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Constitutional Court's Landmark Decision Reshapes Indonesian Manpower Law

Indonesia's Constitutional Court has issued a decision that significantly alters various aspects of the Manpower Law. Key changes include requiring court approval for disputed terminations, capping fixed-term contracts at five years, revising wage calculations, and prioritizing Indonesians over foreigners for job vacancies.

Handed down on 31 October 2024, the Constitutional Court's Decision No. 168/PUU-XXI/2023 ("**Decision**") invalidates and amends numerous provisions in the Manpower Law cluster within the omnibus law on Job Creation.¹

Issued in response to a case filed by labor unions and private employees, the Decision also orders the House of Representatives to pass a new manpower law within two years to streamline manpower provisions spread across different laws and align them with the latest amendments.

The Decision addresses long-standing concerns over employee protection versus business flexibility, clarifying provisions that had multiple interpretations and adding new ones.

This advisory lists the Decision's key points and their potential impact on employers.

¹ Indonesia's Law No. 13 of 2003 on Manpower had previously been amended by Law 11 of 2020 on Job Creation. However, that law was later deemed conditionally unconstitutional, resulting in it being pushed through by an emergency regulation, so it now goes by the convoluted title of Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (Job Creation Law).

No	Original Provision of the Manpower Law	Amendment to the Manpower Law after the Decision	Impact of the Decision
Employment of Foreign Workers			
1	<p>Article 42 (4) <i>Foreign Workers may be employed in Indonesia only within an Employment Relationship for specific positions and specific periods and must possess competencies in accordance with the positions they will hold.</i></p>	<p>Article 42 (4) <i>Foreign Workers may be employed in Indonesia only within an Employment Relationship for specific positions and specific periods and must possess competencies in accordance with the positions they will hold, with due regard for prioritizing the employment of Indonesian workers.</i></p>	<p>The Decision emphasizes the priority of employing Indonesian workers over foreign nationals. In this regard, employers are not only required to comply with restrictions on foreign employees but must also prioritize Indonesian candidates before hiring foreign workers. It will be interesting to observe how this provision will be implemented in practice, as there is no clear guidance on how to assess the unavailability of Indonesian candidates as the “green light” for hiring a foreign national.</p>
Fixed-Term Employment			
2	<p>Article 56 (1) <i>Employment Agreements are made for a fixed term or for an indefinite term.</i> (2) <i>A fixed-term employment agreement as referred to in paragraph (1) is based on:</i> <i>a. a specified period; or</i> <i>b. the completion of a specific job.</i> (3) <i>The specified period or completion of a specific job as referred to in paragraph (2) is determined based on the Employment Agreement.</i></p>	<p>Article 56 (1) <i>Employment Agreements are made for a definite period of time or for an indefinite period of time.</i> (2) <i>A definite-period employment agreement as referred to in paragraph (1) is based on:</i> <i>a. a specified period; or</i> <i>b. the completion of a specific job.</i> (3) The period for completing a specific job shall not exceed a maximum of 5 (five) years, including any extensions.</p>	<p>Under the Decision, the total duration of an initial fixed-term employment contract and any extensions, whether based on a time period or the completion of a specified job, must not exceed 5 years.</p> <p>Previously, the duration for completing a specific job was open to interpretation, as it was determined by the terms of the employment agreement, which could potentially bypass the 5-year limit.</p> <p>As a result, employers must ensure that fixed-term contracts, including any extensions, do not exceed 5 years.</p>

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3	<p>Article 57</p> <p>(1) A fixed-term employment agreement is made in writing and must use the Indonesian language and Latin script.</p>	<p>Article 57</p> <p>(2) A fixed-term employment agreement must be made in writing using the Indonesian language and Latin script.</p>	<p>Fixed-term employment agreements must be in writing, using the Indonesian language and Latin script.</p>
Outsourcing			
4	<p>Article 64</p> <p>(1) A Company may assign part of the implementation if its work to another Company through an outsourcing agreement made in writing.</p> <p>(2) The Government determines which part of the implementation of work as referred to in paragraph (1).</p> <p>(3) Further provisions regarding the determination of which part of the implementation of work as referred to in paragraph (2) shall be regulated in a Government Regulation.</p>	<p>Article 64</p> <p>(1) A Company may assign part of the work implementation to another Company through an outsourcing agreement made in writing.</p> <p>(2) The Minister determines which part of the implementation of work as referred to in paragraph (1) in accordance with the type and field of outsourcing work agreed in a written outsourcing agreement.</p> <p>(3) Further provisions regarding the determination of which part of the implementation of work as referred to in paragraph (2) shall be regulated in a Government Regulation.</p>	<p>The Minister of Manpower holds the authority to determine which types of work can be outsourced. Typically, this would be specified in a Ministerial Regulation. However, as paragraph (3) of Article 64 remains in effect, the types of work for outsourcing could also be issued in a higher-level Government Regulation.</p> <p>An implementing regulation will be crucial for governing outsourcing arrangements in Indonesia, particularly in clarifying which types of work can be outsourced. Under the current regime, there is no longer an explicit distinction between outsourcing personnel and outsourcing work. Therefore, Indonesia's present system offers more flexibility in terms of the types of work that can be outsourced.</p>

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Rest Breaks and Leave			
5	<p>Article 79 (2) <i>The rest break as referred to in paragraph (1) letter a must be given to the Employee, at a minimum, as follows:</i> a. <i>a rest break between working hours, of at least half an hour after working for 4 (four) consecutive hours, and the rest time is not included in the working hours; and</i> b. <i>a weekly rest break of 1 (one) day for 6 (six) working days in 1 (one) week.</i></p>	<p>Article 79 (2) <i>The rest break as referred to in paragraph (1) letter a must be given to the Employee at a minimum, as follows:</i> a. <i>a rest break between working hours, of at least half an hour after working for 4 (four) consecutive hours, and the rest time is not included in the working hours; and</i> b. <i>a 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></p>	<p>This reaffirms the following rest breaks for employees:</p> <ul style="list-style-type: none"> • 1 day for 6 working days per week; or • 2 days for 5 working days per week.
6	<p>Article 79 (4) <i>In addition to the rest break and leave as referred to in paragraph (1), paragraph (2), and paragraph (3), certain companies may provide extended breaks, as regulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement.</i></p>	<p>Article 79 (5) <i>In addition to the rest break and leave as referred to in paragraph (1), paragraph (2), and paragraph (3), certain companies may provide extended breaks, as regulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement.</i></p>	<p>This amendment emphasizes that long leave is mandatory, even though its details will be specified in the Employment Agreement, Company Regulations or Collective Labor Agreement. Previously, the word “may” gave companies discretion over whether to provide long leave.</p>

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Wages			
7	Article 88 <i>(3) The wage policy as referred to in paragraph (2) includes:</i> a. Minimum wage; b. wage structure and scale.	Article 88 <i>(3) The wage policy as referred to in paragraph (2) includes:</i> a. Minimum wage; b. Proportional wage structure and scale.	The word “proportional” has been reinstated, as it was in the Manpower Law before the amendments under the Job Creation Law. This requires employers to set their wage structure and scale based on the proportionality between employees within the company.
8	Article 90A <i>Wages above the minimum wage are determined based on an agreement between the Employer and Employees in the Company.</i>	Article 90A <i>Wages above the minimum wage are determined based on an agreement between the Employer and Employees or Trade Unions/Labor Unions in the Company.</i>	When determining wages above the minimum wage, companies with an existing labor union can reach an agreement with the union or involve them in the process.
9	Article 92 <i>(1) Employers are required to formulate the structure and scale of wages in the Company by taking into account the Company's ability and productivity.</i>	Article 92 <i>(1) Employers are required to formulate the structure and scale of wages in the Company by taking into account the Company's ability and productivity, as well as the class, position, length of service, education, and competence.</i>	In formulating the wage structure and scale, companies must also consider the employees' class, position, length of service, education, and competence.
Termination of Employment			
10	Article 151 <i>(1) Employers, Employees, Labor Unions, and the Government must strive to prevent termination of employment.</i>	Article 151 <i>(1) Employers, Employees, Labor Unions, and the Government must strive to prevent termination of employment.</i>	Employers should prioritize resolving termination disputes in a deliberative manner to reach consensus through bipartite negotiations with the employees and/or labor unions.

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	<p>(2) <i>In the event that termination of employment cannot be avoided, the intention and reasons for termination of employment shall be notified by the Employer to the Employees and/or Labor Unions.</i></p> <p>(3) <i>In the event that an Employee has been notified and refuses the Termination of Employment, the settlement of the Termination of Employment shall be conducted through bipartite negotiations between the Employer and Employee and/or Labor Unions.</i></p> <p>(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></p>	<p>(2) <i>In the event that termination of employment cannot be avoided, the intention and reasons for termination of employment shall be notified by the Employer to the Employees and/or Labor Unions.</i></p> <p>(3) <i>In the event that an Employee has been notified and refuses the Termination of Employment, the settlement of the Termination of Employment shall be conducted through bipartite negotiations in a deliberative manner to reach consensus between the Employer and Employees and/or Labor Unions.</i></p> <p>(4) <i>In the event that the bipartite negotiations as referred to in paragraph (3) do not reach an agreement, termination of employment can only be carried out after obtaining a decision from an industrial relations dispute settlement institution whose decision has permanent legal force.</i></p>	<p>If bipartite negotiations fail, the termination process must follow the legal settlement process. This means a tripartite meeting with the local Manpower authority, and if that fails, proceedings with the Industrial Relations Court, and, if appealed, the Supreme Court.</p> <p>The process continues until:</p> <ol style="list-style-type: none"> a. A mutual termination agreement is reached between the employer and the employee; or b. A final and binding court ruling is issued.

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11	<p>Article 157A</p> <p>(1) <i>During the settlement of Industrial Relations Disputes, Employers and Employees must continue to fulfill their obligations.</i></p> <p>(2) <i>Employers may suspend Employees who are in the process of Termination of Employment while continuing to pay their Wages and other rights that are normally received by the Workers/Laborers.</i></p> <p>(3) <i>The fulfillment of the obligations as referred to in paragraph (1) is carried out until the completion of the industrial Relations Dispute resolution process at its respective level.</i></p>	<p>Article 157A</p> <p>(1) <i>During the settlement of Industrial Relations Disputes, Employers and Employees must continue to fulfill their obligations.</i></p> <p>(2) <i>Employers may suspend Employees who are in the process of Termination of Employment while continuing to pay wages and other rights that are normally received by the Employees.</i></p> <p>(3) <i>The fulfillment of the obligations as referred to in paragraph (1) is carried out until the end of the industrial relations dispute resolution process with permanent legal force in accordance with the provisions under the Industrial Relations Dispute Settlement Law.</i></p>	<p>Under this amendment, employers and employees must fulfil their obligations throughout the statutory settlement process until either (i) a mutual termination agreement is reached, or (ii) a final and binding court ruling is issued.</p> <p>However, implementing this amendment may be challenging during termination disputes. In such as cases, the “no work, no pay” concept under the Manpower Law may come into play.</p>
12	<p>Article 156</p> <p>(1) <i>In the event of Termination of Employment, the Employer is required to pay severance pay and/or long service pay and compensation pay for entitlements that should be received.</i></p>	<p>Article 156</p> <p>a. <i>In the event of Termination of Employment, the Employer is required to pay severance pay and/or long service pay and compensation pay for entitlements that should be received.</i></p>	<p>The amount of severance pay is set as a minimum threshold, allowing companies to offer more generous severance packages if they choose.</p>

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	<p>(2) Severance pay as referred to in paragraph (1) shall be provided under the following conditions:</p> <ul style="list-style-type: none"> a. for less than 1 (one) year of service, 1 (one) month's wages; b. for 1 (one) year or more but less than 2 (two) years of service, 2 (two) months' wages; c. for 2 (two) years or more but less than 3 (three) years of service, 3 (three) months' wages; d. for 3 (three) years or more but less than 4 (four) years of service, 4 (four) months' wages; e. for 4 (four) years or more but less than 5 (five) years of service, 5 (five) months' wages; f. for 5 (five) years or more, but less than 6 (six) years of service, 6 (six) months' wages; g. for 6 (six) years or more but less than 7 (seven) years of service, 7 (seven) months' wages; 	<p>b. Severance pay as referred to in paragraph (1) shall be at least:</p> <ul style="list-style-type: none"> a. for less than 1 (one) year of service, 1 (one) month's wages; b. for 1 (one) year or more but less than 2 (two) years of service, 2 (two) months' wages; c. for 2 (two) years or more but less than 3 (three) years of service, 3 (three) months' wages; d. for 3 (three) years or more but less than 4 (four) years of service, 4 (four) months' wages; e. for 4 (four) years or more but less than 5 (five) years of service, 5 (five) months' wages; f. for 5 (five) years or more, but less than 6 (six) years of service, 6 (six) months' wages; g. for 6 (six) years or more but less than 7 (seven) years of service, 7 (seven) months' wages; 	

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	<p><i>h. for 7 (seven) years or more but less than 8 (eight) years of service, 8 (eight) months' wages;</i></p> <p><i>i. for 8 (eight) years or more of service, 9 (nine) months' wages.</i></p>	<p><i>h. for 7 (seven) years or more but less than 8 (eight) years of service, 8 (eight) months' wages;</i></p> <p><i>i. for 8 (eight) years or more of service, 9 (nine) months' wages.</i></p>	

The Constitutional Court's clarify some provisions of the Manpower Law to prevent misinterpretation, while adding others that have significant implications for employers. Companies should understand these changes and the potential impact on managing their employees.

Please do not hesitate to contact us for further details and explanations.

ABOUT M&T ADVISORY

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