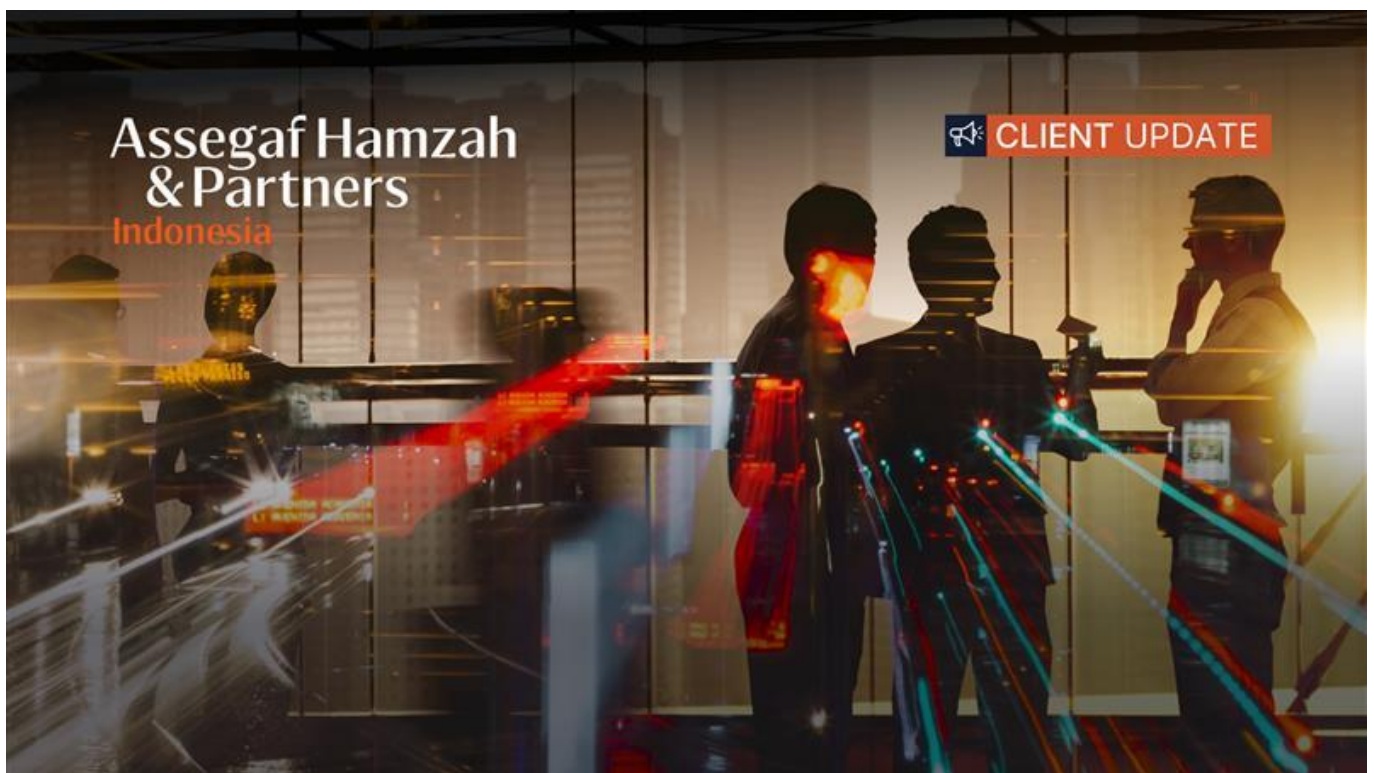


EMPLOYMENT

Major Changes to Indonesian Labour Law: Constitutional Court Ruling Favours Employees



In a significant decision on 31 October 2024, Indonesia's Constitutional Court issued a ruling with major implications for the country's labour law. The Court's decision stems from a judicial review petition (No.168/PUU-XXI/2023) that challenged Law No. 11 of 2020 on Job Creation (as amended) ("**Job Creation Law**"), a law that introduced significant changes to Indonesia's labour regulations. This alert summarises the most impactful changes and their implications for employers.

Key takeaways for employers include:

- Prioritising Indonesian workers over foreign nationals for job vacancies.
- Adhering to the strict five-year limitation on Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu* or "**PKWT**") and ensuring these agreements are in writing.

- Preparing for potential adjustments to outsourcing practices as the Minister of Manpower determines which jobs can be outsourced.
- Reviewing wage structures and scales to ensure compliance with the new eligibility indicators and calculation formula.
- Understanding the revised termination procedures, including the prioritisation of employee payments in bankruptcies and the parties' obligations during the dispute resolution process.

Details of the Petition

The petition was filed by the Labour Party, the Confederation of Indonesian Trade Unions (*Konfederasi Persatuan Buruh Indonesia* or KPBI), the Confederation of Indonesian Trade Unions (*Konfederasi Serikat Pekerja Indonesia* or KSPI), and several other labour unions (together, "**applicants**"), seeking stronger protections for workers. In the petition, the applicants challenged certain provisions in Law No. 13 of 2003 on Labour, as amended by the Job Creation Law ("**Labour Law**"), arguing that they were unconstitutional under the 1945 Constitution. They sought to have these provisions reinterpreted as requested by them, or to reinstate provisions from the previous Labour Law that were changed by the Job Creation Law.

The applicants argued that the challenged provisions created legal uncertainty and negatively impacted employees' rights, particularly concerning wages and dispute resolution. Overall, out of a total of 69 requests, 21 points were granted and reinterpreted by the Constitutional Court, while 48 points were rejected.

Impact on Employment of Foreign Workers

The ruling clarifies that the Indonesian Minister of Manpower is the sole authority responsible for approving the Foreign Worker Utilisation Plan (*Rencana Penggunaan Tenaga Kerja Asing* or "**RPTKA**"). The RPTKA is a mandatory document that employers must obtain before employing foreign workers.

The ruling also emphasises the importance of prioritising Indonesian workers over foreign nationals, especially for roles that do not require specialised skills or expertise. This aims to ensure that Indonesians have access to decent employment opportunities.

Impact on Fixed-Term Employment and Outsourcing

The ruling clarifies that all types of PKWT, including those for specific projects or tasks, are limited to a maximum duration of five years, including any extensions. Additionally, all PKWT must be in writing and use the Indonesian language and Latin alphabet. These requirements ensure clarity and transparency in employment terms, safeguarding both employers and employees.

The role of the Minister of Manpower in determining which jobs can be outsourced is also clarified. This determination will be specified in a written outsourcing agreement, providing legal certainty and guidance for companies engaging in outsourcing practices. The Court highlighted the need to ensure certainty in outsourcing arrangements to protect workers. Uncertainty about job continuity and length of service, particularly with frequent changes in outsourcing companies, can negatively affect workers by limiting job continuity and opportunities for better income and benefits that commensurate with their years of service and dedication.

Impact on Employees' General Rights

The ruling reaffirms the importance of rest periods for employees, mandating a minimum of one day off work per week for six-day workweeks and two days off for five-day workweeks. Certain companies may need to provide additional rest periods beyond these minimum requirements, as stipulated in employment agreements, company regulations, or collective labour agreements.

The ruling also provides new indicators of wage eligibility, which include essential needs such as food and beverages, clothing, housing, education, health, recreation, and old-age security. To determine wage policies, the central government will involve regional wage councils, which include representatives from local governments. Additionally, governors must set sectoral minimum wages at the provincial, regency, or city level.

The ruling clarifies the formula for calculating minimum wages, considering the interests of both employers and employees, and the principle of proportionality to meet the decent living needs of employees and other relevant circumstances. Wages above the minimum wage can be determined through agreements between employers, employees, and labour unions. When establishing wage structures and scales, employers must consider factors such as job categories, positions, length of service, education, and employee competencies.

Impact on Termination Process and Dispute Resolution

The Court's ruling significantly impacts the termination process, particularly in cases of bankruptcy or liquidation. It prioritises employee's claims for payment over most other creditors, including preferred creditors. Only creditors with collateral rights take precedence. Additionally, the ruling emphasises that severance pay amounts are minimums, allowing employers to grant higher amount as they see fit.

The ruling also provides guidance on dispute resolution procedures. It mandates that disputes between employers and employees must prioritise negotiation and consensus building. If negotiations fail, the termination process must go through **all** stages of the industrial relations dispute resolution process. Critically, termination can only occur after obtaining a ruling from the industrial relations court. This ensures that all legal avenues are exhausted and that terminations are conducted lawfully.

Furthermore, the ruling requires employers and employees to continue fulfilling their obligations throughout the entire dispute resolution process until a final, legally binding decision is reached by the industrial relations court.

Conclusion

In the ruling, the Constitutional Court requests that all levels of judiciary and government institutions align their rulings and legal products with its determination. The Constitutional Court also requests that legislators promptly draft a new labour law and separate or remove the relevant provisions from the current Labour Law.

This landmark ruling by the Constitutional Court has significant implications for employers in Indonesia. It is crucial for employers to understand and adapt to potential implications brought by the ruling. Going forward, companies should proactively address potential implications due to the ruling, including reviewing existing employment contracts and company regulations/collective labour agreement.

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