LABOUR & EMPLOYMENT

Indonesia

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Quick reference guide enabling side-by-side comparison of local insights, including legislation, protected employee categories and enforcement agencies; worker representation; checks on applicants; terms of employment; rules on foreign workers; post-employment restrictive covenants; liability for acts of employees; taxation of employees; employee-created IP; data protection; business transfers; termination of employment; dispute resolution; and recent trends.

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LEGISLATION AND AGENCIES

Primary and secondary legislation

What are the main statutes and regulations relating to employment?

Indonesian employment law is governed by Law No. 13/2003, dated 15 March 2003, regarding Manpower (Labour Law), as amended by Law No. 11/2020, dated 2 November 2020, regarding Job Creation (Job Creation Law) (Labour Law, as amended). The government has issued the following regulations to implement the Labour Law:

- Government Regulation No. 35/2021, dated 2 February 2021, regarding Fixed-Term Employment Agreement, Outsourcing, Working Hours and Rest Hours, and Termination of Employment (GR 35/2021); and
- Government Regulation No. 36/2021, dated 2 February 2021, regarding Wages (GR 36/2021).

The 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 and regulations, employers and employees are also subject to the relevant company regulations (or work rules) or collective labour agreement (CLA), as applicable, as well as the provisions of the employment agreement between the employer and employee.

Law stated - 25 February 2022

Protected employee categories

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

Neither the Labour Law, as amended, nor its implementing regulations regulate express protection from harassment for employees. However, the company regulations and CLA would normally contain provisions on harassment and its sanctions. Indonesian case law also protects workers from harassment. However, the Indonesian courts are based on a civil law system that does not follow the principle of stare decisis and therefore judges may not follow precedents established by prior court decisions.

Law stated - 25 February 2022

Enforcement agencies

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.

Law stated - 25 February 2022

WORKER REPRESENTATION

Legal basis

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.

Law stated - 25 February 2022

Powers of representatives

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.

Law stated - 25 February 2022

BACKGROUND INFORMATION ON APPLICANTS

Background checks

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.

Law stated - 25 February 2022

Medical examinations

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.

Law stated - 25 February 2022

Drug and alcohol testing

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.

Law stated - 25 February 2022

HIRING OF EMPLOYEES

Preference and discrimination

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).

Law stated - 25 February 2022

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 compared to indefinite-term employment agreements. A fixed-term employment agreement must be in writing in the Indonesian language or a bilingual format. 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.

Law stated - 25 February 2022

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.

Law stated - 25 February 2022

Probationary period

What is the maximum probationary period permitted by law?

Only a permanent employment contract can provide for a probationary period. The Labour Law, as amended 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 the employee is hired. The duration of the probation for any employee must be communicated in advance to the employee concerned. A probationary period cannot be extended or repeated. Violation of this restriction will mean that the employee automatically acquires permanent status.

Law stated - 25 February 2022

Classification as contractor or employee

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.

Law stated - 25 February 2022

Temporary agency staffing

Is there any legislation governing temporary staffing through recruitment agencies?

GR 35/2021 allows a company to engage in outsourcing to assist with specific work based on a contract with the company providing the service, as long as such company is properly licensed as an outsourcing company. The 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.

Law stated - 25 February 2022

FOREIGN WORKERS

Visas

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 visa 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 last 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 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 is only available to citizens of certain countries at certain airports in Indonesia, 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 the Indonesian Exclusive Economic Zone;
- performing the 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 for 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.

Law stated - 25 February 2022

Spouses

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.

Law stated - 25 February 2022

General rules

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

Under MOM Regulation No. 10/2018, dated 11 July 2018, regarding procedures for the utilisation of foreign manpower, employers intending to employ expatriates must have Foreign Worker Utilization (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 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.

Law stated - 25 February 2022

Resident labour market test

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.

Law stated - 25 February 2022

TERMS OF EMPLOYMENT

Working hours

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.

Law stated - 25 February 2022

Overtime pay

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

In accordance with GR 35/2021, overtime is payable at a 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).

Certain categories of employees are not entitled to receive overtime payment. 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 and who receive higher salaries. 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 should be specified in the employment contract, company regulation or collective labour agreement. Otherwise, all employees will be entitled to overtime pay.

Law stated - 25 February 2022

Can employees contractually waive the right to overtime pay?

Overtime pay requirements cannot be waived contractually except for certain categories of employees, which must still

be specified in the employment contract, company regulation or collective labour agreement.

Law stated - 25 February 2022

Vacation and holidays

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

Employees are entitled to annual leave of a minimum of 12 days per year insofar as the employee has worked for 12 months consecutively. The employer can decide a suitable time for the employee to take his or her leave. These provisions also apply to fixed-term employees.

The implementation of annual leave should be specified in the employment contract, company regulation or collective labour agreement.

Law stated - 25 February 2022

Sick leave and sick pay

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

The Labour Law, as amended, stipulates that the employer is prohibited to terminate an employee who is absent because he or she is sick supported with a doctor's note. If the employee suffers from prolonged sickness, the employer will need to pay full wages for the first four months of sick leave, 75 per cent of full wages 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 they inform the employer. However, this provision should be further regulated in the employment agreement, company regulation or collective labour agreement (CLA).

Law stated - 25 February 2022

Leave of absence

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.

Law stated - 25 February 2022

Mandatory employee benefits

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.

Law stated - 25 February 2022

Part-time and fixed-term employees

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

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

Law stated - 25 February 2022

Public disclosures

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.

Law stated - 25 February 2022

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

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.

Law stated - 25 February 2022

Post-employment payments

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.

Law stated - 25 February 2022

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

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.

Law stated - 25 February 2022

TAXATION OF EMPLOYEES

Applicable taxes

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.

Law stated - 25 February 2022

EMPLOYEE-CREATED IP

Ownership rights

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.

Law stated - 25 February 2022

Trade secrets and confidential information

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

With the enactment 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.

Law stated - 25 February 2022

DATA PROTECTION

Rules and obligations

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, aside from the broad constitutional right to privacy, personal data protection is governed under the newly enacted Law No. 27/2022 regarding personal data protection (the PDP Law), as well as under various industry-specific legislation concerning data privacy.

The PDP Law is the first comprehensive law in Indonesia to govern personal data protection in both electronic systems and non-electronic systems. The PDP Law requires the personal data controller to have a clear legal basis for processing personal data, such as the explicit valid consent of the data subject.

Specifically as relates to electronic data, 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 relevant 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 these regulations reaffirm the importance of consent for any handling of personal data.

Given the foregoing, for an employer to lawfully store and process the personal data of employees, it is obliged to obtain the consent of the employees, signifying their awareness that their personal data will be stored and processed

by the employer. Such consent must be written or recorded and must fulfil the requirement of being clearly distinguished from other purposes, made in an understandable and accessible format, and conveyed using simple and clear language.

In practice, employers in Indonesia regulate the privacy and data protection rights of their employees by way of unilateral employee consents, 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 their personal data.

Law stated - 17 November 2022

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 MOCI Regulation 20, 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. 71/2019 regarding the Provision of Electronic Systems and Transactions (Government Regulation No. 71/2019) and MOCI Regulation 20 as a set of electronic devices and procedures that 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 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 20, 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.'*

Law stated - 17 November 2022

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.

Law stated - 17 November 2022

BUSINESS TRANSFERS

Employee protections

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 from the previous company.

In the event of a change of ownership in an employing entity, article 42(2) of GR 35/2021 provides that in the event the employee(s) does not want to remain with the company due to a change in the employment terms and condition following the change of ownership, the employer can terminate said employee(s). The Labour Law, as amended 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 fixed-term employees. However, it is generally understood that the right in law applies only to permanent employees. Article 62 of the Labour Law, as amended 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 employment is terminated on the basis of change of ownership in the employing entity, the employee is entitled to one-half severance pay, one-time service pay, and compensation, calculated as provided in article 40 of GR 35/2021.

Law stated - 25 February 2022

TERMINATION OF EMPLOYMENT

Grounds for termination

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 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 signs 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 would be the employee's response and settlement.

Law stated - 25 February 2022

Notice

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.

Law stated - 25 February 2022

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.

Law stated - 25 February 2022

Severance pay

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.

Article 40 of GR 35/2021 provides the following calculation of the minimum statutory severance and long-service pay.

Completed years of service	Severance pay
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, but fewer than 9 years	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.

The total of the above benefits that will be received by the employee will be calculated based on the formula depending on the grounds for termination as prescribed by GR 35/2021.

Law stated - 25 February 2022

Procedure

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 required 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 Ministry of Manpower 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.

Law stated - 25 February 2022

Employee protections

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.

Law stated - 25 February 2022

Mass terminations and collective dismissals

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 severance 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).

Law stated - 25 February 2022

Class and collective actions

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

The Labour Law, as amended 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 being 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.

Law stated - 25 February 2022

Mandatory retirement age

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

The Labour Law, as amended does not specifically regulate the retirement age. Provisions related to retirement age can be found in several regulations. The retirement age must be stipulated in the employment contract, company regulations or CLA. In practice, employers predominantly follow the provisions of Government Regulation No. 45/2015, dated 30 June 2015, regarding the Organization of Retirement Security Program, which stipulate the retirement age starting 1 January 2019 is 57 years old and will rise by an additional year every three years, until it reaches the age of 65 in 2043.

Law stated - 25 February 2022

DISPUTE RESOLUTION

Arbitration

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.

Law stated - 25 February 2022

Employee waiver of rights

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.

Law stated - 25 February 2022

Limitation period

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 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.

Law stated - 25 February 2022

UPDATE AND TRENDS

Key developments of the past year

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 government enacted the Job Creation Law in November 2020, amending, among other laws, the Labour Law. The Job Creation Law and its subsequent implementing regulations reshaped Indonesia's employment law regime, introducing changes to expatriate employment, employee entitlements, the termination process and entitlements, and more.

However, in late 2021, the Constitutional Court declared that the Job Creation Law is conditionally unconstitutional and must be amended within two years of the court's decision. This decision raised legal concerns and left employers wondering what to expect next and how they should proceed. The Constitutional Court also prohibited the issuance of any new implementing regulations for the Job Creation Law pending its amendment.

The amendments made by the Job Creation Law to various laws, including the Labour Law, and the already enacted implementing regulations for the Job Creation Law remain valid and in effect during the two-year time frame. However, if the government fails to implement the amendment as ordered by the Constitutional Court, the Job Creation Law

(including the Labour Law, as amended by the Job Creation Law) will become permanently unconstitutional and all the earlier laws and regulations amended or replaced by or due to the Job Creation Law will become valid again.

Considering that the Job Creation Law has introduced significant changes to the employment law regime, its being scrapped would have a significant impact on the employment sector. We will have to wait and see if the court's rectification order is enforced, and if legislators do amend the Job Creation Law, what provisions they might revise, remove or add during the amendment process.

More recently, the government enacted the Sexual Violence Law on 9 May 2022. The Sexual Violence Law provides more detailed provisions on acts that are regarded as sexual violence, which include acts regarded as sexual harassment, and the attendant criminal sanctions. The Sexual Violence Law provides that criminal sanctions for sexual violence committed by an employer against an employee shall be enhanced by one-third.

And in perhaps the biggest recent development in Indonesia, on 17 October 2022, the government enacted the PDP Law. The PDP Law is the first comprehensive law in Indonesia to govern personal data protection in both electronic systems and non-electronic systems. This law is applicable to any person (the definition of 'person' in the PDP Law includes individuals and corporations), public agency or international organization that carries out legal actions in Indonesia. It further provides that the law applies to any person that carries out legal actions outside Indonesian jurisdiction if these actions have legal consequences in the Indonesian jurisdiction and/or for Indonesian data subjects residing outside of Indonesia. The PDP Law clarifies that any offshore entity that processes personal data will also be subject to the PDP Law.

The enactment of the PDP Law does not revoke industry-specific data protection laws and regulations issued prior to the PDP Law insofar as they do not contravene the provisions of the PDP Law.

Pursuant to the PDP Law, data controllers, processors, and other relevant parties that process personal data, including employers that process the personal data of employees, have two years to comply with the provisions of the PDP Law.

Law stated - 17 November 2022

Jurisdictions

Angola	FTL Advogados
Australia	People + Culture Strategies
Austria	Schindler Attorneys
Belgium	Van Olmen & Wynant
Bermuda	MJM Barristers & Attorneys
Brazil	Cescon, Barrieu, Flesch & Barreto Advogados
Canada	KPMG Law
Chile	SCR Abogados
China	Morgan, Lewis & Bockius LLP
Colombia	Holland & Knight LLP
Denmark	Norrbom Vinding
Egypt	Eldib Advocates
Finland	Kalliolaw Asianajotoimisto Oy
France	Morgan, Lewis & Bockius LLP
Germany	Morgan, Lewis & Bockius LLP
Ghana	Globetrotters Legal Africa
Greece	Rokas Law Firm
Hong Kong	Morgan, Lewis & Bockius LLP
Hungary	VJT & Partners
India	AZB & Partners
Indonesia	SSEK Legal Consultants
Ireland	Arthur Cox LLP
Israel	Barnea Jaffa Lande
Italy	Zambelli & Partners
Japan	TMI Associates

Luxembourg	Castegnaro
Malaysia	SKRINE
Malta	GVZH Advocates
Mauritius	Orison Legal
Mexico	Morgan, Lewis & Bockius LLP
Monaco	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
Netherlands	CLINT | Littler
Nigeria	Bloomfield Law
Norway	Homble Olsby | Littler
Pakistan	Axis Law Chambers
Panama	Icaza González-Ruiz & Alemán
Philippines	SyCip Salazar Hernandez & Gatmaitan
Puerto Rico	Morgan, Lewis & Bockius LLP
Romania	Mușat & Asociaţii
Singapore	Morgan Lewis Stamford LLC
Slovenia	Law firm Šafar & Partners
Sweden	Advokatfirman Cederquist KB
Switzerland	Wenger Plattner
Taiwan	Brain Trust International Law Firm
Thailand	Pisut & Partners
Turkey	Bozoğlu Izgi Attorney Partnership
United Arab Emirates	Morgan, Lewis & Bockius LLP
United Kingdom	Morgan, Lewis & Bockius LLP
USA	Morgan, Lewis & Bockius LLP