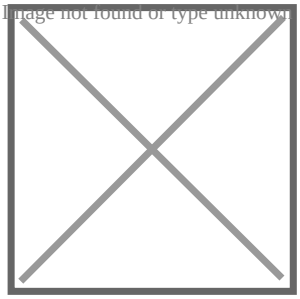

Overview of Employment Law in Indonesia

General Terms of Employment

Employment is mainly regulated under Law Number 13 of 2003 on Manpower (“Manpower Law”). This Manpower Law is supplemented with other implementing laws in the form of government regulation, presidential regulation and minister of manpower regulation.

In general, there are 2 (two) types of employment contracts in Indonesia, i.e. definite and indefinite period employment contracts. Manpower Law does not require an employment contract to be made in writing. However, any employment relationships without contract shall be deemed as an indefinite period employment contract. In principle, a definite period employment contract is allowed for specific jobs that will be finished within a definite period based on its nature. The definite period employment contract can be made for a maximum 2 (two) years period and can be extended once for a maximum 1 (one) year. By the end extension, the parties may renew the definite period employment contract after 30 (thirty days) suspension period. The renewal can only be made once for a maximum 1 (one) year. Failing to comply with the requirements, the contract shall be deemed as an indefinite period employment contract.

The minimum salary in Indonesia varies depending on the location of the workplace in each city/regencies or provinces. Governor or Mayor/Regent normally determines the minimum amount of workers’ salary in his/her area. For an entrepreneur who is not capable of fulfilling the minimum salary requirement, he/she has to propose for suspension – not exclusion – to Governor. It is worth noting, however, once the entrepreneur is capable, he/she has to pay the remaining deficit of previous employees’ salaries. Failure to meet minimum salary requirements can be considered as a crime and can be sentenced for maximum of 4 (four) years.

The probationary period is only allowed for an indefinite period employment contract for a maximum 3

(three) months. During this period, employers have to comply with minimum salary regulation.

Employers who have employed a minimum of 10 (ten) employees are obliged to have company regulation, except for those who have had a collective labor agreement ("CLA"). Employers have to discuss with the representation of employees during drawing up company regulation. Company regulation is effective upon legalization by the Minister of Manpower or appointed official.

In addition to the definite and indefinite period contracts, Indonesian Manpower Law also acknowledges the appointment of an independent contractors to outsource part of works with conditions the contract has to be in writing. Types of works that can be outsourced to third party has to meet the following requirements:

To be performed separately from main business activities;
To be performed under direct or indirect order by user company;
Classified as a supporting of business activity;
It does not directly hinder the production process.

The types of works that can be outsourced are limited to the following works: (a) cleaning services (b) catering for employees (c) security personnel (d) supporting services to mining and oil sectors and (e) employee transportation services.

Labor Union and Representative of Workers

Labor unions can be formed by a minimum of 10 (ten) employees. At least 5 (five) labor unions can form a federation of labor unions. Then a minimum of 3 (three) federation of labor unions can establish a confederation of labor unions. The established labor union must be reported to an authorized official of the ministry of manpower to be listed. Rights of labor union are, inter alia:

To negotiate CLA with entrepreneur;
To represent workers in industrial relations dispute;
To represent workers in manpower institutions;
To form an institution or take an action in relation to the enhancement of workers' welfare;
To do other manpower-related activities so long as it does not violate prevailing laws and regulation;

Manpower Law acknowledges workers' freedom to form or to join a labor union. Any actions, inter alia, (a) termination of employment, temporary termination, mutation and demotion, (b) to not pay or reduce salary, (c) to intimidate in any means, (d) to campaign anti-labor union, intended to hinder or prevent workers to form or join labor union is classified as union-busting. Consequently, the perpetrator can be

sentenced for a maximum of 5 (five) years.

Indonesia does not recognize the works council, however, there is a body called Bipartite Cooperation Institution (Lembaga Kerja Sama Bipartit or “LKS Bipartite”). A company which has employed equivalent to or more than 50 (fifty) employees is obliged to form LKS Bipartite. Member of LKS Bipartite is consists of representation of both entrepreneurs and workers. LKS Bipartite is formed to be a form of communication and consultation with regards to employment in the company.

Foreign Worker

To be able to employ foreign workers, entrepreneurs must obtain approval from the minister of manpower or appointed official. Foreign workers can only be contracted for a definite period. Any entrepreneurs who intended to employ foreign workers must prepare Foreign Manpower Utilization Plan (Rencana Penggunaan Tenaga Kerja Asing or “RPTKA”). Human resources and certain positions as determined by the minister of manpower cannot be held by foreign workers. During the utilization of foreign workers, the employer must annually report to Directorate General of Domestic Employment Placement. Any foreign workers must obtain Temporary Stay Permit Visa (Vitas) followed by Temporary Stay Permit (Itas) which is given for no longer than 2 (two) years period.

Business Transfer

In principle, change of ownership of the company in any cause, inter alia, sale and purchase of shares, inheritance, or grant (hibah), then the employees’ rights shall be borne by the new owner, unless it is agreed otherwise in the transfer of ownership agreement. The agreement, however, is prohibited to reduce workers’ rights. In case of change of ownership, the existing CLA shall remain applicable until it expires.

In case of change of status of the company, merger, consolidation or change of ownership, either entrepreneur or employee is entitled to terminate employment relation. If the entrepreneur decides not to resume the employment contract, the employee is entitled to receive twice the amount of severance payment, one amount of sum as reward for services rendered and compensation payment. If the employee decides not to resume the employment contract, the entrepreneur is obliged to pay one amount of severance payment, one amount of sum as reward for services rendered and compensation payment. During a merger, if both merged companies have CLA, then the applicable CLA is one which favorable to workers. If only one of the merged companies have CLA, then it shall be applicable until it expires.

Closed Down and Bankruptcy

Manpower Law allows the entrepreneur to terminate employment contract because of closed down and the closing down is caused by continual losses for 2 (two) years consecutively or force majeure. In this matter,

the entrepreneur is obliged to pay employees with one amount of severance payment, one amount of sum as reward for services rendered and compensation payment.

In addition, the entrepreneur can also terminate an employment contract in the event of closed down caused by efficiency. In this case, the entrepreneur is required to pay employees with twice the amount of severance payment, one amount of sum as reward for services rendered and compensation payment. Please note that there is a discrepancy on the definition of “closed down”. Even though Constitutional Court asserted that closed down can only be defined as “permanently closed down”, however, there is a Supreme Court decision that provides an efficiency that can be used as a reason to terminate employment and it does not have to be interpreted as “permanently closed down”.

In the event the company is declared bankrupt by the court or liquidated in accordance with the prevailing laws, then the employees’ salary and other rights shall be considered as privileged receivables along with tax. In this case, the employees are entitled to one amount of severance payment, one amount of sum as reward for services rendered and compensation payment.

Statutory Severance Payment

In the event of termination of employment, the entrepreneur is obliged to pay severance payment, a sum of money as a reward for services rendered and compensation payment, which is calculated as below:

Severance payment:

1 (one) month salary for less than 1 (one) year employment;
2 (two) month salaries for employment more than 1 (one) year but less than 2 (two) years;
3 (three) month salaries for employment up to 2 (two) years or more but less than 3 (three) years;
4 (four) month salaries for employment up to 3 (three) years or more but less than 4 (four) years;
5 (five) month salaries for employment up to 4 (four) years or more but less than 5 (five) years;
6 (six) month salaries for employment up to 5 (five) years or more but less than 6 (six) years;
7 (seven) month salaries for employment up to 6 (six) years or more but less than 7 (seven) years;
8 (eight) month salaries for employment up to 7 (seven) years or more but less than 8 (eight) years;
9 (nine) month salaries for employment up to 8 (eight) years or more.

Sum of money as a reward for services rendered:

2 (two) month salaries for employment up to 3 (three) years or more but less than 6 (six) years;
3 (three) month salaries for employment up to 6 (six) years or more but less than 9 (nine) years;
4 (four) month salaries for employment up to 9 (nine) years or more but less than 12 (twelve) years;
5 (five) month salaries for employment up to 12 (twelve) years or more but less than 15 (fifteen) years;

6 (six) month salaries for employment up to 15 (fifteen) years or more but less than 18 (eighteen) years;
7 (seven) month salaries for employment up to 18 (eighteen) years but less than 21 (twenty-one) years;
8 (eight) month salaries for employment up to 21 (twenty-one) years but less than 24 (twenty-four) years;
10 (ten) month salaries for employment up to 24 (twenty-four) years or more.

Compensation payments, shall include:

Annual leaves that have not taken nor expired;
Transport expenses for going home of the worker/ employee and his or her family back to the point of hire
Compensation for housing allowance, medical and health care allowance is determined at 15% (fifteen percent) of the severance payment and/or a sum of reward for years of service for those who are eligible;
Other compensations that are stipulated under an employment contract, company regulation and CLA.

Termination of Employment

In principle, any termination of employment has to be approved by the industrial relation court, unless the termination happens for the following reasons:

during the probationary period;
expiration of definite period employment contract;
the employee voluntarily resigns;
death of employee;
there is an agreement between an entrepreneur and employee;
the employee entered retirement age; or

For point a, the entrepreneur does not have to pay severance payment. For the employee who voluntarily resigns is entitled to a compensation payment. In the case of the employee entered retirement age, the entrepreneur has to pay in full of pension contributions and pay compensation payment. Please note that in case of an agreement reached between entrepreneur and employee, it must be made in writing and be registered in relevant industrial relation court to be effective and enforceable.

In addition to the above termination, there are conditions where the entrepreneur is allowed to unilaterally terminate employment contract subject to approval from relevant industrial relation court. The following are legal reasons for the entrepreneur to unilaterally terminate employment if an employee:

Committed serious misconducts;
Violated employment contract, company regulation or CLA;
Absent for 5 (five) consecutive days without notice after to be summoned twice by the entrepreneur;
to be detained by an authorized official for more than 6 (six) months or to be punished guilty by the court

for the crime that is not reported by the entrepreneur.
Closed down and bankruptcy;
Change of status, change of ownership, merger and consolidation;

There is a constitutional court decision that provides before terminating employees for serious misconduct, there has to be a final and binding court decision stating the employee is guilty. In practice, however, there is a discrepancy between the judges on the requirement of final and binding decision.

In case of termination due to violation of employment contract, company regulation or CLA, the entrepreneur is required to initially send 3 (three) warning letters to employees. For the employee who is absent for 5 (five) consecutive days without notice after being summoned twice, he/she is deemed voluntarily resigns.

Industrial Relation Disputes Resolution

Any industrial relation dispute settlement between employer and employee has to be done with the following steps;
Bipartite negotiation;
Mediation;
Industrial relation court proceedings.

Industrial relation disputes should be initially settled through bipartite negotiation between entrepreneur and worker/employee or Labor Union. Negotiation bipartite to be held for no longer than 30 (thirty) days. Negotiation must be recorded in minutes of negotiation. In the event negotiation failed, one of the parties or both parties register the dispute to the relevant office of the Ministry of Manpower (“MOM”). Normally, the authorized official will ask whether the parties have agreed to appoint a conciliator, if not, then the dispute will be settled through mediation.

Mediation will be mediated by an officer of relevant office MOM. At the latest 30 (thirty) days since mediator receives the assignment, he/she should issue suggestion and send it to the parties. The parties have to send a response letter to the suggestion at the latest 10 (ten) days after receiving the letter. A party who does not respond to the suggestion will be deemed to reject the suggestion. If both parties agree with the suggestion, then no longer than 3 (three) days since the suggestion agreed, a settlement agreement has to be registered to relevant industrial court. In the event one of the parties or both parties disagree with the suggestion, the disagreeing party may proceed with filing a lawsuit to industrial relation court. Upon the industrial relation court decision, the losing party may file an appeal to Supreme Court no longer than 14 (fourteen) days after the decision is read or notification of decision received.

Labor Inspection

Labor Inspection is a supervision and implementation of law and regulation on employment that is conducted by a technical unit at the level of national, province, and regency/ city under the Ministry of Manpower. In addition to settlement through mediation and industrial relation court, Labor Inspector is authorized to enter and inspect the workplace of entrepreneur or summon entrepreneur to examine on implementation of law and regulation. During examination, labor inspectors can issue a determination to force entrepreneurs to comply with law and regulation.

Lawyers of ADP Counsellors at Law are experienced and specialized in employment matters, please do not hesitate to contact us at info@adplaws.com if you have any queries regarding this matter.