

Constitutional Court: Employment Terminations in Indonesia Require Court Decision

Indonesia's Constitutional Court has issued a game-changing decision amending provisions of Law No. 13 of 2003 on Manpower as amended by the Job Creation Law (the "**Manpower Law**"), most crucially rendering that any termination of employment requires a legal and binding court decision.

The Constitutional Court on October 31, 2024, issued Decision No. 168/PUU-XXI/2023 regarding the review of Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (the "**Job Creation Law**") against the 1945 Constitution of the Republic of Indonesia ("**MK Decision No. 168**").

This case was filed by the Labor Party (*Partai Buruh*), the labor federations Federasi Serikat Pekerja Metal Indonesia, Konfederasi Serikat Pekerja Seluruh Indonesia, Konfederasi Persatuan Buruh Indonesia, and Konfederasi Serikat Pekerja Indonesia, an employee of PT Lawe Adya Prima and an employee of PT Indonesia Polymer Compound. It was accepted by the Constitutional Court on January 3, 2024.

Below is a summary of key changes to the Manpower Law as a result of MK Decision No. 168:

No.	Article	Original Article (Manpower Law Cluster)	After MK Decision No.168
1.	42 paragraph 1 42 ayat 1	<p>Every Employer who employs Foreign Workers must have a plan for the use of Foreign Workers authorized by the Central Government.</p> <p>Setiap Pemberi Kerja yang mempekerjakan Tenaga Kerja Asing wajib memiliki rencana penggunaan Tenaga Kerja Asing yang disahkan oleh Pemerintah Pusat.</p>	<p>Every Employer who employs Foreign Workers must have a plan for the use of Foreign Workers authorized by the Minister responsible in the field of manpower (affairs) in casu the Minister of Manpower.</p> <p>Setiap Pemberi Kerja yang mempekerjakan Tenaga Kerja Asing wajib memiliki rencana penggunaan Tenaga Kerja Asing yang disahkan oleh Menteri yang bertanggungjawab di bidang (urusan) ketenagakerjaan in casu Menteri Tenaga Kerja.</p>
2.	42 paragraph 4 42 ayat 4	<p>Foreign Workers can be employed in Indonesia only in Employment Relationships for certain positions and for certain periods of time and must have competence in accordance with the position to be occupied.</p> <p>Tenaga Kerja Asing dapat dipekerjakan di Indonesia hanya dalam Hubungan Kerja untuk jabatan tertentu dan waktu tertentu serta memiliki kompetensi sesuai dengan jabatan yang akan diduduki.</p>	<p>Foreign Workers can be employed in Indonesia only in Employment Relationships for certain positions and for certain periods of time and must have competence in accordance with the position to be occupied, with due regard to the prioritization of the use of Indonesian labor.</p> <p>Tenaga Kerja Asing dapat dipekerjakan di Indonesia hanya dalam Hubungan Kerja untuk jabatan tertentu dan waktu tertentu serta memiliki kompetensi sesuai dengan jabatan yang akan diduduki, dengan memerhatikan pengutamakan penggunaan tenaga kerja Indonesia.</p>

No.	Article	Original Article (Manpower Law Cluster)	After MK Decision No.168
3.	56 paragraph 3 56 ayat 3	<i>The period or completion of a particular work as referred to in paragraph (2) shall be determined based on an Employment Agreement.</i> <i>Jangka waktu atau selesainya suatu pekerjaan tertentu sebagaimana dimaksud pada ayat (2) ditentukan berdasarkan Perjanjian Kerja.</i>	<i>The period of completion of a particular work is made not to exceed a maximum of 5 (five) years, including any extensions.</i> <i>Jangka waktu selesainya suatu pekerjaan tertentu dibuat tidak melebihi paling lama 5 (lima) tahun, termasuk jika terdapat perpanjangan.</i>
4.	57 paragraph 1 57 ayat 1	<i>A fixed-term employment agreement is made in writing and must use Indonesian language and Latin letters.</i> <i>Perjanjian kerja waktu tertentu dibuat secara tertulis serta harus menggunakan Bahasa Indonesia dan huruf latin.</i>	<i>A fixed-term employment agreement must be made in writing using Indonesian language and Latin letters.</i> <i>Perjanjian kerja waktu tertentu harus dibuat secara tertulis dengan menggunakan bahasa Indonesia dan huruf latin.</i>
5.	64 paragraph 2 64 ayat 2	<i>The Government determines the part of the work implementation as referred to in paragraph (1).</i> <i>Pemerintah menetapkan sebagian pelaksanaan pekerjaan sebagaimana dimaksud pada ayat (1).</i>	<i>The Minister determines the part of the work implementation as referred to in paragraph (1) in accordance with the type and field of outsourcing work agreed in the written outsourcing agreement.</i> <i>Menteri menetapkan sebagian pelaksanaan pekerjaan sebagaimana dimaksud pada ayat (1) sesuai dengan jenis dan bidang pekerjaan alih daya yang diperjanjikan dalam perjanjian tertulis alih daya.</i>
6.	79 paragraph 2 letter b 79 ayat 2 huruf b	<i>1 (one) day weekly rest for 6 (six) working days in 1 (one) week.</i> <i>istirahat mingguan 1 (satu) hari untuk 6 (enam) hari kerja dalam 1 (satu) minggu.</i>	<i>Weekly rest of 1 (one) day for 6 (six) working days in 1 (one) week or 2 (two) days for 5 (five) working days in 1 (one) week.</i> <i>istirahat mingguan 1 (satu) hari untuk 6 (enam) hari kerja dalam 1 (satu) minggu atau 2 (dua) hari untuk 5 (lima) hari kerja dalam 1 (satu) minggu.</i>
7.	79 paragraph 5 79 ayat 5	<i>In addition to the rest and leave periods as referred to in paragraph (1), paragraph (21), and paragraph (3), certain companies may provide long breaks as stipulated in Employment Agreements, Company Regulations, or Collective Labor Agreements.</i> <i>Selain waktu istirahat dan cuti sebagaimana dimaksud pada ayat (1), ayat (21, dan ayat (3), Perusahaan tertentu dapat memberikan istirahat panjang yang diatur dalam Perjanjian</i>	<i>In addition to the rest and leave periods as referred to in paragraph (1), paragraph (21), and paragraph (3), certain companies provide long breaks as stipulated in Employment Agreements, Company Regulations, or Collective Labor Agreements.</i> <i>Selain waktu istirahat dan cuti sebagaimana dimaksud pada ayat (1), ayat (21, dan ayat (3), Perusahaan tertentu memberikan istirahat panjang yang diatur dalam Perjanjian Kerja,</i>

No.	Article	Original Article (Manpower Law Cluster)	After MK Decision No.168
		<i>Kerja, Peraturan Perusahaan, atau Perjanjian Kerja Bersama.</i>	<i>Peraturan Perusahaan, atau Perjanjian Kerja Bersama.</i>
8.	88 paragraph 1 88 ayat 1	<i>Every worker/laborer is entitled to a decent standard of living.</i> <i>Setiap Pekerja/Buruh berhak atas penghidupan yang layak bagi kemanusiaan.</i>	<i>Every worker/laborer is entitled to a livelihood that is decent for humanity, including a living income, which is the amount of receipt or income of workers/laborers from their work so that they are able reasonably to meet the needs of themselves and their families, including food and drink, clothing, housing, education, health, recreation, and old age security.</i> <i>Setiap Pekerja/Buruh berhak atas penghidupan yang layak bagi kemanusiaan termasuk penghasilan yang memenuhi penghidupan yang merupakan jumlah penerimaan atau pendapatan pekerja/buruh dari hasil pekerjaannya sehingga mampu memenuhi kebutuhan hidup pekerja/buruh dan keluarganya secara wajar yang meliputi makanan dan minuman, sandang, perumahan, pendidikan, kesehatan, rekreasi, dan jaminan hari tua.</i>
9.	88 paragraph 2 88 ayat 2	<i>The Central Government establishes a wage policy as one of the efforts to realize the right of workers/laborers to a decent standard of living.</i> <i>Pemerintah Pusat menetapkan kebijakan pengupahan sebagai salah satu upaya mewujudkan hak Pekerja/Buruh atas penghidupan yang layak bagi kemanusiaan.</i>	<i>The Central Government establishes wage policies as an effort to realize the right of workers/laborers to a decent standard of living by involving regional wage boards in the formulation of wage policies that become material for the central government to determine wage policies.</i> <i>Pemerintah Pusat menetapkan kebijakan pengupahan sebagai salah satu upaya mewujudkan hak Pekerja/Buruh atas penghidupan yang layak bagi kemanusiaan dengan melibatkan dewan pengupahan daerah yang di dalamnya terdapat unsur pemerintah daerah dalam perumusan kebijakan pengupahan yang menjadi bahan bagi pemerintah pusat untuk penetapan kebijakan pengupahan.</i>
10.	88 paragraph 3 letter b 88 ayat 3 huruf b	<i>Wage structure and scale</i> <i>struktur dan skala Upah</i>	Proportional <i>wage structure and scale.</i> <i>struktur dan skala upah yang proporsional.</i>
11.	88 C	1) <i>The Governor shall set the provincial minimum wage.</i>	<i>The same but must add</i> "including the Governor is obliged to determine the sectoral minimum wage in the provincial area and can for regencies/cities".

No.	Article	Original Article (Manpower Law Cluster)	After MK Decision No.168
	88 C	<p>2) <i>The Governor may set the district/city minimum wage.</i></p> <p>3) <i>The district/city minimum wage as referred to in paragraph (2) shall be determined in the event that the result of the calculation of the district/city minimum wage is higher than the provincial minimum wage.</i></p> <p>4) <i>The minimum wage as referred to in paragraph (1) and paragraph (2) is determined based on economic and labor conditions.</i></p> <p>5) <i>The economic and employment conditions as referred to in paragraph (4) use data sourced from institutions authorized in the field of statistics.</i></p> <p>6) <i>In the event that a regency/municipality does not yet have a minimum wage and will determine a minimum wage, the determination of the minimum wage must fulfil certain conditions.</i></p> <p>7) <i>Further provisions regarding the procedures for determining the minimum wage as referred to in paragraph (4) and certain conditions as referred to in paragraph (6) shall be regulated in a Government Regulation.</i></p> <p>1) <i>Gubernur wajib menetapkan Upah minimum provinsi.</i></p> <p>2) <i>Gubernur dapat menetapkan Upah minimum kabupaten /kota.</i></p> <p>3) <i>Penetapan Upah minimum kabupaten/kota sebagaimana dimaksud</i></p>	<p><i>Sama namun harus ditambahkan</i></p> <p><i>“termasuk gubernur wajib menetapkan upah minimum sektoral pada wilayah provinsi dan dapat untuk kabupaten/kota”.</i></p>



No.	Article	Original Article (Manpower Law Cluster)	After MK Decision No.168
		<p>pada ayat (2) dilakukan dalam hal hasil penghitungan Upah minimum kabupaten/kota lebih tinggi dari Upah minimum provinsi.</p> <p>4) Upah minimum sebagaimana dimaksud pada ayat (1) dan ayat (2) ditetapkan berdasarkan kondisi ekonomi dan Ketenagakerjaan.</p> <p>5) Kondisi ekonomi dan Ketenagakerjaan sebagaimana dimaksud pada ayat (4) menggunakan data yang bersumber dari lembaga yang berwenang di bidang statistik.</p> <p>6) Dalam hal kabupaten/kota belum memiliki Upah minimum dan akan menetapkan Upah minimum, penetapan Upah minimum harus memenuhi syarat tertentu.</p> <p>7) Ketentuan lebih lanjut mengenai tata cara penetapan Upah minimum sebagaimana dimaksud pada ayat (4) dan syarat tertentu sebagaimana dimaksud pada ayat (6) diatur dalam Peraturan Pemerintah.</p>	
12.	88 D paragraph 2 88 D ayat 2	<p>The minimum wage calculation formula as referred to in paragraph (1) considers economic growth variables, inflation, and certain indices.</p> <p>Formula penghitungan Upah minimum sebagaimana dimaksud pada ayat (1) mempertimbangkan variabel pertumbuhan ekonomi, inflasi, dan indeks tertentu.</p>	<p>The minimum wage calculation formula as referred to in paragraph (1)) considers variables of economic growth, inflation, and certain indices.</p> <p>A certain index is a variable that represents the contribution of labor to the economic growth of the province or regency/city by taking into account the interests of companies and workers/laborers as well as the principle of proportionality to meet the decent living needs (KHL) of workers/laborers.</p> <p>Formula penghitungan Upah minimum sebagaimana dimaksud pada ayat (1) mempertimbangkan variabel pertumbuhan ekonomi, inflasi, dan indeks tertentu.</p>



No.	Article	Original Article (Manpower Law Cluster)	After MK Decision No.168
			Indeks tertentu merupakan variabel yang mewakili kontribusi tenaga kerja terhadap pertumbuhan ekonomi provinsi atau kabupaten/kota dengan memperhatikan kepentingan perusahaan dan pekerja/buruh serta prinsip proporsionalitas untuk memenuhi kebutuhan hidup layak (KHL) bagi pekerja/buruh.
13.	88 F 88 F	In certain circumstances, the Government may determine a minimum wage calculation formula that is different from the minimum wage calculation formula as referred to in Article 88D paragraph (2). Dalam keadaan tertentu Pemerintah dapat menetapkan formula penghitungan Upah minimum yang berbeda dengan formula penghitungan Upah minimum sebagaimana dimaksud dalam Pasal 88D ayat (2).	The same article but should be added What is meant by “in certain circumstances” includes, among others, natural or non-natural disasters, including extraordinary conditions of the global and/or national economy determined by the President in accordance with the provisions of laws and regulations”. Pasal yang sama ditambahkan Yang dimaksud dengan “dalam keadaan tertentu” mencakup antara lain bencana alam atau non-alam, termasuk kondisi luar biasa perekonomian global dan/atau nasional yang ditetapkan oleh Presiden sesuai dengan ketentuan peraturan perundang-undangan”.
14.	90A 90A	Wages above the minimum wage are determined based on an agreement between the Employer and Workers/Laborers in the Company. Upah di atas Upah minimum ditetapkan berdasarkan kesepakatan antara Pengusaha dan Pekerja/Buruh di Perusahaan.	Wages above the minimum wage are determined based on an agreement between the Employer and Workers/Laborers or Trade Unions/Labor Unions in the company. Upah di atas Upah minimum ditetapkan berdasarkan kesepakatan antara Pengusaha dan Pekerja/Buruh atau Serikat Pekerja/Serikat Buruh di perusahaan.
15.	92 paragraph 1 92 ayat 1	Employers are obliged to arrange the structure and scale of wages in the Company by taking into account the Company's ability and productivity. Pengusaha wajib menyusun struktur dan skala Upah di Perusahaan dengan memperhatikan kemampuan Perusahaan dan produktivitas.	Employers are obliged to arrange the structure and scale of wages in the Company by taking into account the Company's ability and productivity, as well as class, position, length of service, education, and competence. Pengusaha wajib menyusun struktur dan skala Upah di Perusahaan dengan memperhatikan kemampuan Perusahaan dan produktivitas, serta golongan, jabatan, masa kerja, pendidikan, dan kompetensi.
16.	95 paragraph 3	Other rights of Workers/Laborers as referred to in paragraph (1) shall take precedence in payment over all creditors except creditors holding property security rights.	Other rights of Workers/Laborers as referred to in paragraph (1) shall take precedence in payment over all creditors including preferred creditors except creditors holding property security rights.

No.	Article	Original Article (Manpower Law Cluster)	After MK Decision No.168
	95 ayat 3	<i>Hak lainnya dari Pekerja/Buruh sebagaimana dimaksud pada ayat (1) didahulukan pembayarannya atas semua kreditur kecuali para kreditur pemegang hak jaminan kebendaan.</i>	<i>Hak lainnya dari Pekerja/Buruh sebagaimana dimaksud pada ayat (1) didahulukan pembayarannya atas semua kreditur termasuk kreditur preferen kecuali para kreditur pemegang hak jaminan kebendaan.</i>
17.	98 paragraph 1 98 ayat 1	<i>To provide advice and considerations to the Central Government or Regional Government in the formulation of wage policies and the development of the wage system, a wage board is established.</i> <i>Untuk memberikan saran dan pertimbangan kepada Pemerintah Pusat atau Pemerintah Daerah dalam perumusan kebijakan pengupahan serta pengembangan sistem pengupahan dibentuk dewan pengupahan.</i>	To provide advice and considerations to the Central Government or Local Government in the formulation of wage policies and the development of the wage system, an actively participating wage board is established. <i>Untuk memberikan saran dan pertimbangan kepada Pemerintah Pusat atau Pemerintah Daerah dalam perumusan kebijakan pengupahan serta pengembangan sistem pengupahan dibentuk dewan pengupahan yang berpartisipasi secara aktif.</i>
18.	151 paragraph 3 151 ayat 3	<i>In the event that the Worker/Labor has been notified and refuses the termination of employment, the settlement of termination of employment shall be conducted through bipartite negotiations between the Employer and Workers/Laborers and/or Workers/Labor Unions.</i> <i>Dalam hal Pekerja/Buruh telah diberitahu dan menolak Pemutusan Hubungan Kerja, penyelesaian Pemutusan Hubungan Kerja wajib dilakukan melalui perundingan bipartit antara Pengusaha dengan Pekerja/Buruh dan/atau Serikat Pekerja/ Serikat Buruh.</i>	<i>In the event that the Worker/Labor has been notified and refuses termination of employment, the settlement of termination of employment shall be carried out through bipartite negotiations in a deliberative manner to reach consensus between the Employer and the Worker/Labor and/or the Worker/Labor Union.</i> <i>Dalam hal Pekerja/Buruh telah diberitahu dan menolak Pemutusan Hubungan Kerja, penyelesaian Pemutusan Hubungan Kerja wajib dilakukan melalui perundingan bipartit secara musyawarah untuk mufakat antara Pengusaha dengan Pekerja/Buruh dan/atau Serikat Pekerja/Serikat Buruh.</i>
19.	151 paragraph 4	<i>In the event that the bipartite negotiations as referred to in paragraph (3) do not reach an agreement, the termination of employment shall be carried out through the next stage in accordance with the Industrial Relations Dispute settlement mechanism.</i>	<i>In the event that the bipartite negotiations as referred to in paragraph (3) do not reach an agreement, the termination of employment can only be carried out after obtaining a stipulation from an industrial relations dispute settlement institution whose decision has permanent legal force.</i>

No.	Article	Original Article (Manpower Law Cluster)	After MK Decision No.168
	151 ayat 4	<i>Dalam hal perundingan bipartit sebagaimana dimaksud pada ayat (3) tidak mendapatkan kesepakatan, Pemutusan Hubungan Kerja dilakukan melalui tahap berikutnya sesuai dengan mekanisme penyelesaian Perselisihan Hubungan Industrial.</i>	<i>Dalam hal perundingan bipartit sebagaimana dimaksud pada ayat (3) tidak mendapatkan kesepakatan maka Pemutusan Hubungan Kerja hanya dapat dilakukan setelah memperoleh penetapan dari lembaga penyelesaian perselisihan hubungan industrial yang putusannya telah berkekuatan hukum tetap.</i>
20.	157A paragraph 3 157A ayat 3	<i>The implementation of the obligations as referred to in paragraph (1) shall be carried out until the completion of the Industrial Relations Dispute settlement process according to its level.</i> <i>Pelaksanaan kewajiban sebagaimana dimaksud pada ayat (1) dilakukan sampai dengan selesainya proses penyelesaian Perselisihan Hubungan Industrial sesuai tingkatannya.</i>	<i>The implementation of the obligations as referred to in paragraph (1) until the end of the industrial relations dispute resolution process with permanent legal force remains in accordance with the provisions in the Industrial Dispute Settlement Law.</i> <i>Pelaksanaan kewajiban sebagaimana dimaksud pada ayat (1) sampai berakhirnya proses penyelesaian perselisihan hubungan industrial yang berkekuatan hukum tetap sesuai dengan ketentuan dalam undang-undang PPHI.</i>
21.	156 paragraph 2 156 ayat 2	<i>Severance pay as referred to in paragraph (1) shall be given with the following provisions:</i> <i>Uang pesangon sebagaimana dimaksud pada ayat (1) diberikan dengan ketentuan sebagai berikut:</i>	<i>Severance pay as referred to in paragraph (1) shall be at least:</i> <i>Uang pesangon sebagaimana dimaksud pada ayat (1) paling sedikit:</i>

Conclusion

It should be noted that due to the changes above resulting from MK Decision No. 168, under Article 151 paragraph 4 of the Manpower Law, employment termination requires a court decision that is legally binding. Further, it can be interpreted that under Article 157A paragraph 3 of the Manpower Law, employees shall continue to work and receive wages until there is a court decision on their termination that is legally binding.

In theory, termination of employment takes 140 days from the bipartite meeting process, the mediation hearing with the local manpower office and the Labor Court process to the Supreme Court decision. However, in practice it can take one to two years to receive a legally binding court decision if the case is appealed to the Supreme Court level.

The amendments to the Manpower Law following the Constitutional Court's ruling in MK Decision No. 168 are set to have a substantial impact on Indonesia's labor and employment landscape, both legally and practically. Companies will need to pay close attention to these amendments when managing their employees and handling related matters.

It will be interesting to observe how these changes are implemented and how they affect current and future practices and cases. (4 November 2024)

For more information, please contact:

Syahdan Z. Aziz, Partner
syahdanaziz@ssek.com

Indrawan Dwi Yuriutomo, Senior Associate
indrawanyuriutomo@ssek.com

This publication is intended for informational purposes only and does not constitute legal advice. Any reliance on the material contained herein is at the user's own risk. All SSEK publications are copyrighted and may not be reproduced without the express written consent of SSEK.

