VIII. PENGAWASAN

1. Undang-undang ini mengamanatkan adanya unit pengawasan ketenagakerjaan tersendiri pada setiap instansi yang bertanggung jawab di bidang ketenagakerjaan di Pusat, Provinsi dan Kabupaten/Kota dan mempunyai kewajiban menyampaikan laporan pelaksanaan pengawasan ketenagakerjaan kepada Menteri yang bertanggung jawab di bidang ketenagakerjaan.
2. Agar profesionalisme pegawai pengawas ketenagakerjaan dapat di tegakkan maka diperlukan standar pengawasan ketenaga-kerjaan yang berlaku secara nasional.
3. Persyaratan penunjukan, hak dan kewajiban serta wewenang pegawai pengawas ketenagakerjaan sesuai dengan Undang-undang Nomor 3 Tahun 1951 jo Undang-undang Nomor 1 Tahun 1970.

IX. KETENTUAN PERALIHAN

Dengan berlakunya Undang-undang ini maka semua kesepakatan antara pekerja/buruh dengan pengusaha baik yang dituangkan dalam PK, PP dan PKB tetap berlaku sampai berakhirnya PK, PP dan PKB tersebut. Namun akan lebih baik apabila para pihak sepakat melakukan penyesuain PK, PP dan PKB dengan mengacu kepada Undang-undang yang baru.

SALIENT PROVISIONS OF THE MANPOWER ACT (ACT NO. 13/2003)

Preface

The National Act No. 13 of 2003 concerning Manpower which came into effect starting 25 March 2003, is the successor to various previous manpower legislations that dealt with Work Training, Manpower Placement, Work Relations, Protection, Wages and Welfare, Industrial Relations, Work Layoffs, and Labour Inspection. With its enactment, we can now comprehend the many different interpretations regarding the materials contained in this Act No. 13 of 2003, and it is thus necessary to create a similarity of perception towards the contents of the Act. For this reason, the Government has embarked on publishing a guide towards the understanding of Act No. 13 of the year 2003.

This volume is not an interpretation or expansion of the substance contained within the articles of Act No. 13 of 2003. Through the publication of this book, it is hoped that interpretative differences regarding the contents of the Act can be overcome, so that during its implementation the vagaries caused by the different interpretations can be eliminated.

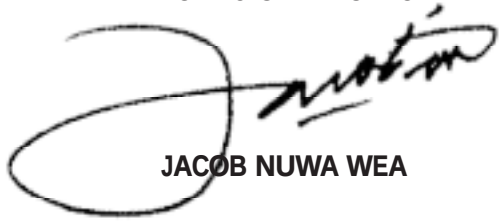
This book is presented in a simple narrative form to better facilitate the proper understanding of the Act.

In conclusion, we convey our appreciation and gratitude to the ILO Director in Jakarta, who, through the ILO/USA Declaration Project on Industrial Relations in Indonesia, has been supportive of the publication of this guidebook.

May this guide be beneficial to the government apparatus, especially those working in the manpower sector, to enable them to carry out their task of upholding the Act's contents, as well as to all parties who may find it useful.

Jakarta, 27 May 2003

THE MINISTER
MANPOWER AND TRANSMIGRATION
REPUBLIC OF INDONESIA



JACOB NUWA WEA

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II. WORK TRAINING

1. Work competence is the capacity for work of each individual, covering aspects of knowledge, skills, and work attitudes in accordance with predetermined standards. *(Article 9)*
2. The importance of work training in providing, enhancing and developing the capability of a person to conduct work in accordance with the stipulated work requirements in order to upgrade productivity that eventually will impact on earnings received and thereby increase the person's own or family welfare. *(Article 9)*
3. One of the purposes of work training is to provide a person with the ability to work. For that reason, the training conducted by a training institution must relate to the needs of the labour market. *(Article 10, paragraph (1))*
4. Basically, work training can be conducted in phases, that in general can be categorised as basic, skilled, and expert. Besides that, in order to meet the needs of users, it is also

possible to conduct training in line with the specifications of the orders/users without going through phases. An example, is to meet the needs resulting from changes in position and technology. *(Article 10, paragraph 3)*

5. Upgrading of the quality of human resources quality is the responsibility of all the parties. For that reason besides the employers having an interest in enhancing their workers' quality, employers also play a role in enhancing of human resources at the national level. The Government shall supervise employers who are obliged to carry out developmental programs to enchance for the competence of their workers. *(Article 12)*
6. The development of Human Resources is the responsibility of all parties, and for that reason individuals will be allowed to carry out work training provided they meet the requirements of the training institution.Through a Ministerial Decree, the requirements for licensing or registration for private work training institutions will be specified, whether they are specifically established to conduct training, or are company-owned training institutions. *(Article 14)*
7. The requirements that are listed are designed to protect the interests of training participants, and to guarantee continuity of the training is better guaranteed. *(Article 15)*
8. Accreditation is an acknowledgment the that an institution has fulfilled the requirements to conduct work training. For that reason, the need to be acknowledged in society is fully left to the training institutions themselves. *(Article 16, paragraph 1)*
9. In order that the process of accreditation can be conducted objectively, it shall be handled by an independent institution. This independence means that in making decisions, the institution shall be influenced by any party whatsoever. *(Article 16, paragraph 2)*
10. Acknowledgment of work competency is extremely important for an individual as it reflects a bargaining position

to enter the labour market, for career enhancement, or to obtain rewards in the form of pay raises in accordance with the competency possessed *(Article 18, paragraph 1)*. Every person, whether one has participated in work training or has working experience, has the right of acknowledgment for his/her work competence in the form of a competency certificate after undergoing a competency examination. *(Article 18, paragraph 2 and 3)*

11. Certification is carried out by a professional certification institution that has been appointed/accredited by the National Professional Certification Board. *(Article 18, paragraph 4 and 5)*
12. The national work training system (*Sislatkernas*) represent the general policy guideline and direction for conducting training in an orderly, systematic and synergetic manner across various fields, sectors, agencies, and training organisations so that the objectives of national training can be met efficiently and effectively. *(Article 20)*
13. Apprenticeships are a part of the work training system carried out with emphasis on prior practice, rather than theory, in the workplace (the curriculum is approximately 80% in the workplace and 20% at the training site). Thus the apprenticeship training is expected to produce a manpower force that is in accordance with the needs of industry. *(Article 21)*
14. To ensure certainty in the status of the participants of apprenticeships and companies accepting apprentices, apprecticeships are conducted based on an apprenticeship agreement between the participants and companies. Aside from that, there must be an apprenticeship cooperation agreement between the training institution and companies accepting apprentices.

    Apprenticeships are not part of the workers recruitment process of a company. For that reason, apprenticeship participants may not be treated as workers. The hiring of

apprenticeship participants who have completed their training programmes to become workers of that company will depend on the needs of the company itself. *(Article 22)*

15. Acknowledgment of work competency qualifications in the form of competency certificates for apprentices by a professional certification institution are granted after undergoing a competency examination. *(Article 23)*
16. Internal apprenticeships within a company may only be undertaken if that company possesses a training unit. *(Article 24)*
17. Organisers of a training programme that will conduct apprenticeship programmes outside the territory of Indonesia are obliged to obtain a permit from the Minister or an appointed official, while the holding of an apprenticeship programme from a subsidiary to the parent company overseas within the framework of upgrading workers qualifications for the company's own purposes, require no special permission, but the company must report the activity to the Minister or appointed official. *(Article 25)*
18. Apprenticeship programmes held overseas must have as reference the training programme already predetermined (competency-based training) that in its execution does not run counter with the values and culture of the Indonesian people. *(Article 26)*
19. Companies considered capable of conducting apprenticeship programmes are required to carry out such programmes as a manifestation of the company's active role in enhancing human resources quality for the sake of national development. *(Article 27)*
20. In order to establish a national commitment in the conduct of work training, there need to be a work training coordinating body as a vehide for the representation of the role of sectors, agencies, and companies to formulate policy suggestions to be taken by the government in determining national policies in the field of work training. *(Article 28)*

21. The guidance conducted by the central government covers supervision in the form of regulations, policies, drawing up guidelines and instructors' functional training. Guidelines carried out by the Regional Government is technical-operational in nature in relation to this national policy.*(Article 29)*
22. The level of productivity of a nation is not only measured by the productivity of its work force, but is linked to the productivity of all sectors, and for that reason there need to be formed a separate body functioning to coordinate and facilitate the efforts to enhance productivity in all sectors and regions forming the network for increasing productivity. *(Article 30)*

III. MANPOWER PLACEMENT

1. Indonesia represents one national labor market territorial unit, for that reason all regions of Indonesia in the unitary state is wide open for all members of the Indonesian labour force. Bearing in mind that principle, the regional/district/municipal governments shall not issue policies not in accordance with the above principle. *(Article 32, paragraph 3)*
2. The responsibility for carrying out manpower placement whether among the government agencies or private institutions extends only to the workers being placed in an appropriate position with the requirements as determined in the job order. *(Article 35, paragraph 2)*
3. The protection that is obligatory for the manpower placement agency to provide for manpower candidates are:
   a. Recruitment and selection is carried out in an open, free, objective, fair, and non-discriminatory manner;
   b. There is a guarantee of accommodation, transport, and decent food during the process of manpower placements that cut across city/district and provincial

borders.

c. The placement is in line with the job order *(Article 35, paragraph 3)*

The manpower placement agency must pay attention to the stipulations concerning work agreement requirements.

4. In carrying out manpower placement activities, the elements of the placement system such as: job seekers, employment positions, labor market information, inter-work mechanisms, and manpower placement institutions, must be conducted separately by different agencies; however, each of those activities must support and lead in the direction of manpower placement activities. *(Article 36, paragraph 3)*

5. What is referred to as written permission consists of the institution's establishment deed and manpower placement license. *(Article 37, paragraph 2)*

6. Based on the ILO Convention No. 88 of 1948 concerning Manpower Placement Service Agencies, ratified through the Presidential Decree No. 36 of 2002, government agencies for manpower placement may not levy any placement fees.

   The private manpower placement agencies are allowed to charge the users of labour. However, for certain categories and positions as determined by the Minister, the placement institutions may charge a fee from the job seekers. *(Article 38, paragraphs 1 and 2)*

7. The expansion of work opportunities refers to an increase or development of available employment, whether within or outside the work relationship.

   Expansion of work opportunities is conducted using two approaches, namely: the approach through sector and regional policies that will create more work opportunities, and an approach through empowerment of the labor force. *(Articles 39 and 40)*

8. Every Indonesian citizen has the right to employment and a decent livelihood in human terms. In order to guarantee that work opportunities is for Indonesian citizens, and to fulfill

the desire of Indonesians to occupy reasonable positions in various employment fields, the Government needs to regulate fields of employment that can be filled by foreign workers (TKA) through a system of licensing *(Article 42, paragraph 1)*. The presence of foreign workers cannot be avoided, bearing in mind the free labor market (globalization) as well as the national interest: in national development there needs to be capital/investment, technology, and foreign expertise, as the domestic labor market cannot as yet provide skilled/expert human resources whether quantitatively or qualitatively.

9. For work providers or users of foreign workers, they are obliged to obtain written permission from the Minister or an appointed official, meaning:

   a. That the authority to issue licenses for foreign worker employment (IKTA licenses) rests with the Minister for Manpower and Transmigration. In case that authority is delegated, the issuance of the IKTA must indicate the words "On behalf of the Minister for Manpower and Transmigration."

   b. The IKTA is provided to work providers and not to the foreign worker concerned (Sponsorship Principle).

   c. The foreign workers may not work independently *(Article 42, paragraph 2)*.

10. The aim of issuing IKTAs is for the protection of the Indonesian work force through control of foreign worker employment in line with the need, so that in the employment of foreign workers there need to be thorough and meticulous considerations concerning two aspects, namely:

    a. The prosperity aspect: that in employing foreign workers there must be some progress towards enhancing the quality of the Indonesian labor force, through technology and skills transfers *(Article 45, paragraph 1)*; encouraging investment and business expansion, as well as providing employment opportunities for the Indonesian labor force.

b. The security aspect: that the policy of foreign worker employment is related to the foreigner traffic policy, namely the entry of foreigners or foreign workers (TKA) must be a selective policy, through a one gate policy, meaning that in foreign worker employment the security interests of the Unitary State of the Republic of Indonesia will be upheld.

11. In order to protect the right of Indonesian citizens to obtain decent work, in jobs capable of being filled by Indonesian manpower, those positions may not be filled by foreign workers, so that the utilization of foreign workers is temporary in nature as long as Indonesians are not capable of undertaking the work in question. In this regard the foreign workers employed in Indonesia are only in a work relationship for a certain position and a certain period. *(Article 42, paragraph 4)*
12. Work providers employing foreign workers have the obligation to name an Indonesian as a co-worker, and must conduct educational and work training for the purpose of technology and skills transfer from the foreign worker to the Indonesian co-worker *(Article 45, paragraph 1)*. However, it is preferable that the company appoints that Indonesian co-worker to succeed the foreign worker when the latter has completed his/her assignment.
13. In order that there can be optimal supervision of foreign workers in Indonesia, the issuing of permits must be based on clear and realistic reasons, so that the work provider about to employ foreign workers must draw up a Foreign Worker Utilization Plan (RPTKA) that serves as an instrument of supervision towards employment of foreign workers. The RPTKA must contain the reason for using foreign workers, their positions, the period of employment, and the appointing of an Indonesian co-worker for the foreign worker being employed. *(Articles 43 and 45, paragraph 1)*
14. Positions that are related to human resources management are key positions for dealing with the problems in worker recruitment or dispute settlement, so that Indonesians are considered to have better comprehension of the interests of the Indonesian work force in general. *(Article 46)*
15. Compensatory fees that are borne by the employers of foreign workers are the PNBP that must be deposited in the national treasury *(Article 47)*. Further, the government shall determine its utilization in order to develop human Resources on a national level.

IV. WORK RELATIONS

1. Relations between workers and employers in the production process of goods and services are based on labour agreements whether written or unwritten. *(Article 51, paragraph 1)*
2. In cases where there is no labour agreement, in order to determine whether there is a labour relationship, the following elements must be observed: employment, orders, and wages.
3. The labour agreement can be made in written or oral form. In order to provide legal certainty to the labour relationship, it is best that the labour agreement be in written form.
4. In cases where the labour agreement is in oral form, both workers and employers are obliged to draw up a letter of appointment. The letter of appointment is meant to provide legal certainty especially regarding the rights of workers and other work stipulations.
5. The obligation to draw up a labour agreement and Letter of Appointment is the responsibility of the employer, and if the employer does not fulfill that obligation, then the employer is responsible for the consequences that arise from the labour relationship. *(Article 53)*
6. The labour agreement can be drawn up for a specified period or an unspecified period.

7. A labour agreement for a specified period is only for certain kinds of activities. *(Article 59)*

   The background behind this limitation is that although the freedom to draw up contracts is a basic right available for the parties to determine how long they will work or be employed, due to the dearth of work opportunities there is a need for certainty of available work opportunities.

   The principle behind a labour agreement is the freedom to draw up contracts and when the contract expires, then the work relationship is nullified by law without any obligation from one party to the other.

   If there is no limitation, then employers can freely draw up contracts for any type of work; for that reason there will be limitations on the kind and nature of work to be contracted.

8. Although the character of the work may be continuous, not halting periodically, not limited by time, and is part of a production process, if there is a pressing need that cannot be fulfilled by the available workers/labourers, then in that situation the company may employ new workers through the PKWT.

9. The PKWT can be drawn up for a time span of 2 (two) years and may be extended for 1(one) year, but in certain cases there can be a renewal of the labour agreement, with the stipulation that there is only 1(one) renewal and it extends a maximum of 2 (two) years.

10. A 30 (thirty) day period will be utilized to consider new contract terms.

    The renewal of the PKWT can only be made after a time span of 30 (thirty) days has passed from the expiry of the PKWT, meaning that in a time frame of 30 (thirty) days the work relationship is terminated. If there still exists a desire to continue the work relationship, it can be done through a renewal of the PKWT with the stipulation that it be for a maximum of 2(two) years. *(Article 59, paragraph 6)*

11. In the event the material requirements *(Article59, paragraphs 1 and 2)* are not realized, so that the condition changes to a PKWTT, the said PKWTT is deemed to be in effect from the start of the PKWT work relationship.

12. In the event the formal requirements *(Article 59, paragraphs 4, 5, and 6)* are not fulfilled so that the change to the PKWTT comes into effect, then the PKWTT is valid from the time that the requirement was not fulfilled.

13. In outsourcing activities, a PKWT and PKWTT can be drawn up. *(Article 64-Article 66)*

14. In outsourcing carried out through contracted work, the work relationship is between the workers/labourers and the contracting company. *(Article 64 - Article 66)*

15. If the material requirements *(Article 65, paragraphs 2 and 3)* in the contract agreement are not fulfilled, then the change in work relationship between the workers of the contracting company and the principal providing the work is calculated from the time the agreement was signed.

    The work relationship between the workers/labourers and the contracted company is ended and all legal consequences arising from the termination of the work relationship becomes the responsibility of the contracted company.

16. The stipulation in number 15 also affects any deviation from Article 66, paragraphs 1 and 2, points a, b, and d as well as paragraph 3.

17. Outsourcing conducted through provision of services by workers/labourers: the work relationship is between the company providing services with the workers/labourers. *(Article 64-Article 66)*

    Example : The security guard work force (SATPAM) hired at the company providing employment has work relations with the security services company and cannot be subject to PKWT.

    The SATPAM unit must be provided with working requirements at least similar to SATPAMs having

a work relationship with companies providing employment, stipulating a job description and the same requirements for the position (for example, education/skills or tenure).

V. PROTECTION, WAGES AND WELFARE

1. The stipulation against child labour in Article 68 must refer back to ILO Conventions No. 138 and No. 182. This means that children over 15 years of age and below 18 years may work, and be treated as adult workers/labourers, except for employment in the worst forms of work for children as mentioned in Article 74.
2. The reason for limitations on children at work, among others is to protect those children from exploitation. If a child works at his/her family business, there is often no obligation to pay wages. This habit often opens up opportunities for exploitation of the child by "the family." In order to prevent this, family businesses should be defined in a limited manner as those businesses owned by the parents or the parents' brothers/sisters or the siblings of that child. *(Article 69, paragraph 3)*
3. To avoid employment of children without due attention to the requirements stipulated in this Law, the employer must be able to prove that a child within the workplace is not being employed. *(Article 73)*
4. When taking a long leave, workers/labourers must be compensated in cash for their annual leave after their eighth year, to the amount of 1/2 (half) a month's salary, while for companies providing longer leaves than stipulated under this Law, they may not provide less than within the existing stipulations. *(Explanation of Article 79, paragraph 2, point d)*
5. The start of the right to long leaves is calculated 6 (six) years from the enactment of this Act.
6. The condition of birth miscarriages can only be known through a health check by an obstetrician or obstetrics nurse. The obstetrician or nurse may provide a letter granting rest according to the health condition of the female worker/labourer. *(Article 82, paragraph 2)*
7. The fulfillment of decent basic needs for living is carried out in stages, bearing in mind the differing company capacities, productivity levels and macro-economic conditions. For that reason, the government shall periodically determine the decent needs level. *(Article 89, paragraph 2)*
8. The wage structure is the wage level arrangement from the lowest to the highest level, or from the highest to the lowest, based on differences in the value of the work and/or position category. The wage scale is the range of the value of nominal wages for each position category.
9. The arrangement of wage structures and scales are meant as a guideline for determination of wages in a company so that there can be certainty concerning wage levels according to position, competence, and tenure in order to reduce the gap between the lowest and the highest wage within the company concerned.
10. For the Wage Structure and Scale, see examples No. 1, 2, 3, 4 and 5.

1. Example I

Position Level	Cat.-Pos. Level	Name of Position	Min-Max Wage Scale
1	2	3	4
Manager	10	General manager	20 Mill. - 30 Mill.
	9	HR Director Marketing Director Finance Director	)) 7.5 Mill. - 10 Mill.)
	8	Management Personnel - Marketing - Finance	) 5 Mill. - 7 Mill.)
Personnel	7	Head, Security - Technical - Restaurant	) 3 Mill. - 4 Mill.)
	6	Dy. Head, Security - Technical - Restaurant	) 2.7 Mill. - 2.9 Mill.)
	5	Supervisor : - Security - Restaurant - Front Office	)) 2 Mill. - 2.5 Mill.)
Executory	4	Secretary Chief for Vehicles	) 1.5 Mill. - 1.9 Mill.)
	3	Chef Painter Carpenter	)) 900,000 - 1.1 Mill.)
	2	Room attendant Security Staff Tel. Operator Receptionist Cleaning Service	) 750,000 - 850,000))) 630,000 - 700,000

2. Example II

Position Level	Category of Position	Name of Position	Scale (Rp)
1	2	3	4
Manager	10	General Manajer	10,000,000
	9	Media Manager	6,000,000
		Finance Manager	6,000,000
		Personnel & General Affairs Manager	6,000,000
Supervisor	8	Finance Head	3,500,000
		Personnel & General Affairs Head	3,500,000
	7	General Medical Staff	2,500,000
	6	Electronic Data Proc. (EDP)	2,000,000
		Paramedic/Nurse	
Staff	5	Finance Staff	1,750,000
		Personnel & General Affairs Staff	
	4	Head of Security Guards	1,500,000
	3	Nursing Assistant	850,000
	2	Technician	750,000
		Driver	
	1	Security Guard	630,000
		Office Boy	
		Gardener	

3. Example III

Position Level	Category	Salary Standard
Inspector (C)	8 7 6 5 4 3 2 1	2,100,000 2,000,000 1,900,000 1,800,000 1,700,000 1,600,000 1,500,000 1,400,000
Administration/Staff (B)	8 7 6 5 4 3 2 1	1,160,000 1,120,000 1,080,000 1,040,000 1,000,000 960,000 920,000 880,000
Executor/Operator (A)	8 7 6 5 4 3 2 1	840,000 810,000 780,000 750,000 720,000 690,000 660,000 530,000

4. Example IV

CATEGORY	Position	Wage (Rp)	
		Minimum	Maximum
X	Director	7,000,000	10,000,000
IX VIII VII	General Manager Manager Assistant Manager	5,000,000 3,000,000 2,000,000	7,500,000 5,000,000 3,000,000
VI V	Section Head Asst. Section Head	1,500,000 1,000,000	2,000,000 1,500,000
IV III	Foreman Head of Work Detail	900,000 800,000	1,100,000 1,000,000
II I	Operator Regional Worker	750,000 650,000	950,000 850,000

5. Example V

Position Level	Cat.	Salary Standard	Tenure
Director (E)	8	8,500.000	> 13 - 15 years
	7	8.000.000	> 11 - 13 years
	6	7.500.000	> 9 - 11 years
	5	7.000.000	> 7 - 9 years
	4	6,500.000	> 5 - 7 years
	3	6.000.000	> 3 - 5 years
	2	5.200.000	> 1 - 3 years
	1	5.000.000	0 - 1 years
Manajer (D)	8	3.000.000	> 13 - 15 years
	7	2.900.000	> 11 - 13 years
	6	2.800.000	> 9 - 11 years
	5	2.700.000	> 7 - 9 years
	4	2.600.000	> 5 - 7 years
	3	2.500.000	> 3 - 5 years
	2	2.250.000	> 1 - 3 years
	1	2.000.000	0 - 1 years
Supervisor (C)	8	1.500.000	> 13 - 15 years
	7	1.400.000	> 11 - 13 years
	6	1.300.000	> 9 - 11 years
	5	1.200.000	> 7 - 9 years
	4	1.100.000	> 5 - 7 years
	3	1.000.000	> 3 - 5 years
	2	900.000	> 1 - 3 years
	1	800.000	0 - 1 years
Administration/Staf	8	770.000	> 13 - 15 years
	7	750.000	> 11 - 13 years
	6	730.000	> 9 - 11 years
	5	710.000	> 7 - 9 years
	4	690.000	> 5 - 7 years
	3	670.000	> 3 - 5 years
	2	650.000	> 1 - 3 years
	1	630.000	0 - 1 years

11. In contrast to stipulations before this Act, after the worker has taken ill for at the most, 12 (twelve) continuous months, that worker has the right over 25% of wages provided until there is a decision on the status of work relations. In the event there is a termination of the work relationship, the basis for calculation of wages is 100%. *(Article 93, paragraph 3)*
12. Workers can demand their rights from the employer in the case of deficient wage payments or other payments. Those demands can be conveyed through the Industrial Relations Dispute Settlement Agency, not exceeding a period of 2 (two) years from the time the worker/labourer should have received his wages and other remuneration, as stipulated in the PK, PP and PKB (CLA). *(Article 96)*
13. The policy of wage systems is directed towards the system of receiving net wages.

    Within the wage practices of companies thus far, there has been a system of wage payments consisting of various kinds of benefits, whether fixed benefits or non-permanent benefits; with the composition of the basic wage being far lower than benefits, to the detriment of the worker/labourer and often causing disputes.

    For that reason there needs to be a simplification of the wage components with the stipulation that the basic wage must be at least 75% of the basic wage plus fixed benefits. *(Article 94)*

    When that stipulation is put into effect for the first time, it should not give rise to new problems, thus an effort that can be carried out is by shifting/changing a portion or the whole fixed benefits to become the “basic wage” with the requirement that the wages received by the worker/labourer does not decrease.

VI. INDUSTRIAL RELATIONS

A. Bipartitism and Tripartitism

1. In the course of industrial relations as stipulated under this Act, there is the term "Bipartite" as an institution and "Bipartite" as a system.

   As an institution, Bipartite means a body whose members comprise elements representing workers/labourers or labour unions, along with employers for a single period of time within a company. This is called LKS Bipartite.

   In the event that within that company there is already a labour union, then upon the agreement of the workers, the representatives can be appointed from that labour union.

   This Act does not automatically confer status to the labour union to sit as the representative of the workers in the Bipartite institution as :

   a. within a company, not all workers are members of the labour union;

   b. The LKS Bipartite as a forum providing suggestions and recommendations must have its members focused more directly on professionalism.

      As a system, Bipartite means the meetings mechanism or the bringing together of the workers or labour unions on the one side, and the employers on the other side in a meeting, as an effort to reach agreement.

2. Suggestions, opinions, and considerations from the LKS Tripartite provide inputs for the government for determining policy in the manpower field. However, the government will carefully weigh all suggestions and opinions put forward by the LKS Tripartite.

3. The membership of the LKS Tripartite from among labour union elements *(Article 107)* basically adhere to the principle "the most representative" meaning representation according to the sequence of the highest number of members.

   In order to determine the sequence of the actual number of members, a verification is conducted based on membership data of the labour unions involved.

B. Company Regulations

1. In contrast to previous arrangements, the obligation to draw up company regulations is the task of employers hiring at least 10 (ten) or more workers, but for companies employing less than 10 (ten) workers, they can draw up the company regulations voluntarily.

2. The purpose of drawing up company regulations:

   a. there will be an amount of certainty concerning work requirements in the company as a guide for labour relations;

   b. enhancing productivity and peace in the workplace that can eventually raise the living standards of the workers and their families.

3. The company regulations become effective after they are ratified by the Minister or other appointed official. *(Article 108, point a)*

   In accordance with government decentralization, the official named to ratify is an official responsible for the manpower sector of a district, municipality or province, or is an official from the Department of Manpower and Transmigration.

4. During the validity period of the company regulations, employers are obliged to accommodate the labour unions who desire to draw up a collective labour agreement, if the said labour unions have fulfilled the requirements for drawing up a collective labour agreement.

5. Validation of the company regulations by an official having responsibility over manpower affairs is limited to a period of time of at the most 30 (thirty) days. Within that 30 (thirty) day period, the official concerned may return any company

regulation not meeting requirements back to the employer. In order to anticipate any late return of company regulations that have already been revised by the employer (within 14 days), in these cases sanctions may be imposed on the appointed official, and at the time that official inspects the said company regulations, he is obliged to provide guidance concerning its revision.

6. In order to avoid any lack of regulations for the company to follow, the employer in submitting a revision of company regulations must take into account the time period for the validation of those regulations.

   If the employer is late in submitting a revision of the company regulations, thus creating a lack of regulations inside the company, the employer is then considered not to possess any company regulations or is not providing revisions.

C. Collective Labour Agreement

1. The purpose of a CLA in a company is so that in the company there are no differing work requirements between one set of workers and another set of workers. Differences in work requirements will cause acts of discrimination which violate this Act and ILO Convention No. 111 against Discrimination.
2. Stipulations of work as mentioned in the collective labour agreement is valid for all workers, thus those work requirements must be approved by the majority (more than 50%) of workers in the company concerned. *(Article 119, paragraph 1)*
3. An over- 50% agreement level can be attained by:
   a. a single labour union within the company;
   b. a labour union not achieving a majority but receiving support from the other workers in that company through the process of voting;
   c. a coalition of several labour unions.

4. In the event a coalition does not attain more than 50%, a team of negotiators will be represented by all the representatives of all the labour unions, in a proportional manner.

   The stipulation to allow more than one labour union in one company to discuss the CLA with the Employers, even though their members do not attain the 50% figure, is meant as an effort to encourage and enhance the status of the CLA as an instrument determining the work requirements in a voluntary manner.
5. As the collective labour agreement is valid for all the workers in a company, then in the drawing up of a collective labour agreement, the labour unions winning the right must have the support of more than 50% of all the workers.
6. In order to prevent a vacuum in any arrangement of work conditions within a company, when the time of a 1 (one) year extension has expired, but there is still no agreement on a new CLA, then the work requirements in that company still will be based on the CLA that was last in effect. *(Article 123)*
7. In this Article what is meant is that the collective labour agreements drawn up between the labour unions and the employers are in general better than the company regulations that were unilaterally drawn up by the company. *(Article 131, paragraph 3)*
8. Registration of the CLA by the Employer at the agency responsible for manpower affairs is meant to:
   - Enable the agency in charge of manpower affairs to provide guidance in order to enhance the quality of the conditions of work;
   - To provide data on the number of companies having a CLA. *(Article 132)*
9. Bearing in mind that this Manpower Act is valid also for State-Owned Enterprises and Region-Owned Enterprises, the process of settlement of industrial relations disputes in those

companies as stipulated under this Act is subservient to National Act No. 22 of 1957 and National Act No. 12 of 1964.

10. Strikes as a basic right of workers/labourers and labour unions are carried out after a breakdown in negotiations, whether as a result of the meetings ending in a deadlock or the employer is unwilling to continue negotiations.

11. As strikes are a basic right of the workers/labourers, they therefore cannot be instigated or participated in by non-workers and/or non-labour unionists. In the event of a strike being participated in by those who are not workers/labourers, all actions undertaken by them are also the responsibility of the strike guarantors. *(Article 137)*

12. Included within the category of inciting other workers/labourers to strike in violation of existing laws is included in Article 138 stating among others:
    - coercing/intimidating/threatening workers/labourers not originally participating in the strike so that those workers/labourers take part or do not carry out their work;
    - conducting deceptive practices/inciting the workers/labourers so that they are ensnared into participating in the strike;
    - obstructing other workers/labourers who are willing to work/carry out duties.

    In the conditions above, there must be some courage among the workers/labourers to refuse to strike.

13. The time frame of 7 (seven) workdays before the onset of the strike is meant to provide adequate opportunity to the employers and the agencies in charge of the manpower field to strive for a settlement.

    If the workers/labourers conduct their strike before the time frame of 7 (seven) days prior notification has passed, there is a concern that not enough time was given to attain a hoped-for settlement, so that some undesirable consequences may occur. For that reason, the employer can take temporary action as a security measure by forbidding the workers/

labourers on strike to enter the location of productive process activities or the company grounds. *(Article 140)*

14. Basically strikes are carried out at the work site or location and concerns the execution of the work relationship, however, workers/labourers can strike outside the work area and this does not create problems in the work relationship. For that reason, in the notification process the place and reasons for the strike must be mentioned. *(Article 140, paragraph 2, items b and c)*

15. Strikes cannot be allowed to linger on, bearing in mind that many parties lose in the process; thus in the case that officials in charge of the manpower field cannot settle the matter, there must be other authoritative institutions to immediately settle the dispute. The institution in this case is the Industrial Relations Dispute Settlement Agency. However, submission of the matter to that institution must be in accordance with procedures in effect. *(Article 141, paragraph 4)*

16. Submission of the problem to the institution does not automatically halt the strike. Continuation or cessation of the strike is based on agreement between the parties. *(Article 141, paragraph 5)*

17. The legal consequence of a strike in violation of the law and its sanctions will be determined through a Ministerial Decree. *(Article 142, paragraph 2)*

18. Wages continue to be paid during a strike in cases where: *(Article 145)*
    a. The strike is legal, namely:
        - there has been notification within the stipulated time frame; and/or
        - for companies providing public services or involving the safety of human lives, the strike is conducted by workers/labourers who are off duty; and
    b. the employer clearly is unwilling to fulfill the normative demands that have been determined and instructed by

the officials of the agency responsible for the manpower field.

19. Lockouts *(Article 146)* are an action taken by employers to reject the workers/labourers' demands in whole or in part, in order to continue production, as a result of an industrial dispute.

    There must be differentiation from a company's closure as a result of bankruptcy or other reasons.

    A lockout is temporary in nature and can be ended when the dispute has been resolved, or an agreement has been reached to stop the lockout.

    Refusing entry to workers/labourers does not constitute or is meant as an action to terminate the work relationship.

    In the case of lockouts that are carried out legally, wages are not required to be paid. *(explanation of Article 146, paragraph 3)*

VII. LAYOFFS

1. Employers are forbidden to lay off workers among others in the following conditions:
   a. a worker/labourer suffers a long-term illness, not exceeding 12 (twelve) continuous months, as backed up by a doctor's letter.

      After a period of 12 (twelve) months, an employer can lay off the worker in accordance with stipulations in effect, or the worker may continue to be employed at 25% of wages, and under that condition, if the worker feels it burdensome to continue the working relationship, then he/she may submit a request to terminate the said relationship in accordance with the legal regulations. *(Article 93, paragraph 3, item d; Articles 153, 156, and 172)*
   b. the worker/labourer is pregnant, in childbirth, suffers a miscarriage or is nursing a baby; and in this case marital

status will not be taken into account. *(Article 153, paragraph 1, item e)*
   c. a worker/labourer has blood relations and/or marital ties with someone running a company, except if determined otherwise in the PK, PP or CLA. Taking into consideration that those agreements were drawn up through consultations or agreements with the worker, if there are stipulations determining differently, then the matter is considered to be an agreement between the worker and the employer. *(Article 153, paragraph 1, item f)*
   d. in contrast to normal illness as stipulated under Article 153, paragraph 1, item a; an injury caused by a work accident within the working relationship (work-related illness or injury) in basis may not cause a layoff, except when the worker submits a request for termination. The compensation is regulated by Article 72. *(Article 53, paragraph 1, item j)*
2. Layoffs that are nullified by law as mentioned in Article 153, paragraph 2, are terminations of the work relationship by an employer that are considered null and void, meaning that the employer must re-hire and pay compensation for the rights of the worker when he/she was laid off.
3. In principle, the termination of the work relationship must receive a judgment from an industrial relations dispute settlement institution, except in the following cases *(Article 151, paragraph 3)*:
   a. Article 154
      - the worker is still under probation;
      - the worker resigns;
      - the worker reaches the retirement age;
      - the worker passes away.
   b. Article 158
      - The worker commits a serious mistake.

        However, if the worker protests the layoff, he/she can

file charges with the industrial relations dispute settlement institution.

- The serious misdemeanor regulated by Article 158 is already limitative and cannot be carried further. However it must be understood that in certain sectors, there are several actions that can be categorized as "a fatal mistake."

  Example : The "no smoking" prohibition in the oil drilling industry, or a petrol station, may be considered a fatal mistake by looking at the effects caused by someone smoking. For that example, what can be done is to stipulate the rule in the Work Agreement, Company Regulations, and Collective Labour Agreement, stating that such infractions merit an initial and final warning.

c. Article 160, paragraph 3 and 5.

- The worker/labourer is detained by the police for more than 6 (six) months; *(paragraph 3)*
- The worker/labourer is declared guilty of a criminal violation by the courts although the period of his/her detainment has not reached 6 (six) months. *(paragraph 5)*

3. In cases where there has been no layoff decision from the industrial relations dispute settlement institution, the two parties must still adhere to their respective duties. *(Article 155)*
4. When considered necessary, an employer may put a worker under suspension before undertaking a layoff action. However, the employer must still pay wages and provide other rights normally enjoyed by the worker.
5. Monies in compensation of rights *(Article 156, paragraph 4)* are meant for rights not yet received by workers, for example annual leave not taken up, and other normative rights that

have not been provided, as well as transport allowances for the worker and his/her family from the company. *(Article 168)*

7. The provision of housing and medical compensation in the amount of 15%, should be given if the worker has the right of severance pay and/or appreciation funds for his/her tenure.

   Thus when the said worker is laid off for the reason of committing a serious mistake or through resignation, if the worker involved does not meet severance or appreciation pay requirements, then he/she has no right over the 15% amount.

VIII. INSPECTIONS

1. This Act mandates a separate labour inspection unit in every government office responsible for manpower affairs at the Central, Provincial, and District/Municipal levels, having the duty of submitting reports on labour inspections to the Minister having authority in the manpower field.
2. In order to guarantee the professionalism of labour inspection officers, there need to be labour inspection standards that are applicable nationwide.
3. Requirements for appointments, rights, and obligations as well as the authority of labour inspection officials are in line with National Act No. 3 of 1951, and National Act No. 1 of 1970.

IX. TRANSITIONAL STIPULATIONS

With the enactment of this Act, all agreements between the workers/labourers with the employers, whether formulated through PK, PP, and CLAs will still be in effect until the expiry of those agreements. However, it will be much better when the parties agree to make adjustments to their PK, PP, and CLAs with reference to this new Act.