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# Labour & Employment 2021

**Contributing editors**

**Matthew Howse, K Lesli Ligorner, Walter Ahrens,  
Michael D Schlemmer and Sabine Smith-Vidal**  
Morgan, Lewis & Bockius LLP

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Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Labour & Employment*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Hong Kong, Hungary, Mauritius, Romania, Singapore and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Matthew Howse, K Lesli Ligorner, Walter Ahrens, Michael D Schlemmer and Sabine Smith-Vidal of Morgan, Lewis & Bockius LLP, for their continued assistance with this volume.



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# Indonesia

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## LEGISLATION AND AGENCIES

### Primary and secondary legislation

1 | What are the main statutes and regulations relating to employment?

Generally, Indonesian employment law is governed by Law No. 13/2003, dated 25 March 2003, regarding labour (the Labour Law), as amended by Law No. 11/2020, dated 2 November 2020, regarding Job Creation (the Job Creation Law). The government has issued government regulations to implement both the Labour Law and the Job Creation Law, namely:

- Government Regulation No. 35 of 2021, dated 2 February 2021, regarding Fixed-Term Employment Contracts, Outsourcing, Work and Rest Time, and Termination of the Work Relationship; and
- Government Regulation No. 36 of 2021, dated 2 February 2021, regarding Salary.

The two other main statutes are:

- Law No. 2/2004, dated 14 January 2004, regarding industrial relations dispute settlement; and
- Law No. 21/2000, dated 4 August 2000, regarding labour unions.

In addition to the above laws, employers and employees are also subject to company regulations (or work rules) or a collective labour agreement (CLA), if applicable, as well as the express provisions of the employment agreement between the employer and the employee.

### Protected employee categories

2 | Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Labour Law as amended, as well as the implementing regulations, do not regulate protection from harassment for employees. However, the company regulation or collective labour agreement (CLA) will normally contain provisions regarding harassment and applicable sanctions. Indonesian case law also protects workers from harassment. However, the Indonesian court system is based on a civil law system and does not follow *stare decisis* (a legal principle under which judges must respect the precedents established by prior decisions).

In practice, employees wishing to take action against harassment experienced in the workplace can file a claim by civil tort law. The labour laws and regulations are silent on this matter.

### Enforcement agencies

3 | What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The primary government agency for manpower matters in Indonesia is the Ministry of Manpower. The Ministry is supported by regional manpower service offices spread throughout Indonesia to assist on administrative matters, including in disputes where an official from the service office can act as a mediator. Any decisions on dispute settlement between employers and employees will ultimately be made at the Labour Court.

## WORKER REPRESENTATION

### Legal basis

4 | Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

Some laws allow the establishment of a bipartite cooperation institution (an LKS bipartite) and a labour union.

An LKS bipartite is established based on article 106 of the Labour Law and Ministry of Manpower (MOM) Regulation No. Per.32/Men/XII/2008 regarding procedures for the establishment and membership composition of a bipartite cooperation institution. An LKS bipartite is made up of members of management and employees at a ratio of 1:1, regardless of the number of unions. It should have at least six members.

A group of at least 10 workers may establish a labour union. The notification and registration of labour unions is governed by MOM Decree No. Kep-16/MEN/2001. According to this Decree, unions and federations of labour unions must give written notification to the local MOM office to be registered.

### Powers of representatives

5 | What are their powers?

An LKS bipartite serves as a forum for communication and consultation between management and employees, and performs the following duties:

- to convene periodically, and as required, meetings;
- to communicate the policies of the company and the aspirations of the employees in the framework of preventing any industrial relations disputes at the company; and
- to exchange advice and opinions between the company and employees in stipulating and implementing the policies of the company.

Law No. 21/2000 states that the objective of a labour union is to improve the members' skills, knowledge and productivity, and improve the protection of members. A union is obliged to be free (ie, not subject to another's influence or pressure), open (to all and not based on political ideology, religion, ethnicity or gender) and independent (ie, acting on its own volition and not being controlled by a party outside the union).

A registered union can:

- represent workers in labour disputes;
- negotiate a collective labour agreement with the employer;
- establish institutions or undertake activities to improve the welfare of workers;
- plan, implement and take responsibility for workers' strikes; and
- represent workers in attempting to obtain shared ownership in the company.

Law No. 21/2000 imposes criminal sanctions on anyone who engages in certain anti-union activity, including:

- preventing workers from forming a union, becoming members of a union or conducting union activities;
- terminating an employee or reducing his or her salary for engaging in union activities;
- conducting an anti-union campaign; or
- intimidation in any form.

## BACKGROUND INFORMATION ON APPLICANTS

### Background checks

- 6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

There is no prohibition against background checks on applicants. Employers in Indonesia can perform background checks on applicants themselves or by using a third-party service. Certain background checks are, in practice, subject to the consent of the applicant.

### Medical examinations

- 7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

An employer can require a potential employee to undergo a medical examination as a condition of employment, as long as the same treatment is applied to all potential employees. The potential employee should give his or her written consent to both the examination and the release of the results to the employer. An employer can refuse to hire an applicant who does not submit or agree to the release of the results to the employer.

### Drug and alcohol testing

- 8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Drug and alcohol testing can be carried out only in limited circumstances; for instance, where working under the influence of drugs or alcohol could give rise to health and safety considerations (eg, where employees drive or operate machinery) or serious damage to the employer's business. The applicant must consent to the test. Drug and alcohol testing should be carried out during employment only if justified, necessary and proportionate, and with the consent of the employee.

## HIRING OF EMPLOYEES

### Preference and discrimination

- 9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

The Labour Law provides that each employee shall be entitled to equal treatment from the employer without discrimination. Each employee has the same rights and opportunities to obtain a decent job and livelihood without discrimination by sex, ethnic group, race, religion or political orientation, under the interests and abilities of the employee, including equal treatment for disabled persons. It is not considered discriminatory for an employer to select candidates based on abilities required for the job (ie, employing a person with a certain language ability to serve customers speaking that language or dialect).

- 10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

Generally, an employment contract in Indonesia can either be a fixed-term (definite) or an indefinite-term (permanent) contract. Fixed-term employment agreements are subject to stricter requirements than indefinite-term employment agreements. A fixed-term employment agreement must be in writing and the Indonesian language. If it is not made in writing, a fixed-term employment agreement is deemed an indefinite-term employment agreement. Additionally, a fixed-term employment agreement cannot include a probationary period. Indefinite-term employees are employees who do not fall into the category of fixed-term employees. This type of worker is also known as a permanent worker.

- 11 | To what extent are fixed-term employment contracts permissible?

A fixed-term employee is also known as a contract worker. Based on the Labour Law, the types of work that can be performed by a fixed-term employee under a fixed-term employment agreement are either time-based or project-based.

For time-based work, the work must fulfil the following criteria:

- work that can be completed within a short period;
- seasonal work; and
- work that is related to a new product, new activity or a product that is still in the experimental stage.

For project-based work, the work must fulfil the following criteria:

- work that can be completed at one time; or
- temporary work.

GR 35/2021 provides that fixed-term employees employed for a certain period (time-based) can only be employed for a maximum of five years (including any possible extensions thereof) unless the contract is project-based in which case the employee can be employed until the work or project is completed.

### Probationary period

- 12 | What is the maximum probationary period permitted by law?

Only a permanent employment agreement may provide for a probationary period. A fixed-term employment agreement cannot include probation.

The Labour Law allows a maximum probationary period of three months, during which time the employer can terminate the employee without having to follow the termination procedures as prescribed by law.

A probationary period of employment applies only if it is specified in writing to the employee when he or she is hired. The duration of the probation for any employee must be communicated in advance to the employee concerned. A probationary period can be neither extended nor repeated. Violation of this restriction will mean that the employee automatically acquires permanent status.

### Classification as contractor or employee

#### 13 | What are the primary factors that distinguish an independent contractor from an employee?

An employer and employee relationship is a relationship between a superior and a subordinate governed by the Labour Law. The relationship between a company and an independent contractor is a relationship between contracting parties governed by contract law and other applicable legislation. In an employment relationship, the employee is entitled to a salary or wage, where the payment of the salary does not require an invoice. In the case of an independent contractor, the terminology of the payment is 'fee', where the independent contractor agreement will usually require a contractor to submit an invoice for payment of the fees.

### Temporary agency staffing

#### 14 | Is there any legislation governing temporary staffing through recruitment agencies?

GR 35/2021 allows a company to engage in outsourcing (alih daya) to assist with specific work based on a contract with the company using the service, as long as such outsourcing company is properly licensed as an outsourcing company (perusahaan alih daya).

In the framework of outsourcing, outsourced employees do not have an employment relationship with the company using the outsourcing services where the outsourced employees are placed, but rather with the outsourcing company. The outsourced employees shall enter into an employment contract with the outsourcing company, which may be a permanent employment contract or a fixed-term contract.

If a company wishes to use outsourced employees to perform certain activities in the company, the company will enter into an outsourcing service agreement with the outsourcing company, and not an employment contract directly with each outsourced employee.

## FOREIGN WORKERS

### Visas

#### 15 | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There are no numerical limitations on short-term visas, other than the limit of one per expatriate. There are four types of visas referred to in Law No. 6/2011, dated 5 May 2011 (the Immigration Law), and its implementing regulation, Government Regulation (GR) No. 31/2013, dated 16 April 2013, as lastly amended by GR No. 48/2021, dated 2 February 2021:

- diplomatic visa;
- official visa;
- visitor visa; and
- limited-stay visa (VITAS).

Only the visitor visa and VITAS are relevant in this context.

A visitor visa is given to a foreign citizen visiting Indonesia for governmental, educational, sociocultural, tourism, business, family, journalistic or transit purposes. There are different types of visitor

visas, namely, single-entry and multiple-entry visitor visas and the visa on arrival. The purpose of the visit to Indonesia and the intended length of stay will determine which type of visitor visa the foreign citizen is eligible for and required to obtain.

A single-entry visitor visa is valid for a maximum of 60 days and a multiple-entry visa is valid for a maximum of 60 days for each visit (a multiple-entry visa is valid for five years). The visa on arrival, which only citizens from certain countries are eligible to obtain, can be obtained at certain airports in Indonesia and is valid for a maximum of 30 days, and is not extendable.

In practice, visitor visas used for business purposes are often referred to as business visas, even by Indonesian embassies or consular offices. However, the text of the applicable regulations uses the term 'visitor visa'.

According to GR 31/2013, as amended, a VITAS is intended for foreign citizens who intend to reside in Indonesia for a limited period.

The VITAS is issued to foreign citizens for working (working VITAS) or non-working (non-working VITAS) purposes. A working visa covers activities related to:

- work as an expert;
- work onboard a vessel, floating device or installation operating in Indonesian waters, territorial seas, continental shelf or Indonesian Exclusive Economic Zone;
- performing duties of a clergyperson;
- activities related to the holder's profession for which he or she receives money;
- making commercial films, as authorised by the relevant institution;
- supervising the quality or production of goods;
- conducting an audit or inspection of a company's subsidiary in Indonesia;
- after-sales service;
- installing or repairing machinery;
- conducting temporary construction work;
- conducting art, music or sports shows;
- playing in a professional sports activity;
- work related to the provision of medical treatment or medical activities; and
- the activities of an expatriate worker during his or her probationary period.

A non-working VITAS is for:

- conducting foreign investment;
- participating in scientific training and research;
- attending an educational institution;
- family reunions;
- former Indonesian citizens planning a permanent return to Indonesia; and
- having Indonesia as a second home.

Pursuant to Ministry of Law and Human Rights (MOLHR) Regulation No. 24/2016, as amended by MOLHR Regulation No. 51/2016, a non-working VITAS can be issued for two years, one year, six months, 90 days or 30 days. A two-year non-working VITAS can only be given to the following types of foreign national:

- investors;
- students; or
- experts who work in an international organisation under the auspices of the United Nations.

Since 11 July 2018, the application and issuance of working VITAS have referred to MOLHR Regulation No. 16/2018, dated 27 July 2018, regarding procedures for granting visas and stay permits for expatriate manpower. Based on MOLHR Regulation No. 16/2018, the validity period

for a working VITAS depends on the employment period stated in the employment contract, but shall not exceed two years.

Once a foreign citizen arrives in Indonesia with a non-working VITAS, he or she must report to the immigration office within seven days to process his or her limited-stay permit (ITAS). Expatriates who enter Indonesia with a working VITAS process their ITAS directly at the airport upon arrival.

There is no visa available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction.

## Spouses

### 16 | Are spouses of authorised workers entitled to work?

It is a general principle that every foreign worker must have his or her own work permit organised by his or her employer. This general principle applies regardless of marital status. Therefore, assuming the spouse is not an Indonesian citizen, or, in other words, the spouse is also an expatriate, he or she needs his or her own work permit to be eligible to work in Indonesia.

## General rules

### 17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

Under Ministry of Manpower (MOM) Regulation No. 10/2018, dated 11 July 2018, regarding procedures for the utilisation of foreign manpower, employers intending to employ expatriates must have a manpower utilisation plan (RPTKA). The RPTKA is a plan to employ expatriate manpower in certain positions for a certain period that is approved by the MOM. An RPTKA approved by the MOM serves as a work permit for expatriates.

However, an approved RPTKA does not automatically grant employers the right to employ expatriates. Previously, employers were required to obtain a Foreign Worker Utilization Plan (Rencana Penggunaan Tenaga Kerja Asing or RPTKA) and a Notification approved and issued by the Minister of Manpower before employing foreign workers. GR 34/2021 removes the Notification requirement and adds one new step, the RPTKA appropriateness assessment (RPTKA Assessment). During the RPTKA Assessment, the MOM will determine within two business days whether the submitted information and documents are correct and complete.

Employing expatriates without first fulfilling the above requirements would subject the company to administrative sanctions in the form of postponement of service, temporary suspension of the work permit application, revocation of notification or other sanctions under the prevailing laws and regulations.

## Resident labour market test

### 18 | Is a labour market test required as a precursor to a short or long-term visa?

No labour market test is required in applying for a visa. A labour market test is used by the MOM only to determine positions that expatriates are allowed to hold.

## TERMS OF EMPLOYMENT

### Working hours

#### 19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Normal working hours are prescribed by GR 35/2021 as not more than seven hours per day and 40 hours per week based on a six-day working week or eight hours per day and 40 hours per week, for a five-day working week. Wages of employees who work five days per week must not be less than the wages of employees who work six days per week.

The five-day working week has become common among private companies since the government applied a five-day working week for civil servants and employees of state-owned businesses. Regardless, after four hours of continuous work, an employee is entitled to at least 30 minutes of rest time. Employers must also provide reasonable time to perform religious observances, including Muslim prayers, which are performed five times a day.

### Overtime pay

#### 20 | What categories of workers are entitled to overtime pay and how is it calculated?

Overtime is regulated under GR 35/2021 and is payable at the rate of one-and-one-half times the hourly wage for the first hour and twice the hourly wage thereafter. Overtime pay is calculated based on an employee's monthly wage, with the hourly wage being equal to 1/173 of the monthly wage. GR 35/2021 also specifies overtime pay for work done during rest days (eg, Saturday and Sunday) depending on whether the employee is on a six-day or five-day work week.

Under GR 35/2021, a company is required to pay overtime to all employees. However, certain categories of employees are not entitled to receive overtime payment provided that they receive higher salaries. These employees are, literally translated, employees with responsibilities as thinkers, planners, executors and controllers of the company's operations whose working hours cannot be limited. It is widely thought that employees with these responsibilities are those at or above the management level or professional employees. These special categories of employees can be specified in the employment contract, company regulation or collective labour agreement. Otherwise, all employees will be entitled to overtime pay.

#### 21 | Can employees contractually waive the right to overtime pay?

The overtime pay requirement cannot be waived contractually.

### Vacation and holidays

#### 22 | Is there any legislation establishing the right to annual vacation and holidays?

Employees are entitled to one day of leave with pay for every 23 working days, with a minimum of 12 days per year insofar as the employee has worked for 12 months consecutively. If the employee does not take his or her leave entitlement within six months of earning it, the vacation leave will be forfeited. The employer can decide a suitable time for the employee to take his or her leave. These provisions also apply to fixed-term employees.

### Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

Full wages must be paid for the first four months of sick leave, 75 per cent of the full wage for the second four months, 50 per cent for the third four months and 25 per cent thereafter until the employer terminates the employee.

Further, female employees are not obliged to work on the first and second days of menstruation if they feel sick and can inform the employer. However, this provision should be further regulated in the employment agreement, company regulation or CLA.

### Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Generally, the Labour Law allows employees to take paid leave under the following circumstances:

- marriage: three days;
- marriage of employee's child: two days;
- circumcision or baptism of employee's child: two days;
- employee's wife giving birth or experiencing miscarriage: two days;
- death of employee's spouse, parent, parent-in-law, child or step-child: two days;
- death of other family member living in employee's household: one day;
- miscarriage: one-and-a-half months; and
- maternity leave for female employee: one-and-a-half months before the birth and one-and-a-half months after delivery.

The company regulations or CLA may provide additional items under which employees would be allowed to take paid leave.

### Mandatory employee benefits

25 | What employee benefits are prescribed by law?

In addition to wages, employees are generally entitled to certain social security benefits administered by the Social Security Administration Board (BPJS), which mainly consist of the BPJS health programme and the BPJS employment programme. Under the health programme, BPJS manages the health insurance of employees, while under the employment programme, it manages old-age security, occupation accident and illness, life insurance and pension benefits. Employers must register their employees in both programmes, but the contributions are payable by both employers and employees, except for occupational accident or illness and life insurance, where all contributions are paid by employers.

There are other mandatory benefits as well, such as the religious holiday allowance that employers must pay for one religious festival per year, in the amount of one month's salary, and secured salary for employees who are unable to work owing to illness.

### Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

GR 35/2021 provides that a fixed-term employment arrangement can be work whose characteristics or activities is not permanent or variable in terms of time and volume of work, where payment of the employee's salary is based on presence. These part-time employees can stay employed as fixed-term employees as long as they work less than 21 days per month.

### Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

In Indonesia, there is no requirement for employers to publish information on pay (eg, gender equality or executive remuneration) or other details about employees or the general workforce.

## POST-EMPLOYMENT RESTRICTIVE COVENANTS

### Validity and enforceability

28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

The Labour Law and other applicable labour regulations are silent concerning non-compete clauses. However, non-compete and non-solicitation clauses are common in Indonesia. Very little is known about whether these are enforceable as these have not been tested in the courts and there is little scholarly comment.

In practice, the enforcement of such an agreement would likely depend on the particular factual context. We are not aware of scholarly comments or cases on this point. An employee or a job candidate could raise issues concerning her or his right to obtain a proper job, as protected by Indonesia's Constitution and the Human Rights Law. Therefore, it is possible that the Indonesian government or an Indonesian court would view such an agreement as contrary to public policy if it prevented an individual from earning a living.

### Post-employment payments

29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

There is no requirement under the Labour Law or other applicable labour regulations for an employer to continue to pay a former employee while they are subject to post-employment restrictive covenants.

## LIABILITY FOR ACTS OF EMPLOYEES

### Extent of liability

30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?

Article 1367 of the Indonesian Civil Code provides that employers and those who have been assigned to manage the affairs of other individuals shall be responsible for the damage caused by their employees or subordinates in the course of the duties assigned to them, as long as the employees or subordinates are acting in the interests of the employer.

## TAXATION OF EMPLOYEES

### Applicable taxes

31 | What employment-related taxes are prescribed by law?

Under article 21 of the Income Tax Law, employers are obliged to deduct income tax due from employees' remuneration at the source and pass the sums withheld to the tax authorities. Income tax rates are progressive, as specified in the Income Tax Law.

## EMPLOYEE-CREATED IP

### Ownership rights

32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

Employees own any industrial design or copyrighted work they create during their employment unless agreed otherwise contractually. Employers can include a standard provision in the employment contract to assign ownership of all IP rights that their employees create during employment to the employer.

### Trade secrets and confidential information

33 | Is there any legislation protecting trade secrets and other confidential business information?

With the passage of Law No. 30/2000, dated 20 December 2000, regarding trade secrets, employers enjoy the protection of their trade secrets regarding:

- methods of production;
- methods of processing;
- methods of sale; and
- other information in the area of technology or business that has economic value and is not otherwise available to the general public.

To enjoy this protection, the entrepreneur must actively take certain steps to identify and protect these secrets.

## DATA PROTECTION

### Rules and obligations

34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

There is no specific legislation governing employee data protection in Indonesia. However, all persons have a broad constitutional right to privacy, and there is various industry-specific legislation concerning data privacy.

Law No. 11/2008, dated 21 April 2008, regarding electronic information and transactions (the ITE Law), as amended by Law No. 19/2016, dated 25 November 2016, prohibits the use of information acquired through electronic media containing personal data related to an individual without the consent of the person. The ITE Law further provides that anyone with intent and without valid rights shall be prohibited from changing, adding, reducing, transmitting, destroying, eliminating, transferring or hiding electronic information or electronic documents owned by another person or owned by the public. Protection of personal data is further regulated in the implementing regulations of the ITE Law, including Government Regulation No. 71/2019, dated 10 October 2019, regarding the provision of electronic system and transactions, as well as Minister of Communications and Informatics (MOCI) Regulation No. 20/2016, dated 1 December 2016, regarding the protection of personal data in electronic systems (MOCI Regulation 20). Both of these regulations reaffirm the importance of consent for any handling of personal data.

In practice, employers in Indonesia regulate the privacy and data protection rights of their employees by way of unilateral employee consent, employment agreements, company regulations and collective labour agreements (each called consent). The consent permits the collection, retention, disclosure and use of the employee's personal data or other confidential information. This consent is justified by the freedom of contract principle under the Indonesian Civil Code. Based on

the foregoing, it is recommended that employers obtain written consent from each employee regarding the use of personal data.

Based on Law No. 24/2009, dated 9 July 2009, regarding the national flag, language, emblem and anthem, as well as MOCI Regulation 20 regarding the protection of personal data in electronic systems, the consent should be in the Indonesian language or a bilingual format. If bilingual, the consent may provide that the English version prevails in the event of a conflict or inconsistency between the Indonesian and English versions, insofar as one of the parties involved is a foreign party.

35 | Do employers need to provide privacy notices or similar information notices to employees and candidates?

Generally, the Indonesian data protection laws apply to an electronic system provider (ESP). Under article 1(6) of Minister of Communication and Informatics (MOCI) Regulation No. 20 of 2016 regarding the Protection of Personal Data in Electronic Systems (MOCI Regulation No. 20/2016), an ESP is defined as 'any person, state administrator, business entity or the general public providing, managing or operating an electronic system, either individually or jointly, accessible by electronic system users, for its own purpose or another party's purpose, within or outside Indonesian territory.' The term 'electronic system' is broadly defined in Government Regulation No. 71 of 2019 regarding the Provision of Electronic Systems and Transactions (Government Regulation No. 71/2019) and MOCI Regulation No. 20/2016 as 'a set of electronic devices and procedures which function to prepare, collect, process, analyse, retain, display, publish, transmit or disseminate electronic information.'

Given the above, any employer that collects and processes the personal data of its employees through its electronic online system qualifies as an ESP. Thus, the Indonesian data protection laws apply to such an employer. The Indonesian data protection laws emphasise the requirement of consent for an ESP to process personal data. In other words, any and all actions taken with respect to personal data must be based on the consent of the personal data owner. The definition of consent is found in article 1(4) of MOCI Regulation No. 20/2016, which provides that 'consent' is:

*a written manual or electronic statement given by a personal data owner after receiving complete disclosure of the obtaining, collection, processing, analysis, storage, display, announcement, transfer and disclosure, as well as the confidentiality or non-confidentiality, of the personal data.*

36 | What data privacy rights can employees exercise against employers?

Under Government Regulation No. 71/2019, electronic system providers (ESPs) are required to notify the personal data owner of any breach involving such owner's personal data. Failure to comply with the notification obligation under Government Regulation No. 71/2019 may subject the relevant ESP to administrative sanctions in the form of a written warning, fines, temporary suspension of parts of or the entire components or services on an electronic system, termination of access (eg, access blocking, account closure or content removal) or removal from the list of registered electronic system providers.

Also, each employee or potential employee, as a data owner, has a right to erasure, which means the employer must erase any electronic information that contains their personal data when so requested by the data owners, unless such erasure is not permitted due to applicable data retention requirements, such as tax-related information. Further, data owners have the right to delisting (ie, removal from searchability by search engines), but this can only be enforced with a court stipulation, which can be applied for by the relevant data owner.

**BUSINESS TRANSFERS**

**Employee protections**

**37** | Is there any legislation to protect employees in the event of a business transfer?

If employees are transferred from one company to another without dismissal, the new company must provide at least the same remuneration as the previous company. The new company must also recognise the length of service of employees.

In the event of a change of ownership in an employing entity, article 42(2) of GR 35/2021 confers upon employees a right to resign and receive termination benefits, but only if there is a change in the employment terms and condition following the change of ownership. The Labour Law and GR 35/2021 are silent as to whether the right to a termination benefits package in the event of a change of ownership applies only to permanent employees or also to fixed-term employees. However, it is generally understood that the right in law applies only to permanent employees. Article 62 of the Labour Law provides that, if a fixed-term employment contract is terminated before the expiry of the contract, the terminating party must compensate the other party in the amount of the salary and other benefits that should have been paid under the fixed-term employment agreement until the date on which the contract would otherwise have expired. This right to be paid out the remaining term of an unexpired fixed-term employment agreement, rather than a termination benefits package, is generally accepted by the Ministry of Manpower.

Article 42(2) of GR 35/2021 provides that, in the event a permanent employee exercises his or her right to resign following a change of ownership of the company, the employee is entitled to 0.5 severance pay, one service pay and compensation, calculated as provided in article 40 of GR 35/2021.

**TERMINATION OF EMPLOYMENT**

**Grounds for termination**

**38** | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

The basic policy of Indonesian labour law is that the dismissal of an employee should be prevented or even, in some cases, prohibited. The general principle is that the Labour Court must approve every termination of employment unless the termination is agreed or otherwise not disputed by the employee.

The Labour Law (as amended by the Job Creation Law) and GR 35/2021 can be construed as permitting the employer to effectively terminate the employment relationship by written notice of termination with reasons, while ensuring that the employee has the right to object, negotiate and commence legal proceedings for wrongful dismissal in the Labour Court.

In instances where, following written notice, the employee agrees to a voluntary mutual termination agreement (MTA), the question of an employee's acceptance or rejection of the termination should not be relevant. The execution of the MTA is the employee's response.

**Notice**

**39** | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Article 38 of GR 35/2021 specifies that written notice must be made in the form of a notification letter duly served to the employee at the latest 14 working days before the effective date of termination. Article 38 further

provides that if the employee does not object, the termination only needs to be reported to the local Manpower Service Office. Otherwise, the objection from the employee must be delivered within seven working days after such notification letter under article 39 of GR 35/2021.

If the employee disagrees with the notice of termination (eg, no MTA is signed), the termination process would then involve:

- bipartite negotiation;
- non-binding mediation; and
- Labour Court approval.

**40** | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Exceptions to the general principle of termination of an employment relationship above include, among others, termination during a probationary period or the voluntary resignation of the employee.

**Severance pay**

**41** | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Termination of employment gives rise to termination entitlements, which include:

- severance pay;
- long-service pay; and
- other compensation, as described below.

Article 40 of GR 35/2021 provides the following calculation of the minimum statutory termination benefits.

Completed years of service	Severance pay
Less than 1 year	1 month's salary
1 year or more, but fewer than 2 years	2 months' salary
2 years or more, but fewer than 3 years	3 months' salary
3 years or more, but fewer than 4 years	4 months' salary
4 years or more, but fewer than 5 years	5 months' salary
5 years or more, but fewer than 6 years	6 months' salary
6 years or more, but fewer than 7 years	7 months' salary
7 years or more, but fewer than 8 years	8 months' salary
8 years or more	9 months' salary

Completed years of service	Long-service pay
3 years or more, but fewer than 6 years	2 months' salary
6 years or more, but fewer than 9 years	3 months' salary
9 years or more, but fewer than 12 years	4 months' salary
12 years or more, but fewer than 15 years	5 months' salary
15 years or more, but fewer than 18 years	6 months' salary
18 years or more, but fewer than 21 years	7 months' salary
21 years or more, but fewer than 24 years	8 months' salary
24 years or more	10 months' salary

Other compensation payable to the employee includes:

- compensation for annual leave to which the employee is entitled but that has not been taken or forfeited;
- any costs or expenses incurred in returning the employee and his or her family to the place where he or she was recruited (if applicable); and
- any other matters agreed to in the employment agreement, company regulation or collective labour agreement (CLA).

Further, employees may be entitled to separation pay, which amount is as contractually agreed with the employer.

### Procedure

#### 42 | Are there any procedural requirements for dismissing an employee?

When an employee objects to a termination notice, the parties (employee, employer and, if applicable, a labour union) are required to meet in an attempt to reach an amicable termination settlement. This meeting is known as bipartite negotiation. Such negotiations should be completed within 30 days, and minutes of each negotiation must be drafted and signed by all parties.

If a settlement is reached, an MTA should be executed and then registered at the relevant labour court. A settlement that is documented as a resignation does not require registration.

If the negotiations fail, the employer or employee may file the dispute with the relevant office of the Ministry of Manpower (MOM), along with supporting documents to show that bipartite negotiations have been attempted. A MOM official will ask the parties whether the dispute should be resolved through non-binding conciliation with private conciliators, mediation with a MOM mediator or arbitration. The parties should respond within seven days, and if they do not, the dispute automatically goes to mediation.

If the non-binding written recommendation of the mediator is rejected, then the matter must be brought by either party to the Labour Court.

### Employee protections

#### 43 | In what circumstances are employees protected from dismissal?

Article 153 of the Labour Law provides that an employer is prohibited from terminating an employment relationship in the following circumstances:

- the employee is unable to work owing to illness based on a doctor's statement, for a period not exceeding 12 consecutive months;
- the employee is prevented from working because he or she is fulfilling state duties under the provisions of the prevailing laws and regulations;
- the employee performs religious rites prescribed by his or her religion;
- the employee marries;
- the female employee is pregnant, gives birth, miscarries or is nursing her baby;
- the employee has a blood or marital relationship with another employee in the same company, except where this is regulated in the employment agreement, company regulation or CLA;
- the employee establishes or becomes a member or executive of a labour union, or conducts labour union activities outside of working hours or during working hours with the agreement of the employer or under the provisions in the employment agreement, company regulation or CLA;
- the employee reports the employer to the authorities for a criminal act committed by the employer;
- because of differences in ideology, religion, political leaning, ethnic group, skin colour, social group, gender, physical condition or marital status; or
- the employee is permanently disabled or injured in a work accident, or is injured owing to the employment relationship where, based on a doctor's statement, the recovery period required cannot be predicted.

### Mass terminations and collective dismissals

#### 44 | Are there special rules for mass terminations or collective dismissals?

Based on the Labour Law, the termination benefits for termination owing to downsizing are as follows:

- for downsizing because of the company suffering losses, employees are entitled to one-half basic severance pay, one-time basic service pay and compensation (article 43(1) of GR 35/2021);
- for downsizing for efficiency reasons to avoid losses, employees are entitled to one-time basic severance pay, one-time basic service pay and compensation (article 43(2) of GR 35/2021);
- for downsizing because of company closure due to either suffering losses for two years consecutively or not because of suffering losses for two years consecutively, employees are entitled to one-half basic severance pay, one-time basic service pay and compensation (article 44(1) of GR 35/2021);
- for downsizing because of company closure not due to suffering losses, employees are entitled to one-time basic severance pay, one-time basic service pay and compensation (article 44(2) of GR 35/2021);
- for downsizing because of company closure due to force majeure, employees are entitled to one-half basic severance pay, one-time basic service pay and compensation (article 45(1) of GR 35/2021); and
- for downsizing because of force majeure without company closure, employees are entitled to 0.75 basic severance pay, one-time basic service pay and compensation (article 45(2) of GR 35/2021).

### Class and collective actions

#### 45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

The Labour Law allows employees on a collective basis to conduct strikes, following certain procedures as prescribed by law. Otherwise, the strike would be considered an illegal strike.

A strike is a basic right of employees and labour unions that must be conducted lawfully, in an orderly manner and peacefully, which means it must not disrupt public safety and orderliness or endanger people's safety, the assets of the company or other people or public property. A strike is called as a consequence of the failure of negotiations with the employer, which may be owing to the employer is unwilling to conduct negotiations even though the labour union or the employees have requested such negotiations in writing twice within a period of 14 working days, or the negotiations are deadlocked, as stated by the parties.

The employees or labour union, or both, must notify the employer and the local competent authority for labour affairs in writing at least seven business days before a strike is conducted.

### Mandatory retirement age

#### 46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

From 1 January 2019, the retirement age is 57. It will rise by an additional year every three years until the retirement age reaches 65 in 2043.

## DISPUTE RESOLUTION

### Arbitration

- 47 | May the parties agree to private arbitration of employment disputes?

Law No. 2/2004 provides for private arbitration of employment disputes as an alternative method of settlement only for union-employer disputes over interests (ie, amendment of work conditions) or disputes between labour unions in the same company. Law No. 2/2004 reasserts that any dispute over dismissal or termination is under the sole jurisdiction of the Labour Court.

### Employee waiver of rights

- 48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

There is no restriction under Indonesian law on an employee waiving his or her contractual rights to potential employment claims. Any written agreement that includes such a waiver will not form a basis for cancellation of the agreement or be considered null and void. Although such a waiver should be enforceable, in practice, the Labour Court would most likely still agree to hear claims from an employee even though he or she has contractually waived his or her rights to such employment claims.

### Limitation period

- 49 | What are the limitation periods for bringing employment claims?

An employee involved in a voluntary resignation or termination owing to a criminal proceeding may file a claim with the Labour Court within a year of the date of termination. Article 96 of the Labour Law originally stipulated a two-year statute of limitations to bring claims for payments arising out of the employment relationship, but the Constitutional Court nullified the two-year limit in 2012 (Decision No. 100/PUU-X/2012) and the Job Creation Law has formally deleted article 96. In practice, the limitation period for bringing employment claims is similar to that for civil claims, whereby article 1967 of the Indonesian Civil Code stipulates that a potential claim expires after 30 years.

## UPDATE AND TRENDS

### Key developments of the past year

- 50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

The introduction of the Job Creation Law in November 2020 and the subsequent issuance of its implementing regulations, one of which is GR 35/2021, have raised concerns about the law's effect on the environment, human rights and media freedom. Most of the controversy has concerned changes to the Indonesian Labour Law under the Job Creation Law and there were several fairly large demonstrations by labour unions while the law was being deliberated.

The Job Creation Law amends, revokes and adds provisions to laws in multiple sectors of the Indonesian economy. In addition to changes to the Labour Law, there are also changes to the oil and gas law, the electricity law, the mining law, the law on halal products. It revises various provisions in the Company Law, which helps regulate the norms and practice of doing business in Indonesia.

Specifically for labour and immigration matters, the Job Creation Law introduces changes to the Labour Law, foreign manpower



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utilisation, wages and the administration of the loss of the employment security programme.

Many of the new provisions require implementing regulations that have already been issued.

### Coronavirus

- 51 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Minister of Manpower Circular Letter No. M/3/HK/04/III/2020 on the Protection of Employees/Workers and Continuation of Business for the Prevention and Treatment of COVID-19 (MOM COVID-19 Circular Letter) was issued on 17 March 2020.

The MOM COVID-19 Circular Letter expressly recognises that employees may be placed on leave due to pandemic advisory measures (eg, paid leave due to self-quarantine and sick leave due to confirmed cases) and that reductions in work or working days may be necessary as a matter of business continuity. But the Circular Letter expressly provides that any such reduction, if followed by reduction of salaries, must be agreed upon between the employer and employees.

Therefore, in complying with the MOM Circular Letter, the employer must document the reduction of employees' salaries in a written agreement with the affected employees. This agreement can be in the form of an amendment to the employees' current employment agreements.

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