose the settlement method, the local office of the MOE will refer the dispute to a mediator.

The mediator/conciliator must conduct a review of the case and promptly convene a mediation/conciliation hearing no later than seven working days from receipt of the delegation of responsibility for settling the termination dispute.

The mediator/conciliator must try to persuade the parties to settle the dispute during the first 10 days of the mediation/conciliation hearing. If there is no settlement within said period, the mediator/conciliator must issue a recommendation no later than 10 days after the first mediation/conciliation session. The parties must submit a written reply to the mediator within 10 days after receiving the mediator's/conciliator's recommendation. If a party does not provide a reply, it will be deemed to have rejected the mediator's/conciliator's recommendation.

If the parties agree to comply with the recommendation, the mediator must assist the parties in preparing a joint agreement (no later than three days from notice of the agreement). The joint agreement must be registered at the relevant IR Court.

If the dispute is not resolved through mediation/conciliation, then the mediator/conciliator will issue a written recommendation. If the mediator's/conciliator's written recommendation is rejected by one or both parties, then one or both parties may continue by filing a lawsuit with the relevant IR Court.

Mediators and conciliators are required to accomplish their duties within 30 working days after receiving the assignment to settle the dispute.

Proceedings at the IR Court

If a party does not agree with the recommendation of the mediator/conciliator, it may bring the case to the IR Court whose jurisdiction covers the employee's workplace. The IR Court is a special court within the sphere of the general justice system. The civil procedure law is applicable in the IR Court (unless otherwise stipulated by the IR Disputes Law).

The proceedings at the IR Court theoretically should not exceed 50 working days from the first hearing.

Supreme Court

For disputes over rights and disputes on termination of employment, the decision of the IR Court can be appealed to the Supreme Court.

The cassation appeal must be submitted through the sub-registrar's office of the IR Court no later than seven working days after the date of the decision (for parties who are present at the court

decision hearing) or seven working days after the date of notification of the decision (for parties who are absent).

The sub-registrar's office must submit the case dossiers to the head of the Supreme Court no later than 14 working days after it receives the cassation appeal.

Under the IR Disputes Law, settlement of disputes over termination of employment at the Supreme Court must be made within no more than 30 working days after the date the cassation appeal has been received. However, it should be noted that in practice, given the workload of the Supreme Court, this can take much longer and an employer should assume that the entire disputes process from start to finish will take a minimum of 18 months, and has been known to go on for longer (during which period the employee must still be employed and paid).

1.3 Types of working relationship

Individuals who provide their services broadly fall into the following two main groups: (1) indefinite-term employees (employees hired on a permanent basis); and (2) fixed-term employees (employees hired on a fixed-term basis). Under Indonesian law, there is also a concept of "daily workers," who are workers employed under a certain type of fixed-term employment.

1.4 On the horizon

1.4.1 Amendment to existing laws and issuance of new employment regulations

In November 2020, the Indonesian government enacted Law No. 11 of 2020 on Job Creation ("**Job Creation Law**"), which is also commonly known as the Omnibus Law. The Job Creation Law amends a number of Indonesian laws, including Law No. 13 of 2003 on Labor ("**Law No. 13/2003**") and Law No. 40 of 2004 on National Social Security System ("**Social Security Law**").

The amendment to Law No. 13/2003 includes amendments to provisions regarding foreign workers, definite period employment, outsourcing, overtime, minimum wage and termination of employment. The key points on these subjects are described below.

With regard to the amendment to the Social Security Law, the Job Creation Law introduces a new social security program known as Job Loss Security (*jaminan kehilangan pekerjaan* or JKP). This newly introduced program is administered by the Manpower Social Security Organizing Agency (Badan Penyelenggara Jaminan Sosial (BPJS) Ketenagakerjaan).

Following the enactment of the Job Creation Law, the government has issued a number of implementing regulations.

1.4.2 Work permits for expatriates

The Indonesian government has suspended the issuance of new work permits for expatriates due to the current COVID-19 situation. The MOE is still waiting for the decision of the Ministry of Law and Human Rights on allowing foreigners to enter into Indonesia. Following this decision, the MOE will resume processing new work permit applications.

2 Hiring employees

2.1 Key hiring considerations

The concept of "at will" employment, which applies in some countries, does not exist in Indonesia. It can be very difficult (and expensive) to terminate employees in Indonesia. Employers should therefore be careful about who they hire and the terms of employment they offer to employees.

Employers should conduct background checks, at least for those being hired for senior positions.

Fixed-term employment is highly regulated in Indonesia, and if employers want to engage employees on a fixed-term basis, they should be aware of the requirements. If an employee is employed on a fixed-term basis in violation of the requirements, by law the employee is deemed to be employed on an indefinite-term basis.

In light of the prohibition against foreign employees being involved in HR matters in Indonesia, the entire hiring process should be handled by Indonesians.

2.2 Avoiding the pitfalls

Employers should make sure they put in place employment agreements that are compliant with the requirements for employment agreements under Indonesian law (of which there are many). Employers should also ensure that all employment agreements are signed by the authorized representative of the Indonesian employer (ideally an Indonesian national due to the prohibition on foreign employees being involved in HR matters in Indonesia).

Fixed-term employment is highly regulated in Indonesia, and if employers want to engage employees on a fixed-term basis, they should be aware of the requirements — see further at **5.2** and **5.3** below.

2.3 Procedural steps and key documents in recruitment

2.3.1 Identifying the vacancy

When there is a vacancy, an employer should consider whether the position must be filled by an indefinite-term employee or whether it could be filled by a fixed-term employee.

2.3.2 Preparing a job description and person specification for the position

When preparing a job description, an employer should list the duties the employee will be expected to carry out, and list the requisite qualifications and experience necessary for the job role (if applicable).

2.3.3 Advertising the job

The main recruitment channels in Indonesia are advertising in the mass media and on company websites, using recruitment firms, “job fairs,” on-campus interviews and word of mouth.

2.3.4 Shortlisting and interviewing

Taking the time to shortlist thoroughly and systematically will help to ensure that an employer has the best selection of candidates to choose from during the interview process. Once an employer has shortlisted its selected candidates, it should begin interviewing the employees. In Indonesia, employers generally conduct two to three interviews (i.e., with HR personnel, managers and the head of the company) with a candidate before offering a job.

2.3.5 Making an offer of employment, subject to conditions where appropriate

Once the candidate has been selected, an employer should offer the candidate an employment agreement that sets out the terms and conditions of employment. The employer could also provide the candidate with a conditional offer letter (i.e., conditional on the employment agreement being entered into, subject to, for example, a medical or pre-employment screening process).

2.3.6 Involvement of trade unions or works councils

In Indonesia, labor unions or employee representatives are not usually involved in the hiring process. However, some company regulations or CLAs may have provisions requiring the employer to consider whether existing employees could fill a job vacancy before proceeding to hire from external candidates.

3 Carrying out pre-hire checks

3.1 Background checks

Pre-employment background checks are not mandatory in Indonesia. However, it is suggested that they are conducted, especially for those being hired for senior positions. Employee consent is required to conduct some checks (e.g., formal court searches). In practice, background checks typically include reviewing the following:

- criminal background
- court records
- education
- employer references and work history
- limited health/medical conditions (excluding HIV/AIDS test)

In relation to some of these checks, the below should also be noted.

3.1.1 Criminal background checks

Generally, information on the criminal record of an individual is not publically available in Indonesia. In practice, usually (in addition to requesting the candidate to provide information on whether they have ever been convicted of a crime) a candidate will be asked to request a Statement Letter of Police Records (*Surat Keterangan Catatan Kepolisian*) from the police office local to where they reside in Indonesia and to submit such statement letter to the employer. The local police office will issue the Statement Letter of Police Records if the candidate has no criminal record at that office. However, please note the following:

- The statement letter may not cover data from police offices other than the police office that issued the statement letter.
- An employer cannot obtain a Statement Letter of Police Records for a candidate/ employee, i.e., it can only be obtained by the individual to whom the record pertains.

3.1.2 Court records checks

Upon specific written authorization from the candidate, an employer may also request a statement letter from a court or courts about whether the candidate is involved in any court cases. However, such a statement letter issued by a court will only cover data in that particular court and will only include active cases in which the individual is currently involved. Most court records are still recorded physically in Indonesia and can therefore only be manually searched by court officials. As such, it is possible that the result of a court records check may be incomplete.

3.2 Reference checks

It is common for employers in Indonesia to ask for candidates to provide details of referees (e.g., previous employers and personal referees) and for the employer to conduct checks with the referees.

3.3 Medical checks

Pre-employment medical examinations (and medical examinations during the course of employment) are not prohibited under the Labor Law. However, the examination should not include an HIV/AIDS test. The law prohibits the conducting of HIV/AIDS tests in the recruitment process or to determine the continuity of the employment status of an employee. In addition, the law also prohibits HIV/AIDS tests

becoming part of routine medical check-ups. An HIV/AIDS test is only allowed if the employee voluntarily and specifically agrees to undertake the test and in so far as the test is not used for the purpose of recruitment or determining the continuity of an employment relationship. The agreement of the employee to undertake a HIV/AIDS test must be made in writing.

4 Immigration

Please refer to our Handbook, The Global Employer: Focus on Global Immigration and Mobility, which is accessible HERE, for information about the immigration system in Indonesia.

5 The employment contract

5.1 Form of the employment contract

The Labor Law states that an employment agreement must include at least the following provisions:

- name and address of the employer, and its line of business
- name, gender, age and address of the employee
- position or type of work of the employee
- location of work
- amount of wages and manner of payment
- terms of employment, covering the rights and obligations of the employer and the employee
- commencement date of employment and the period of employment
- place of signing and date of the employment agreement
- signatures of the parties to the employment agreement (i.e., the employer and the employee)

There is no specific sanction under the Labor Law for failure to include the above provisions.

5.2 Types of employment contract

Employees can be hired on an indefinite- or fixed-term basis. The table below provides further information on indefinite- and fixed-term employees.

Types of working relationship	
Indefinite-term employment	Indefinite-term employment is the employment of an employee for an indefinite term. An employer may impose a probationary period of a maximum of three months. During this probationary period, provided that the probationary period was agreed in writing, an employer may terminate the employment without notice and without the obligation to pay a termination package. Otherwise, unless an employee agrees to a "mutual termination," the reason for an employer to terminate an indefinite-term employee must be a reason set out in the Labor Law (of which there are not many).
Fixed-term employment	Fixed-term employment is the employment of an employee for a specified (or fixed) period of time. A fixed-term employment agreement can only be entered into for certain work that will be completed within a specified time period, i.e., work that: • is completed "once and for all," or is of a temporary nature

Types of working relationship

- is completed in a short period of time (three years at most)
- is considered to be of a seasonal nature, or to be repeated (e.g., seasonal harvesting)
- is related to a new product, new activities or supplemental products that are still experimental or in the exploration stage

An employer cannot include a probationary period in a fixed-term employment agreement.

The maximum validity of a fixed-term employment agreement depends on the type of work. The table below summarizes the types of work and the relevant maximum validity of an initial fixed-term employment agreement.

	Based on period of time	Based on completion of certain work	Other work that is not permanent in nature (daily workers)
Type of work	• Completion of the work is not too long • Seasonal work • Related to new products, new activities or additional products that are still in trial or experiment	• One-time completed work • Temporary work	• Period and volume of work keep changing • Pay based on attendance at work

Contract Period	Maximum 5 years (including extensions)	• No specific contract period limitation.
		• It is possible to extend the contract until the work is completed.
		• The agreement must include:
		  ○ scope and limit for declaring work completion
		  ○ period for work completion
			• Maximum 20 working days in a month
			• If the employee works 21 days or more for three consecutive months, the employee is deemed an indefinite period employee

5.3 Language requirements

The Labor Law states that a fixed-term employment agreement must be made in Indonesian. The Labor Law, however, does not state that an indefinite-term employment agreement must be made in Indonesian. However, for the following reasons, we suggest that an indefinite-term employment agreement, and all employment documents for Indonesians, be made in Indonesian (dual language with Indonesian as the governing language is also suitable):

- Indonesian law provides, among other things, that parties must use the Indonesian language in agreements with Indonesian individuals.
- For Indonesian employees, we strongly suggest that all employment-related documents (e.g., agreements, warning letters, consents, policies, etc.) be in Indonesian, or dual language with Indonesian as the governing language. The reason for this is that, in employment disputes in Indonesia, it is quite common for Indonesian employees to argue (no matter how good their English language is) that they did not understand an employment-related document that was not in the Indonesian language.
- In Indonesia, any document submitted to an Indonesian court must be in the Indonesian language (i.e., any foreign language document must first be translated into Indonesian by a sworn translator before it is submitted to an Indonesian court).

6 Working terms and conditions

6.1 Trial periods

Indefinite-term employment

When an employee is employed for an indefinite term, an employer may impose a probationary period of a maximum of three months at the beginning of employment. During this probationary period, provided that the probationary period was agreed in writing, an employer may terminate the employment without notice and without the obligation to pay a termination package. A probationary period cannot be extended.

Fixed-term employment

An employer cannot impose a probationary period on a fixed-term employee.

6.2 Working time

The working hours under the Labor Law are:

- seven hours per day and 40 hours per week for six working days in a week
- eight hours per day and 40 hours per week for five working days in a week

The Labor Law does not designate specific days in a week as working days. However, most employers in Indonesia that adopt the working hours of eight hours per day and 40 hours per week typically set Monday to Friday as the working days in a week (note that this may vary depending on the nature of the business of the employer).

Lunch break

The minimum rest period between working hours is 30 minutes after working for four continuous hours. The rest period is not included in the working hours. In practice, most employers adopt a one-hour lunch break (on Fridays, the lunch break is typically longer to allow Muslim employees to perform the Friday prayers).

6.3 Wage and salary

Components of salary

Under the Indonesian wage regulation ("**Regulation 36**"), a salary can consist of:

- salary only (i.e., clean wage, without allowances)
- basic salary and fixed allowances
- basic salary, fixed allowances and non-fixed allowances

The Labor Law and Regulation 36 defines "fixed allowance" as a payment to an employee made regularly, which is unrelated to the employee's attendance at work or performance. An example is a monthly housing allowance.

Regulation 36 refers to a "non-fixed allowance" as an irregular payment made to an employee and family that does not have to be directly related to the employee's job or paid along with the basic salary. Examples of a non-fixed allowance are transport and meal allowances that are paid to an employee based on the employee's attendance at work.

Under the Labor Law, if the components of salary consist of "basic salary" and "fixed allowances," the amount of the basic salary must be at least 75% of the total salary.

Except for the religious festivity allowance (see comments below), employers are not obliged to pay employees allowances under the Labor Law.

Depending on the type of payment concerned, the determination of the components of salary might differ for different types of calculations, e.g., the components of salary used to calculate a termination payment could be different from those used to calculate overtime pay.

The components of "salary" that are used to calculate a termination payment, the religious festivity allowance and social security contributions are:

- basic salary
- fixed allowances

Salary structure and grade

The Labor Law requires employers to determine the salary structure and grade of individual employees based on their position with the employer, their years of service, education and competency.

The minister of employment issued Regulation No. 1 of 2017 on Wage Structure and Wage Scale ("**Regulation 1**"), which requires employers to prepare a wage structure and wage scale and provide this information to employees. Regulation 1 defines "wage structure" as a structure of wages from the lowest amount to the highest amount or from the highest amount to the lowest amount. "Wage scale" is defined under Regulation 1 as the range of wage — from the lowest to the highest amount — that is applicable for a particular level of employees.

An employer can prepare a wage structure by listing the total range of wage brackets in its organization. Each employee position will then have a different wage scale, which will be prepared by the employer taking into account the employee's level, title, service period, education and competence. The wage scale will highlight the range of wages each employee (position) may be entitled to within the wage structure.

The management of the employer must issue the wage structure and wage scale in the form of a letter of decree (*surat keputusan*).

Employers must inform all employees individually about the wage structure and wage scale, including details on which wage structure and wage scale is applicable to them.

The wage structure and wage scale will also need to be presented to the relevant officials of the MOE (or its relevant local office) when the employer processes its:

- application for ratification of its company regulations
- application for registration of its CLA

After the wage structure and wage scale have been approved by the MOE and returned to the employer, the employer will need to prepare a statement letter confirming that it has determined the wage structure and wage scale. This statement letter will be kept by the MOE (or its relevant local office).

The employer can review its wage structure and wage scale; however, if any changes are made to the wage structure and wage scale, employees who are impacted by the changes must be informed.

Failure to prepare a wage structure and wage scale or failure to inform employees about the wage structure and wage scale may mean employers are subject to administrative sanctions. Under Article 190(2) of the Labor Law, administrative sanctions can be in the form of:

- a warning
- a written warning
- limitation of business activities
- freezing of business activities
- cancelation of approvals
- cancelation of registrations
- a temporary shutdown of part or all of the production equipment
- revocation of license

Minimum salary/wage

The Labor Law provides that an employer should periodically review the salary/wage of its employees by considering the company's capability and productivity. The review is intended to assess whether any adjustment to the salary/wage is necessary considering changes in living costs, the employee's job performance and the company's growth and capability.

The Labor Law does not specifically address salary/wage increases other than the requirement to increase the amount of salary/wage in accordance with the applicable minimum salary/wage requirement.

Regulation 36 stipulates that the governor of each province in Indonesia will determine the minimum salary/wage. The minimum salary/wage means the minimum monthly salary/wage, which consists of:

- basic salary/wage without allowances
- basic salary/wage plus fixed allowances

Under Regulation 36, the minimum salary/wage will be further assessed and determined by each governor every year by considering the appropriate living cost, productivity and economic growth.

The annual minimum wage only applies to employees who have been working for less than one year for the relevant company. If an employee has worked for more than one year, the employee should no longer be paid the minimum wage, i.e., their salary/wage should have been adjusted and agreed between the employer and the employee.

Religious festivity allowance

Religious festivity allowance (i.e., *Tunjangan Hari Raya* or THR) is a mandatory benefit that must be provided to all employees in conjunction with the religious holiday observed by the employee (based on the employee's religion). THR is regulated under the religious festivity allowance regulation ("**Regulation 6**") and Regulation 36.

Indonesia recognizes six religions and the recognized religious holidays are as follows:

- Idul Fitri (end of the fasting month of Ramadhan) for Muslims
- Christmas for Christian Protestants and Catholics
- Seclusion (*Nyepi*) for Hindus
- Vesak (*Waisak*) for Buddhists
- Chinese New Year for those who follow Confucius

All employees (i.e., both fixed-term and indefinite-term employees) are entitled to THR. However, THR is not paid to a fixed-term employee if the fixed-term employment agreement ends prior to the date the THR is payable to the fixed-term employee.

All employers are obliged to provide THR to employees who have worked continuously for at least one month. The amount of THR to be paid based on the employee's service period is as follows:

- An employee with a service period of 12 continuous months or more is entitled to THR in an amount equal to one month's salary.
- An employee with a service period of one month or more but less than 12 months is entitled to a prorated amount of THR calculated using the following formula:

$$\frac{\text{service period}}{12} \times \text{1 month's salary}$$

For daily freelance workers, the one month's salary is determined as follows:

- For those who have worked for 12 months continuously or more, the one month's salary is calculated based on the average salary for the past 12 months.
- For those who have worked for less than 12 months, the one month's salary is calculated based on the average salary received each month during employment.

THR must be provided in Indonesian rupiah.

If an employee's religious holiday occurs more than once in the same calendar year, the employee will be entitled to THR for each occurrence.

Under Regulation 36, employers who are late in providing THR will be fined 5% of the THR amount. The fine will be managed and utilized for the employees' welfare in accordance with the company

regulations or the CLA of the employer. This sanction does not waive an employer's obligation to provide THR to its employees.

Employers who do not provide THR for their employees will be subject to the administrative sanctions under prevailing laws and regulations. Under Regulation 36, the administrative sanctions that can be imposed on an employee who does not provide THR for its employees may be in the following forms:

- written warnings
- restriction of business activities
- temporary or permanent suspension of some or all production facilities
- suspension of business activities

6.4 Making deductions

Salary deductions by an employer for third parties are only allowed if there is a specific power of attorney from the employee authorizing such deductions. This rule is not applicable to salary deductions in relation to payments that employees must make to the state, e.g., contributions to the mandatory social security programs and salary deductions for the purpose of income tax.

It is possible to make deductions from an employee's termination payment. There is no limit on the amount that can be deducted from an employee's termination payment.

6.5 Overtime

Under the Labor Law, all employees working overtime are entitled to overtime pay, except those who have the responsibility as the "thinker, planner, executor and controller of the operation of the employer" (which is interpreted to mean those in managerial positions) and their working hours cannot be limited based on the normal working hours.

Under the regulation on definite period employment agreements, outsourcing, working hours and rest hours and termination of employment ("**Regulation 35**"), the employment agreement must specify whether or not the relevant employee is entitled to overtime. Otherwise, company regulations (which are mandatory under the Labor Law for employers that have at least 10 employees) or the CLA must include provisions on the levels or categories of employees who are entitled to overtime pay.

Calculation of overtime pay

Under Regulation 35, overtime pay is calculated as follows:

- Overtime work on regular working day:
  - for the first hour of overtime = 1.5 x hourly wage
  - for each subsequent hour = 2 x hourly wage of overtime
- Overtime work on weekly rest days and/or public holidays:
  - If the normal working hours are six days per week and 40 hours per week:
    - Overtime work during weekly rest days and/or public holidays:
      - for the first seven hours of overtime = 2 x hourly wage
      - for the eighth hour of overtime = 3 x hourly wage
      - for the ninth to eleventh hours of overtime = 4 x hourly wage

- Overtime work on a public holiday that falls on the shortest working day in the week:
  - for the first five hours of overtime = 2 x hourly wage
  - for the sixth hour of overtime = 3 x hourly wage
  - for the seventh to ninth hours of overtime = 4 x hourly wage

- If the normal working hours are five days per week and 40 hours per week:
  - for the first eight hours of overtime = 2 x hourly wage
  - for the ninth hour of overtime = 3 x hourly wage
  - for the 10th to 12th hours of overtime = 4 x hourly wage

The hourly wage for calculating overtime pay is 1/173 of the relevant employee's monthly salary.

If the salary consists of basic salary and fixed allowances, 100% of the salary (i.e., including basic salary and fixed allowances) is used for calculating the overtime pay. If the salary consists of basic salary, fixed allowances and non-fixed allowances, but the total of the basic salary and fixed allowances is less than 75% of the total salary (i.e., basic salary + fixed allowances + non-fixed allowances), the overtime pay will be calculated based on the salary that is equal to 75% of the total salary.

6.6 Bonus and commission

There are no provisions in the Labor Law that oblige an employer to provide bonuses or commission to employees. However, under Regulation 36, where an employer provides bonuses or commission to its employees, this must be stated in the employment agreement, company regulations or CLA. Please note that most employers in Indonesia only provide discretionary bonuses or commission. This is so that employers do not become bound to provide bonuses or commission to employees on a continual basis. To avoid bonuses or commission being obligatory, a specific provision in the employment agreement, company regulations or CLA needs to say that bonuses and commissions are discretionary in nature.

6.7 Benefits in kind

There are no provisions under the Labor Law that regulate benefits in kind. It is up to an employer to decide whether it would like to provide benefits in kind. In Indonesia, some employers do provide benefits in kind, e.g., in the form of health insurance, car loans or company cars.

6.8 Equity incentive plans

There is no requirement under Indonesian law for an employer to provide equity incentive plans to its employees and, to date, they are not very common.

6.9 Pensions

An employer can put in place a separate pension plan, as provided under the law on pension funds, but this is not required and is not common.

In addition, please refer to **6.12** on the Pension Program by BPJS Manpower.

6.10 Annual leave

Under the Labor Law, an employee is entitled to annual leave of 12 working days after 12 continuous months of employment. It is possible for an employer to provide more than 12 working days' annual leave entitlement. In light of the entitlement to annual leave being granted after working for 12 continuous months, annual leave entitlements in Indonesia are typically calculated based on the commencement date for each employee and not on a calendar or fiscal year basis.

6.11 Sick leave and pay

The Labor Law provides that an employee who is ill is not obliged to work. Indonesia does not have a concept of a certain number of sick days per year similar to that found in other countries. Instead, an employee's salary during sickness absence is calculated as follows:

- first four months of illness: 100% of salary
- second four months of illness: 75% of salary
- third four months of illness: 50% of salary
- each subsequent month of illness: 25% of salary (until termination of employment)

An employer may terminate an employee who has been continuously sick for 12 months.

6.12 Taxes and social security

Taxation

Under Indonesian income tax laws, an employer is obliged to withhold a certain amount of an employee's taxable income for the purpose of payment of the employee's income tax to the state.

Income tax on all payments to employees, except termination payments, is calculated based on the following progressive tax rates:

Taxable income	Tax rate
Up to IDR 50 million	5%
IDR 50 million to IDR 250 million	15%
IDR 250 million to IDR 500 million	25%
Above IDR 500 million	30%

Income tax on termination payments is calculated based on the following progressive tax rates:

Taxable income	Tax rate
Up to IDR 50 million	Exempted
IDR 50 million to IDR 100 million	5%
IDR 100 million to IDR 500 million	15%
Above IDR 500 million	25%

Social security

Everyone (including foreign employees working in Indonesia for at least six months) must be enrolled in the social security program that is administered by the Social Security Organizing Agency (*Badan Penyelenggara Jaminan Sosial*, commonly referred to as BPJS).

There are two BPJS agencies:

- BPJS Manpower
- BPJS Health

BPJS Manpower administers five programs:

- Occupational Accident Security Program (*Jaminan Kecelakaan Kerja* or JKK)
- Death Security Program (*Jaminan Kematian* or JK)
- Old Age Security Program (*Jaminan Hari Tua* or JHT)
- Pension Security Program (*Jaminan Pensiun* or JP)
- Job Loss Security Program (*Jaminan Kehilangan Pekerjaan* or JKP)

BPJS Manpower contributions are calculated based on a certain percentage of the employee's salary as follows:

- JKK: The percentage depends on the industry of the employer, but ranges from 0.24% to 1.74%. This contribution is fully paid by the employer.
- JK: The contribution is 0.3% of the employee's monthly salary and is paid by the employer.
- JHT: The contribution is 5.7% of the employee's monthly salary, of which 3.7% is paid by the employer and 2% by the employee (deducted from the employee's salary but paid by the employer to BPJS Manpower).
- JP: The contribution is 3% of the employee's monthly salary, of which 2% is paid by the employer and 1% by the employee (deducted from the employee's salary but paid by the employer to BPJS Manpower).
- JKP: The contribution is 0.46% of the employee's monthly salary. The government bears 0.22%, and the rest of the contribution is sourced from the contribution to JKK and JKM. Accordingly, employers and employees are not required to pay contribution for this program.

An employee should be covered by BPJS Manpower for the above programs from the first day they join the employer.

For BPJS Health, there are different contribution rates for each type of member as follows:

No.	Type of member	Employer contribution	Employee contribution	Maximum wage to calculate monthly contributions
(a)	Workers receiving wages: • state officials	4%	1%	IDR 12 million

No.	Type of member	Employer contribution	Employee contribution	Maximum wage to calculate monthly contributions
	• chairs and members of the Regional House of Representatives (DPRD) • civil servants at the central government • civil servants at the regional government • Indonesian armed forces • Indonesian police • village heads (*kepala desa*) and village officials (*perangkat desa*) • workers who do not fall under categories (a) to (g) above, are not private sector employees and serve at the central government agency • workers who do not fall under categories (a) to (g) above, are not private sector employees and serve at the regional government agency • workers who are not any of the above (this includes private sector employees)			
(b)	Non-wage recipients and non-employees	• Class 1: IDR 150,000 per month/per person • Class 2: IDR 100,000 per month/per person • Class 3: IDR 35,000 per month/per person		

7 Family rights

7.1 Time off for antenatal care

The Labor Law does not provide for antenatal care during the pregnancy of an employee. The Labor Law only provides paid maternity leave (see **7.2** below). If a pregnant employee wishes to take time off during pregnancy, she may take annual leave. If a pregnant employee is suffering from a

pregnancy-related illness, she does not have to work and her salary will be calculated in the same way as for salary during sickness absence (see **6.11** above).

7.2 Maternity leave and pay

Female workers are entitled to three months' paid maternity leave, 1.5 months before and 1.5 months after the birth. However, in practice, many female employees take three months off after the birth. Female workers are also entitled to 1.5 months' paid miscarriage leave. A female employee may be eligible for a longer period of maternity leave and miscarriage leave if this is prescribed in a recommendation letter from a physician or midwife.

7.3 Paternity leave and pay

Under the Labor Law, a male employee is entitled to two days' paid paternity leave for his wife's childbirth or miscarriage.

7.4 Parental leave and pay

The Labor Law does not provide for parental leave and pay.

7.5 Adoption leave and pay

The Labor Law does not provide for adoption leave and pay.

7.6 Other family rights

The Labor Law provides the following paid leave for employees:

Type of leave	Period of paid leave
Employee's marriage	Three days
Marriage of a child	Two days
Circumcising/baptizing a child	Two days
Death of a spouse, parents/parents-in-law or child or son/daughter-in-law	Two days
Death of family member living in the same house	One day
Menstruation (for a female employee if she is ill to such an extent that she cannot perform her work)	Two days (first and second day of the menstruation period)
Performing state duty (as stipulated by laws and regulations)	Salary paid if: • the state does not make the payment • the state pays less than the employee's normal salary, in which case the employer must pay the shortfall The maximum period within which the salary must be paid (or shortfall must be

Type of leave	Period of paid leave
	paid if the state pays less than the employee's normal salary) is one year.
Performing religious rituals as required by the employee's religion, which have been stipulated in the prevailing laws and regulations, e.g., to perform Hajj for Moslem. The employer can determine that the paid religious leave will be granted only once and only after the employee has worked for the employer for a specified period of time (e.g., two years).	There is no maximum period for paid leave. In practice, this will depend on the religious program undertaken by the employee. The employer can request the employee to provide a certificate (e.g., from the Ministry of Religion, which organizes the regular Hajj program or from the private entity that organizes the special Hajj program) setting out the Hajj program that will be followed by the employee. The regular Hajj program usually takes 40 days and the special Hajj program usually takes 14 to 23 days.

8 Other types of leave

8.1 Time off for dependents

Please refer to **7.6**. If an employee wishes to take time off for a dependent not listed in **7.6**, the employee would need to take annual leave.

8.2 Time off for training

The Labor Law specifically addresses time off for training and an employer must continue paying an employee's salary if the employee is performing educational duties assigned by the employer. In practice, leave for participating in education or training may be further regulated in the employment agreement, company regulations or CLA.

8.3 Union activities

Under the Labor Law, an employer must continue paying the employee's salary if the employee is performing union activities that have been approved by the employer. There is no maximum period of leave that an employer must provide to the employee for performing union activities. However, the maximum amount of leave for participating in union activities could be addressed in a CLA.

8.4 Public duty leave

The Labor Law specifically addresses the period of leave for performing state duty. As reflected in **7.6** above, the maximum period for which an employer must pay an employee's salary (or pay the shortfall if the state pays less than the employee's normal salary) is one year.

9 Termination provisions and restrictions

9.1 Notice periods

Please refer to **15.5**.

9.2 Payment in lieu of notice

Payment in lieu of notice is not regulated in Indonesia and it is a contractual agreement between the employer and the employee. If agreed, it may be given in addition to the statutory termination payment.

9.3 Garden leave

There is no concept of garden leave under the Labor Law and it is not common. However, it can be contractually agreed.

9.4 Intellectual property

In Indonesia, it is common to include provisions on intellectual property in the employment agreement, company regulations or CLA (if any).

It should be noted that in Indonesia, “moral rights” remain forever with the author and cannot be assigned or transferred to other parties. The author can, however, agree not to exercise their moral rights.

9.5 Confidential information

In Indonesia, it is common to include provisions on confidentiality in the employment agreement, company regulations or CLA (if any).

9.6 Post-termination restrictions

The Labor Law is silent in relation to post-termination employment restraint clauses (e.g., noncompetition and non-solicitation clauses) in employment agreements. However, the Indonesian Civil Code (ICC) specifically addresses such clauses, providing the following in particular:

- Post-employment restrictions must be agreed in writing between the employer and the employee.
- Post-employment restrictions may only be enforced against an adult employee.
- A judge can nullify the entirety or part of such a clause if the employee is damaged unfairly compared to the interest of the employer that must be protected.
- An employer cannot enforce such a clause if the employer illegally terminated the relevant employee.
- In the event the employer and employee have agreed on compensation payable by the employee, if the employee breaches such agreement, the judge may determine a lesser amount of compensation if the judge believes that the agreed amount of compensation is unreasonable.

In light of the requirements in the ICC, any noncompetition or non-solicitation clause must be made in writing. In addition, the limitation must be reasonable, both in terms of the geographical scope, activities limited and duration. Too wide a scope and too long a duration may be viewed as limiting the employee’s basic right to a proper living.

As part of the restraint, some employers in Indonesia include that the employer will provide some sort of payment (e.g., to be included in the final pay when the employee leaves the company) to compensate the employee for the limitation to which they are bound under the noncompetition or non-solicitation clause. Often the payment reflects the employee’s salary during the restricted period.

However, in our experience, it is not common to see references to such compensation in noncompetition or non-solicitation clauses in Indonesia.

For various reasons, it is generally accepted in Indonesia that a post-employment restriction will be very difficult to enforce and many employers include them simply as a deterrent.

As far as we are aware, the IR Court and the district court have never issued a decision on the enforceability of a noncompete clause. We are only aware of one noncompete case being bought before the district court. However, it was settled before the district court even made a determination as to whether it had jurisdiction to hear the matter let alone hear the merits of the claim.

9.7 Retirement

The Labor Law does not regulate a retirement age (commonly referred to as “pension age”). The relevant article of the Labor Law in relation to termination for “retirement” simply refers to the employer being able to terminate the employee because of reaching “retirement age,” i.e., there is no mention of a specific age and there is no obligation to terminate. In addition, another article of the Labor Law (also in relation to termination) provides that the applicable retirement age will be in accordance with the provisions of the employment agreement, company regulations, CLA or the laws and regulations.

A government regulation on pension security program administration under BPJS Manpower (“**Regulation 45**”) sets out initially that the “pension age” should be 56. From 1 January 2019, the pension age was increased to 57. Thereafter, every three years the pension age will increase by one year until it reaches 65. Arguably, the “pension age” set out in Regulation 45 is to determine when a pension benefit of a relevant program under BPJS Manpower (i.e., the pension program) can be provided to a participant. The employment agreement, company regulations or CLA should still be able to determine a different retirement age that is applicable for determining when a company is entitled to terminate an employee due to reaching such retirement age. In practice, however, most employers tend to adopt the “pension age” under Regulation 45 as the age when the company can terminate an employee for retirement.

10 Managing employees

10.1 The role of personnel policies

Under the Labor Law, an employer that has at least ten employees must have company regulations (*Peraturan Perusahaan*).

The Labor Law defines company regulations as a regulation made in writing by an employer that contains the terms of employment and the rules of conduct of the employer.

In practice, many employers already have employee manuals/work rules, which may include similar matters to what is found in company regulations. However, in order for an employee manual/work rules to be considered as company regulations as defined under the Labor Law, an employer should ensure that the requirements under the Indonesian labor laws and regulations in relation to company regulations are fulfilled, including, among other things, that the company regulations are ratified by the relevant office of the MOE.

10.2 The essentials of an employee handbook

Company regulations are only valid for a period of two years and must be renewed and ratified by the relevant office of the MOE upon expiry. If company regulations are not renewed in time, in practice, the expired company regulations will apply until they are renewed (or a CLA is put in place).

Under the Labor Law, company regulations should contain at least:

- the rights and obligations of the employer
- the rights and obligations of the employees
- the general terms of work
- the rules of conduct in the company
- the validity period (i.e., maximum of two years)

There is no standard form of company regulations issued by the MOE. However, under a regulation on the procedures for drafting and ratification of company regulations and drafting and registration of CLAs, as well as containing the information set out above, company regulations should contain terms of work that are not yet covered by labor laws and regulations, and details as to the implementation of the labor laws and regulations with the relevant employer.

The detailed provisions of company regulations may differ from one employer to another.

The provisions of company regulations must not contravene or be less than the provisions of prevailing labor laws and regulations; they can even be more generous. For example, the minimum annual leave entitlement of an employee (after a service period of at least 12 consecutive months) under the Labor Law is 12 days; therefore, company regulations can provide for 15 days' annual leave, but cannot provide for 10 days' annual leave.

10.3 Codes of business conduct and ethics

Codes of business conduct and ethics are not mandatory in Indonesia but many large companies (and, in particular, foreign-owned companies) have them in place. In practice, codes of business conduct and ethics are often incorporated into the company regulations or CLA.

11 Data privacy and employee monitoring

Please refer to our Global Privacy Handbook, which is accessible HERE, for information on data privacy and monitoring requirements in Indonesia.

12 Workplace safety

12.1 Overview

Workplace safety is mainly regulated by a law on safety at work ("**Work Safety Law**"). In addition, there are a number of implementing regulations that further regulate matters addressed in the Work Safety Law.

Under the Work Safety Law, the "management" of a company has the duty to directly lead a workplace or an independent part of a workplace.

From the definition of "management" in the Work Safety Law, the "directors" of a company would likely be considered as the "management" of a company. This is because, under the Indonesian Company Law, the board of directors has the duty and authority to manage the company.

One of the main implementing regulations of the Work Safety Law is regulation No. 50 ("**Regulation 50**"). Under Regulation 50, certain employers must implement a management system for work health and safety (commonly known as SMK3) that is aimed at:

- implementing, and increasing the effectiveness of, a well-planned, measureable, structured and integrated work health and safety protection policy
- preventing and reducing work accidents and work-related illnesses by involving the management, employees and/or labor unions
- creating a safe, comfortable and efficient workplace

Employers that must implement the SMK3 are those that:

- have 100 employees or more
- employ individuals in roles with a high degree of potential danger (i.e., potential danger that could cause accidents that can damage people's lives, disrupt the production process and pollute the work environment)

SMK3 covers the following activities, which must be conducted by all employers:

- work health and safety policy-making
- work health and safety planning
- work health and safety plan implementation
- work health and safety performance monitoring and evaluation
- SMK3 performance review and improvement

12.2 Main obligations

Under the Work Safety Law, the "management" of a workplace is required to:

- display in writing, at places that can be clearly seen and read in the workplace, all work safety requirements, a copy of the Work Safety Law and any of its implementing regulations that are applicable to the relevant workplace
- display, at places that can be clearly seen and read in the workplace, all required work safety symbols and other safety developmental materials
- provide, free of charge, all personal protective equipment required for employees as well as other persons who enter the workplace, along with the necessary instructions for use
- display and explain to all new employees:
    - potential conditions and dangerous events that could occur in the workplace
    - all security and protective equipment required in the workplace
    - personal protective equipment for the new employees
    - safe working methods and attitude
- conduct a development program for all employees on accident prevention, fire prevention and fire-fighting methods, as well as the increase of work health and safety and first-aid assistance for an accident

- fulfill and observe all terms and conditions applicable to the business and workplace

If the "management" of the workplace does not comply with the above requirements, the management could be subject to a maximum of three months' imprisonment or a fine not exceeding IDR 100,000.

As, under the Indonesian Company Law, the board of directors is the authorized representative of a company and has the duty and authority to manage the company, the above sanction under the Work Safety Law could be imposed on the board of directors. This means that a member of the board of directors could be liable to serve the term of imprisonment.

12.3 Claims, compensation and remedies

12.3.1 Reporting requirements

Reporting occupational illness to the MOE

Under a regulation on the obligation to report occupational illness ("**Regulation 1**"), an employer is required to report occupational illness of its employees to the local office of the MOE within 48 hours of the illness being diagnosed.

Regulation 1 also requires an employer to take preventive measures to avoid the recurrence of the same occupational illness, including providing, free of charge, any necessary personal protection equipment to all employees.

The obligations of the employees in this regard include:

- providing the required information when being examined by a doctor or the designated MOE official for the supervision of occupational health and safety
- wearing/using all personal protective equipment required for the prevention of occupational illness
- observing and complying with all terms and conditions for the prevention of occupational illness

Regulation 1 also sets out the following rights of the employees:

- the right to request the employer to implement terms and conditions for the prevention of occupational illness
- the right to object to the performance of work that could result in occupational illness

Reporting occupational accidents

Under a regulation on the procedure for the reporting and investigation of accidents at the workplace ("**Regulation 3**"), an employer is obliged to report in writing every accident that occurs at the workplace to the local office of the MOE at the latest 48 hours following the accident. Regulation 3 allows the employer to report the accident verbally before submitting the written report of the accident.

Reporting occupational illnesses and occupational accidents to BPJS Manpower

Under a regulation on guidelines for the implementation of occupational accident security, death security and old age security ("**Regulation 26**"), the employer must also report the accident to the relevant local office of BPJS Manpower at the latest 48 hours following the accident or the identification of an occupational illness.

Follow-up reporting

Under Regulation 26, the employer is also required to submit a "Stage II" report to the local office of the MOE and the local office of BPJS Manpower within 48 hours following the issuance of a doctor's statement on:

- the end of the employee's temporary inability to work due to the occupational accident
- the employee being declared partially anatomically disabled (*cacat sebagian anatomis*)
- the employee being declared partially functionally disabled (*cacat sebagian fungsional*)
- the employee's death

The Stage II report will also serve as the means for the claim for occupational accident security benefits from BPJS Manpower.

12.3.2 Claims for occupational accident security from BPJS Manpower

It is possible for an employer to submit, on behalf of an employee, a claim to request the benefits granted under BPJS Manpower's JKK program. In this regard, BPJS Manpower will usually request the employer's report on the occupational accident that was submitted to the local office of the MOE (see above), as well as the analysis report prepared by the local office of the MOE following receipt of the employer's report. If the employer fails to submit these reports, BPJS Manpower could reject the submitted claim.

13 Employee representation, trade unions and works councils

Information about working with trade unions and works councils can be found throughout this guide. For more information about this subject in Indonesia, please contact us. See Key contacts for contact details.

14 Discrimination

14.1 Who is protected?

The Labor Law provides that every worker has the same opportunity to obtain a job without discrimination. The Labor Law also provides that every worker has the right to receive equal treatment from the employer without discrimination. An employer must provide rights and obligations for workers without discriminating on the grounds of gender, ethnic group, race, religion, skin color or political alliance.

14.2 Types of discrimination

Indonesia does not have a specific law on discrimination. However, the Labor Law includes two articles that address discrimination:

- Article 5 provides that every worker has the same opportunity to obtain a job without discrimination. The elucidation in this article refers to discrimination based on gender, ethnic group, race, religion, political alliance and disability.
- Article 6 provides that every worker has the right to receive equal treatment from their employer without discrimination. The elucidation in this article refers to discrimination based on gender, ethnic group, race, religion, skin color and political alliance.

In our view, the items referred to in the elucidations in both articles are not exhaustive, i.e., it is possible for the anti-discrimination provisions to extend to other grounds, e.g., age, marital status, etc.

14.3 Special cases

14.3.1 Disability discrimination

The Labor Law provides that an employer employing disabled workers must provide protection in accordance with the type and severity of their disability. The protection could be in the form of the provision of access, job tools and personal protective equipment, which are suitable to the type and severity of the disability.

In addition, an employer with 100 or more employees is obliged to employ at least one disabled person in accordance with the job conditions and qualifications. If an employer has less than 100 employees but uses advanced technology, it is also required to employ one or more disabled persons.

14.4 Exclusions

14.4.1 Exceptions relating to age

Basically, an employer is prohibited from employing children. An exemption exists for children between 13 and 15 years old carrying out light work to an extent that does not disturb their physical, mental and social development and health. An employer who wishes to employ children between 13 and 15 years old must fulfill the following requirements:

- They must obtain written permission from the child's parents or guardians.
- They must enter into an employment contract with the parents or guardians of the child.
- The working hours must be no more than three hours.
- The work must be carried out during daytime and not interrupt school time.

Children who are at least 14 years old may be employed at a place of work that is a part of either an educational program or training ratified by an authorized official.

In the event that a child is employed together with an adult worker, the place of work of the child must be separated from the place of work of the adult worker. A child is considered to be working if they are present in the place of work, unless proven to the contrary.

14.5 Employee claims, compensation and remedies

An aggrieved party may claim damages caused by an unlawful action of the other party as long as such unlawful action has caused actual losses to the aggrieved party. In practice, the employee will use this to claim damages caused by employment discrimination.

It is also possible for an employee to terminate their employment relationship with an employer and to claim a termination package if the employer has assaulted, rudely humiliated or threatened the employee.

14.6 Potential employer liability for employment discrimination

If it is proven that an employer violated the employment discrimination provisions by assaulting, rudely humiliating or threatening an employee, the employer may be held liable to pay the termination package for the employee who wishes to terminate the employment relationship. The employer may also be liable to pay damages to the employee if the employee files a civil claim to the district court.

The employer will be subject to:

- an administrative sanction for violation of the Labor Law regarding equal opportunity and equal treatment. The administrative sanctions consist of a reprimand, a written warning,

limitation of business activities, freezing of business activities, cancelation of approvals, cancelation of registrations, temporary shutdown of a part or all of the production equipment and revocation of license

- criminal detention for one to 12 months and/or a fine of IDR 10 million to IDR 100 million for the violation of the protection of disabled workers, the protection of female workers and the requirements to employ children to develop their talents and interests
- criminal imprisonment for one to four years and/or a fine of IDR 100 million to IDR 400 million for violation of the prohibition on the employment of children and the requirements to employ children only for light work

14.7 Avoiding discrimination and harassment claims

To avoid employment discrimination problems, it is important for an employer to address this issue in the company regulations or CLA and to provide a sanction for an employee who violates these provisions or policy. It is also important to conduct a special session for the employees (at least once as part of the orientation program) to discuss employment discrimination issues. The employees must also understand that the employer requires them to immediately report to the employer any violation of an employment discrimination provision or policy that is committed by other employees.

15 Termination of employment

15.1 General overview

A Labor Law principle is that employers, employees, labor unions and the government are obliged to make every effort to avoid termination of employment. Efforts in this regard include positive actions aimed at avoiding termination of employment, such as rescheduling working hours, taking cost-efficiency measures, altering working methods and providing developmental programs for employees.

The procedure and requirements on termination is mainly regulated under Regulation 35.

15.2 By the employer

There is no unilateral right of termination of employment in Indonesia similar to that found in other countries. Instead, subject to certain very limited exceptions, the general rule is that employers must first issue a written notice of termination. The notice of termination must, at least, include the intention and reason for the termination, and the termination payment to be made to the employee. The employee has seven working days from the receipt of the termination notice to object to the termination. The notice must be issued 14 working days prior to the proposed termination date.

The issuance of a notice of termination is not required in the following circumstances:

- the employee's voluntary resignation
- the expiration of the employee's definite period employment agreement
- the employee reaching the retirement age as stipulated under the employment agreement, the company regulations or the CLA
- the employee's death
- termination due to an urgent reason, i.e., the employee commits a serious violation that is subject to termination due to urgent reason (note that "urgent reason" can only be used as a reason for termination if the employment agreement, company regulations or CLA specifically set out certain serious violations that are specifically subject to termination for urgent reasons)

If the employee objects to the termination, the employer must obtain a favorable decision on the termination of employment from the IR Court or the Supreme Court (if a decision of the IR Court is appealed by one or both of the parties). Commencing the formal process of termination (i.e., process from bi-partite negotiation to obtaining the IR Court order) generally takes around four to six months. If the decision of the IR Court is appealed to the Supreme Court, it could take 12-18 months or longer.

If an employee agrees to a "mutual termination" and enters into a joint agreement with the employer that is registered with the IR Court, a court order is not required. Registration of a joint agreement with the IR Court is an administrative process and not an approval process.

Salary during process of termination

Under the Labor Law, as long as the IR Court (or the Supreme Court on appeal) has not issued its decision confirming the termination of employment, both the employer and the employee are required to fulfill their respective obligations. This means that an employee is still required to work, and the employer is still required to pay the employee's salary and benefits as normally received by the employee.

Under the Labor Law, if an employer and an employee have commenced bipartite negotiations, the employer can suspend the employee during the termination process (i.e., until a settlement is reached or a final and binding decision on the termination of employment is issued). However, during the suspension, the employer is still required to pay the full salary and benefits of the employees. Some company regulations and CLAs provide that an employer can temporarily suspend an employee during an investigation.

Salary during detention

An employer is not required to pay salary to an employee if the employee is arrested for allegedly committing a criminal act. However, the employer is required to provide assistance to the employee's dependents. The amount of the assistance depends on the number of dependents and ranges from 25% to 50% of the employee's monthly salary.

15.3 By the employee

Under the Labor Law, if the employee resigns, they must submit a resignation letter at least 30 days prior to the effective date of resignation. It is possible for an employer and employee to agree to a longer notice period for resignation, e.g., three months.

Under the Labor Law, an employee who voluntarily resigns is entitled to "compensation of rights" — please refer to **15.9**. An employee who resigns may also be entitled to "separation pay" — please refer to **15.4**.

15.4 Employee entitlements on termination

The statutory termination payment for an employee depends on the reason for termination and whether the employee is employed for an indefinite term or a fixed term.

Indefinite-term employees

The termination payment paid to an indefinite-term employee consists of three elements: severance pay, long service pay and compensation of rights (please refer to **15.9**). In addition, depending on the reason for termination in addition to these three elements, an employee may also be entitled to "separation pay" (as described below).

Formula

Termination payments for indefinite-term employees are calculated based on a specific formula as set out under Regulation 35. The formula used depends on the reason for the termination of the employee.

Please refer to **15.9,** which sets out a summary of the various reasons for termination (and the applicable statutory termination payment) under the Labor Law.

Fixed-term employees

Any party that terminates a definite period employment agreement before expiry is obligated to pay to the other party an amount equal to the employee's salary up until the definite period employment agreement should have expired.

In addition to the above, Regulation 35 provides that an employer is required to provide compensation pay (*uang kompensasi*) to definite-term employees upon the end of the employment. The compensation pay is calculated as follows:

Contract period	Compensation pay
1 month or more but less than 12 months	(work period /12) x 1 month's salary
12 months	1 month's salary
More than 12 months	(work period /12) x 1 month's salary

The requirement to provide the compensation pay is not applicable for foreign workers.

For ongoing definite period employment agreements, the compensation pay is to be calculated from 2 November 2020 (not from the contract start date).

Separation pay (*uang pisah*)

Under the Labor Law, separation pay is applicable where the termination is due to the employee's voluntary resignation or absence without leave for five or more consecutive working days.

The Labor Law provides that the amount of separation pay is set in the employment agreement, company regulations or CLA. In addition, separation pay is only to be paid to employees whose duties and functions do not "directly represent" the employer's interests. The Labor Law is not clear on who is included in this category of employees. However, it is generally assumed that this refers, at a minimum, to the members of the board of directors of the company. Some officials of the MOE have interpreted this provision to mean "managerial level employees" as well (e.g., HR managers, finance managers, etc.).

15.5 Notice periods

Aside from the 14-working-day notice period for termination initiated by the employer (see **15.2**) and the notice period that an employee is required to give to resign (see **15.3**), there are no labor laws and regulations that prohibit employers and their employee from agreeing on a longer notice period.

15.6 Terminations without notice

Unless the reason for termination falls within one of the very limited exceptions to the general rule under the Labor Law that an employer must first obtain a court decision approving the termination of employment (please refer to **15.2**), a notice of unilateral termination of employment should not be issued in Indonesia. It would not be valid and could be considered as an unlawful act.

15.7 Form and content of notice of termination

Please refer to **15.2**, **15.3** and **15.5**.

15.8 Protected employees

In Indonesia, an employer is required to use all efforts to prevent the termination of employment. In addition, an employer is prohibited from terminating employment in the following circumstances:

- A worker is absent due to illness according to a doctor's statement for a period of not more than 12 months.
- A worker is unable to carry out their work due to the fulfillment of their state duties in accordance with the prevailing laws and regulations.
- A worker is performing their religious rituals.
- A worker gets married.
- A female worker is pregnant, is in delivery, experiences a miscarriage or is required to breastfeed her baby.
- A worker has a blood relationship and/or a marital relationship with another worker within one company, unless this has been permitted in the employment agreement, company regulations or CLA.
- A worker has reported the employer to the authorities on suspicion of committing criminal actions.
- There is a difference of ideology, religion, political alliance, race, skin color, ethnic group, sex, physical condition or marital status.
- A worker has a permanent disability or is ill due to a work accident or due to the employment relationship, the recovery period for which, according to a doctor's statement, cannot be determined. The Labor Law, however, allows an employer to terminate an employee who has a permanent disability or is ill for 12 consecutive months.
- A worker forms a union; becomes a member or officer of a union; or participates in union activities outside working hours, during working hours with the consent of the employer or in line with the provisions of the employment agreement, company regulations or CLA.

In addition, under the Labor Union Law, anyone is restricted from "obstructing or forcing" an employee to form or not form a union; become or not become an officer of a union; become or not become a member of a union; or engage or not engage in union activities. However, it limits these restrictions by setting out actions that are prohibited as follows:

- terminating or suspending the employee
- demoting or transferring the employee
- not paying or reducing the employee's wages

- intimidating the employee in any way
- conducting a campaign against the establishment of a union

15.9 Mandatory severance

15.9.1 Components of a termination payment (for indefinite-term employees)

Severance pay

- one month's salary for a service period of less than one year
- two months' salary for a service period of one year but less than two years
- three months' salary for a service period of two years but less than three years
- four months' salary for a service period of three years but less than four years
- five months' salary for a service period of four years but less than five years
- six months' salary for a service period of five years but less than six years
- seven months' salary for a service period of six years but less than seven years
- eight months' salary for a service period of seven years but less than eight years
- nine months' salary for a service period of eight years or more

Long service pay

- two months' salary for a service period of three years or more but less than six years
- three months' salary for a service period of six years or more but less than nine years
- four months' salary for a service period of nine years or more but less than 12 years
- five months' salary for a service period of 12 years or more but less than 15 years
- six months' salary for a service period of 15 years or more but less than 18 years
- seven months' salary for a service period of 18 years or more but less than 21 years
- eight months' salary for a service period of 21 years or more but less than 24 years
- 10 months' salary for a service period of 24 years or more

Compensation of rights

- compensation for annual leave to which the employee is entitled, but which was not taken by the employee
- compensation for travel expenses or costs for the employee and their family to return to the original location of hire
- other compensation as stipulated under the employment agreement, company regulations or CLA

Salary components

The components of "salary" that are used to calculate a termination payment under the Labor Law consist of:

- current basic salary
- fixed allowances (i.e., payments to the employee made regularly and not related to the employee's attendance or achievements within a certain job)

15.9.2 Statutory termination payments (indefinite-term employees)

Note:

Severance pay (SP)

Long service pay (LSP)

Compensation of rights (COR)

Formula	Reason for termination
• **2xFormula** ○ 2 x SP ○ 1 x LSP ○ 1 x COR	• Long-term illness or disability due to work accident (after being unable to work for 12 months) • Employee's death
• **1.75xFormula** ○ 1.75 x SP ○ 1 x LSP ○ 1 x COR	• Retirement
• **1xFormula** ○ 1 x SP ○ 1 x LSP ○ 1 x COR	• Merger, consolidation, separation of company • Acquisition (termination initiated by employer) • Efficiency to prevent losses • Closure of company not due to company's losses • Company in suspension of payment (PKPU) not due to its losses • Employee's self-termination (allegation proven)
• **0.75xFormula** ○ 0.75 x SP ○ 1 x LSP ○ 1 x COR	• Force majeure that does not result in the company closing down

Formula	Reason for termination

• **0.5xFormula**
  ○ 0.5 x SP
  ○ 1 x LSP
  ○ 1 x COR
	• Acquisition resulting in changes to terms of employment and employee does not want to continue the employment relationship
	• Efficiency due to the company's losses
	• Closure of company due to losses for two years continuously or not continuously
	• Closure of company due to force majeure
	• Company in PKPU due to losses suffered by the company
	• Company's bankruptcy
	• Employee's violation of the employment agreement, company regulations or CLA (after being served warning letters)

• **COR + UP**	• Court decision finding the employee's allegation against the employer (which is used by the employee to initiate self-termination) is not proven • Employee's voluntary resignation • Employee's absence without leave for five continuous working days or more, having been summoned twice by the employer • Urgent reason • Employee cannot work for six months due to detention by the authorities for a suspected crime that resulted in losses for the company • Employee being found guilty of a crime that resulted in losses for the company before the end of the six-month period
• **LSP + COR**	• Employee cannot work for six months due to detention by the authorities for a suspected crime that did not cause losses for the company • Employee found guilty of a crime that did not cause losses to the company before the end of the six-month period

15.10Collective redundancy situations

There is no concept of unilateral termination of employment due to "redundancy" in Indonesia similar to other countries. In a redundancy situation, each employee must agree to be terminated (i.e., a mutual termination) and enter into a joint agreement that is registered with the IR Court. Registration of a joint agreement at the IR Court is an administrative process and not an approval process.

If an employee does not agree to a mutual termination, in order to terminate them, the employer must obtain a prior court order, which can be difficult. The reason for this difficulty is that in order to obtain a court order, the reason for termination must be a reason set out in the Labor Law and there is no

concept of redundancy in the Labor Law. The Labor Law does provide for a reason for termination called “termination for efficiency measures” and historically this reason has been used to obtain court orders to terminate employees in some redundancy situations, e.g., where a department has been forced to close to keep the company open, all employees in the department have been made redundant. However, the relevant article of the Labor Law refers to the “closure of the employer” and a constitutional court decision on 22 June 2012 decided that for “termination for efficiency measures,” the company must be shut down permanently. As such, it has become a lot harder to use this reason to obtain a court order to terminate employees in a redundancy situation.

As mentioned above, in order to obtain a court order to terminate an employee, a formal process must be followed (including bipartite negotiations, mediation/conciliation and court proceedings) and the employee must be paid in full until the court order is obtained.

15.11Claims, compensation and remedies

If an employee is not terminated in accordance with prevailing labor laws and regulations, the termination is not valid. In addition, if an employer terminates an employee without complying with the requirements of the prevailing labor laws and regulations, it can be regarded as an “illegal act” and action can be taken under the Indonesian Civil Code.

15.12Waiving claims

There is no specific prohibition on an employee signing an agreement where the employee waives any claims that they may have upon termination. However, if such an agreement is included as part of the employee’s employment agreement, it is likely to be unenforceable, i.e., the employee could still commence a dispute on the termination of employment despite the previously agreed waiver.

However, it is common to include a clause in the joint agreement (which an employee and an employer need to sign to mutually terminate the employment relationship) where the employee releases the employer from any claims related to the mutually agreed termination as well as any claims arising out of the employment relationship between the employee and the employer.

16 Employment implications of share sales

16.1 Acquisition of shares

Acquisition of shares is one of the reasons for termination recognized under the Labor Law and Regulation 35.

Under Regulation 35, a company can terminate the employment relationship with its employees:

- due to the acquisition of the company (the termination is initiated by the employer)
- if the acquisition of the company results in a change to the existing employment terms and the employee does not wish to continue the employment relationship (the termination is initiated by the employee)

If the employer or the employee exercises the right to terminate the employment relationship, the employer must pay the termination payment (see 15.9).

16.2 Information and consultation requirements

Cooperation of the employees is required to ensure a smooth transaction, as is a discussion with the target company’s human resources department on how employees may be dealt with. Typically, in a transaction involving the acquisition of shares, employees will be asked to elect before closing

whether they will exercise their rights to initiate termination of their employment upon closing so that their position is known.

This issue is usually not a valuation issue (as there may be provisions in the target company for statutory termination payments), but more of a cash-flow and talent management issue.

If an employer does not want an employee to leave, an industrial relations plan should be drawn up and discussions held with the labor union (if any) to try to ensure that employees will continue their employment. In practice, some employees have taken advantage of this right and sought termination and payment of the statutory termination payment and re-employment (without continuity of service).

17 Employment implications of asset sales

17.1 Acquisition of assets

Unlike in other jurisdictions, there is no automatic transfer of employees in an asset sale. If the seller and the buyer want employees to move with the assets, the employees must agree to do so.

17.2 Automatic transfer of employees

There is no automatic movement of employees between companies in Indonesia. Employees must agree to be moved. There are two ways employees can be moved between employers under Indonesian law:

- Transfer

  There is no termination of employment and no termination payment is paid. The employment is transferred from the seller to the buyer and the buyer assumes all the liability (including years of service, etc.).

- Termination and rehire

  The seller and each employee terminate the employment by agreement and enter into a joint agreement. The seller pays the employee a termination payment. The buyer employs the employee without continuity of service.

17.3 Changes to terms and conditions of employment

Under the Labor Law, if an employer wants to change the terms or conditions of an employment agreement, it must first obtain the written consent of the relevant employee. If the employee does not consent to the change of the terms and conditions of the employment agreement, the existing terms and conditions of employment continue to be applicable.

17.4 Information and consultation requirements

Please refer to **16.2**.

17.5 Protections against dismissal

Please refer to **15** above and, in particular, **15.2**, **15.4**, **15.8** and **15.9**.

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