



Employment Law in Indonesia: Part I

Insights

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Indonesia is a democratic republic with a population of approximately 240 million people scattered across the more than 17,000 islands which make up its 34 provinces. A former Dutch colony, Indonesia gained independence in 1945 and has since become a member of the G-20. Although still largely an agrarian economy, Indonesia is rapidly industrializing and diversifying into other spheres. This, combined with the country's large youth population has led to consistent economic growth of 6% per year since 2007. Given its continued growth, Indonesia is expected to attract business in the coming years. Therefore, it is imperative that companies currently doing business in the country or considering doing so be aware of the country's often strict employment and labor laws.

Laws, Courts, and Agencies

Law No. 13 of 2003 Regarding Manpower (Law No. 13) is the primary law dealing with employment issues in Indonesia. Disputes are handled by the Industrial Relations Court (Industrial Court), also known by the acronym PHI, which was established under Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes. The Industrial Court functions as a tribunal which examines, adjudicates, and renders sanctions in employment matters. The tribunal's decisions are deemed final but may be appealed to the nation's Supreme Court.

The Department of Manpower and Transmigration (the Department of Manpower) regulates all labor affairs in Indonesia. The Department of Manpower sets policies on labor matters and issues regulations.

Worker's Representation

Trade unions are regulated under Law No. 21 of 2000. Unions may be set up "to struggle for, defend and protect the rights and interests of workers and to improve the welfare of workers and their families".

Trade unions may be parties to collective bargaining agreements and represent members in settling disputes. Unions must have at least ten members, and must be registered with the Department of Manpower's district office.

Besides trade unions, workers may also be represented by a works-council if employed at a job with 50+ employees. The council consists of representatives for both the employer and employee. Some work sites even employ employee tripartite "cooperation-institutions" which consist of employer, employee, and government representatives.

Hiring of Employees

Article 5 of Law No. 13 provides that individuals are entitled to equal opportunity to obtain work without discrimination on the basis of race, sex, ethnic group, religion, disability or political affiliation in accordance with the interests and abilities of the employee.

Contracting and the Employment Relationship

Contracts:

Only fixed-term employment contracts must be in writing. Fixed-term contracts are governed under Articles 56 and 59 of Law No. 13 which state that such contracts are limited to circumstances where the work to be performed is:

- A "one off" task or one where the work is temporary in nature;
- the work is expected to take no longer than three years to complete;¹
- the work is seasonal; or
- relates to a product still in the experimental stages.

Terms of the employment agreement must also comply with any provisions found in any collective bargaining agreements or company regulations. Any agreement deviating from the above requirements will cause the agreement to be considered a permanent contract. If a party to the contract unilaterally terminates the employment agreement before its expiration date, the terminating party must pay a sum equal to the employee's wage for the remaining period under the contract. This rule does not apply to terminations arising from a ruling of the Industrial Court.

Probationary Periods:

Article 60 of the Employment Law states that the maximum probationary period is three months. During this time, the probationary employee must be paid at or above the minimum wage.

Independent Contractors:

Independent contractor relationships are allowed in Indonesia. There are multiple factors determining whether one is categorized as an independent contractor primarily having to do with the employer's care and control. Some distinguishing factors between employees and independent contractors include:

- An independent contractor agreement governed by contract law rather than labor laws control the relationship;
- Contractors are paid using a fee agreement, usually requiring an invoice;
- enrollment in the "Manpower Social Security Program" is at employer's discretion;

- disputes are handled in the district courts or through arbitration rather than the Industrial Court;
- If terminated, provisions of the independent contractor agreement (subject to contract laws) will govern severance pay whereas an employee may be entitled to receive severance pay or other compensation under the law; and
- Contractor pays his or her own taxes versus tax withholdings for employees.

Thank you for reading and stay tuned for our next post on Indonesian employment law which will cover wage & hour rules, and terminating the employment relationship.

¹ The maximum length of a fixed-term contract is two years with the option of a one-time, one year extension bringing it to the three year maximum mentioned above. The employee must be notified of such an extension at least seven days before the expiration of the agreement, and the extension must be made within thirty days of the expiration of the first agreement. Agreement may only be renewed once for a maximum period of two years following a thirty day break after the expiration of the contract.

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