Manpower Act of Indonesia

GUIDE BOOK

SUWARTO

Foreword

The Guide Book on the Manpower Act of Indonesia (Act No. 13 Year 2003) is the third publication on the new law which the ILO/ USA Declaration Project (Phase II) in Indonesia has decided to support in order to assist the government, trade unions and employers' organizations as well as the public in general in having a better knowledge and understanding of the basic provisions of the new law.

The Manpower Act is one of the three important pieces of legislation envisioned under the 1998 Labour Law Reform Programme of Indonesia which covers various aspects of labour and employment including the rights and responsibilities of the parties concerned. Through this publication, the project financed by the Department of Labour of the United States which was designed to promote and realize freedom of association and the right to collective bargaining in Indonesia, is carrying out one of its original mandates which is to help raise the awareness of the tripartite constituents on their rights and responsibilities and their ability to exercise them, as well as on the new structures of industrial relations under the Manpower Act.

The project expresses its deep appreciation to Mr. Suwarto for agreeing to put together and develop the Guide Book. Mr. Suwarto is a noted national expert on industrial relations. He had a distinguished career as a public official which includes holding the posts of Director-General of Industrial Relations and Labour Inspection and Secretary General of the Ministry of Manpower. He is currently the Executive Chairman of the Indonesian Industrial Relations Association.

We also want to acknowledge the excellent contribution of Mr. Michael Klemm, in the preparation of the initial version of the Guide Book which he undertook way before and in anticipation of the passage of the law in his

capacity as international legal consultant of the project. Mr. Suwarto found the draft together with selected materials prepared by senior officials of the Ministry of Manpower and Transmigration to be very valuable and useful in finalizing the Guide Book. The contents of the Guide Book and any views expressed therein, as in previous publications, are those of the author and not necessarily those of the project or the ILO.

The ILO and the project trust that the tripartite constituents and all concerned and interested parties will find this publication to be of practical use and a handy reference and thereby ensure the proper and effective implementation the Manpower Act in the interest of sound industrial relations and workplace efficiency and equity.

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I. Introduction

The Manpower Act (Act no. 13 of 2003) deals with a wide range of manpower matters which are reflected in the scope of the Act. This Act pays particular attention and provides legal framework for the basic rights of workers, including the right to strike for workers/labourers as well as the right to lock out for employers, protection in relation to wages, and social security and occupational safety and health. It regulates Indonesia's industrial relations and the procedure of how to deal with termination of employment.

This Act will replace 15 acts and regulations on labour and manpower, as follow:

1. Ordinance of *Recruitment of Indonesian People to Work Overseas* (Staatsblad Year 1887 No. 8);
2. Ordinance dated 17 December 1925 on *Regulation Concerning Limitation of Child Work and Nigh Work for Woman* (Staatsblad Year 1925, No. 647);
3. Ordinance year 1026 on *Regulation Concerning Child Work and Youth on Vessel* (Staatsblad year 1926 No. 87);
4. Ordinance dated 4 May 1936 on *Ordinance for the Arrangement of Activities of Recruiting Job Seekers* (Staatsblad year 1936 NO. 208);
5. Ordinance on *Sending Home Worker Who Has Recruited or Employed Abroad* (Staatsblad year 1939);
6. Ordinance no 9 year 1949 on *The Limitation of Child Work* (staatsblad Year 11949 No. 8);
7. Law No 21 Year 1954 on *The Statement of Putting Into Effect Law of Work Year 1948 No 12 of the Republic of Indonesia for the Whole of Indonesia* (Government Gazette Year 1951 No. 2);

8. Law No 21 Year 1954 on *Labour Agreement Between Trade Union And Employer* (State Gazette year 1954 No. 69)
9. Law No. 3 year 1963 on *The Placement of Expatriate Worker* (State Gazette Year 1958b No 8)
10. Law No 8 Year 1961 on *the Compulsory Work for University Graduate* (State Gazette Year 1961 No 207)
11. Law No 7 year 1969 on *The Prevention of Strike and / or Lock Out at the Vital Establishment, Institution and Board* (State Gazette year 1963 No. 67);
12. Law No 14 year 1969 on *The Basic Provision Respecting Manpower* (State Gazette year 1969 No 55);
13. Law No 25 year 1997 on *Manpower* (State Gazette year 1997 No. 73);
14. Law No. 11 year 1998 on *The Revision of the Effectiveness of Law No. 25 year 1997 on Manpower* (State Gazette year 1998 No. 184);
15. Law No. 28 year 2000 on *The Decree of Government Regulation Replacement Law No 3 year 2000 on The Revision of Law No. 11 year 1998 on The Revision of the Effectiveness of Law NO 25 year 1997 on Manpower Become Law* (State Gazette year 2000 No. 240)

The extensive scope of the Act covers subjects as follow:

Chapter III	:	Equal Opportunities and Treatment
Chapter IV	:	Manpower Planning and Information
Chapter V	:	Vocational Training
Chapter VII	:	Extension of Employment
Chapter VIII	:	Employment of Expatriates
Chapter IX	:	Employment Relations
Chapter X	:	Protection, Wages, and Welfare
Chapter XI	:	Industrial Relations
Chapter XII	:	Termination of Employment
Chapter XIII	:	Development
Chapter XIV	:	Labour Inspection
Chapter XV	:	Investigation

This Guide Book aims to address no particular group but rather seeks

to draw attention to the new and important changes in Indonesian labour law, particularly regarding the subjects of employment and industrial relations, protection, wages and welfare, and other relevant subjects. It is therefore specifically designed for all workers, trade unions, employers and employers' organizations and also to general public. The intention is to give a short, understandable, and useful overview of the new Manpower Act. This Guide Book does not promise a detailed and exhaustive coverage and explanation of all the issues concerning the new Manpower Act but rather focuses on the most relevant articles and issues. Some chapters of the Act will be covered in some detail, whereas other matters will only be briefly mentioned or explained. Some issues are left outside the scope of this Guide Book.

To understand the law and its procedures and principles in full detail, it might be necessary to refer to the provisions of Manpower Act itself or gain further help and assistance from other sources. However, through this Guide Book, the reader hopefully will be able to learn the key features of Indonesia's industrial relations as well as essential rights and obligations of employers and workers under the new law.

II. General Definitions

Article 1 of this Act defines some important legal terms, as follow:

1. ***Worker/labourer*** is anybody who works for the purpose of earning wages or compensation in other forms.
2. ***Employer*** is an individual person, entrepreneur, legal body, or other entity employing manpower with payment of wages or compensation in other forms.
3. ***Working agreement*** is an agreement between worker/labourer and employer which regulates the terms of employment, rights and obligations of the parties concerned.
4. ***Employment relations*** are the relations between employer and worker/labourer based on the working agreement which has components of the job, wages, and instruction.
5. ***Industrial relations*** is a system of relationships which is formed between the actors for production processing of goods and services, consisting of the employer and the worker/labourer, and which is based on Pancasila values and the 1945 Constitution of the Republic of Indonesia.
6. ***Labour/Workers Union*** is an organization which is formed from, by, and for the workers/labour at a company as well as outside the company having the characteristics of independence, openness, democracy, and self-help. Labour/workers unions are responsible for advocacy and protection of the rights and interests of workers/labour and the improvement of workers/labour welfare and their families.
7. ***Company regulation*** is a written regulation formulated by the

employer which stipulates the terms of employment and the discipline of work.

8. ***Collective Labour Agreement*** is an agreement resulting from negotiation between the workers/labour union or several workers/labour unions which are registered in the government institution responsible for manpower affairs, and the employer or group of employers which stipulate terms of employment, rights, and obligations of both parties.
9. ***Industrial dispute*** is a difference of opinion between employer or employer groups and worker/labourer or workers/labour union resulting from a dispute of rights, a dispute of interest, a dispute of termination of employment, or a dispute between one worker/labour union and other worker/labor union at one company.
10. ***Strike*** is a collective action of workers/labour, which is planned and carried out by a trade union to stop or slow down the work.
11. ***Lock-out*** is an employer's action to prevent part of, or the whole workers/labour force from doing their job.

III. Equal Opportunity and Treatment

Articles 5 and 6 of this Act define basic principles regarding discrimination, which stipulates that all manpower is to be provided the same opportunity without discrimination to obtain employment, and that all manpower get the same treatment in the work place.

IV. Employment Relations

Article 50 of the Manpower Act provides that employment relations are the result of the work agreement between the employer and the worker/labourer. The Act requires a set of particular features to be met by the work agreement in order to protect the worker from unfair practices or abuses and to guarantee legal certainty in respect to the rights and obligations of the worker/labourer and employer.

A. Requirements for the Work Agreement

The work agreement is made in writing or orally (Article 51). The written work agreement shall at least include (Article 54):

- Name, address, and area of business of the company;
- Name, sex, age, and address of the worker/labourer;
- Occupation or type of job of the worker/labourer;
- Working place;
- Wage and how it should be paid ;
- Terms of employment, including the rights and obligations for workers/labourers and employer;
- Starting and the period of time the work agreement is effective;
- Place and date that the work agreement is made;
- Signatures of employer and worker/labourer.

B. Other Rules Governing the Work Agreement

Costs and other necessary acts for the conclusion of the work agreement

shall be the responsibility of the employer (*Article 53*). At least 2 copies of the work agreement shall be made, each having the same legal power, and each party shall have one copy (Article 54(3)). The work agreement cannot be withdrawn or changed unless otherwise agreed to by both parties (Article 55). The work agreement can be made for a specified or an unspecified period of time (Article 56). A probationary period can only be stipulated for a work agreement that has been made for an unspecified period of time (Article 58(1)).

C. Work Agreement for A Specified Period of Time

A work agreement for a specified period of time can only be made for jobs of a certain time period or based on the completion of the job (*Article 56*).

A work agreement for a specified period of time shall be made in writing and in bahasa Indonesia, otherwise it is deemed to be for an unspecified period of time. If the contract is written in bahasa Indonesia and some other language and there is a dispute about the interpretation involving the different languages, the bahasa Indonesia version shall prevail (*Article 57*).

Jobs which are permanent by nature cannot be subject to work agreements for specified periods of time. A work agreement for a specified period of time can be applied for no more than 2 years and can be extended for a maximum of 1 year. Renewal of this work agreement can also be made provided that 30 days have elapsed after the date of completion of the previous work agreement. The renewed agreement is for 1 time only and can be for no longer than 2 years.

If any of the requirements for an agreement for a specified period of time is not met, the work agreement will be seen as an agreement for an unspecified period of time (*Article 59*).

If any party terminates the agreement before the contract is finished, the terminating party is obliged to pay compensation to the other party, the amount of the compensation is as much as the wage that the worker is entitled to receive from the termination until the expiration of the work agreement (*Article 62*).

D. Work Agreement for An Unspecified Period of Time

A probationary period of no longer than 3 months can be applied to a

work agreement for an unspecified period of time, and the period of probation may not be extended. During the probationary period the employer is prohibited from paying the worker less than the current minimum wage (*Article 60*).

A work agreement for an unspecified period of time can be made orally or in writing and is not limited to certain types of work/jobs, unlike the agreement for a specified period of time. A letter of appointment has to be issued by the employer if the agreement was made orally. This letter of appointment shall at least contain:

- Name and address of the worker/labourer;
- Date when the worker/labourer is supposed to start working;
- Type of work;
- Wage. (*Article 63*)

E. End of The Work Agreement

The work agreement ends with the following events (*Article 61*):

- Worker/labourer passes away;
- Work agreement expires;
- A judgment is made by the Institution for Industrial Relations Dispute Settlement (IIRDS) having permanent legal force;
- A particular situation or condition, as described in the working agreement, company regulations, or the collective labour agreement has been met;

The work agreement does not terminate as a result of the death of the employer, transfer of the company's ownership, or any other change of the company's status. (*Article 61(3)*).

F. Outsourcing

Article 64 of The Manpower Act provides provisions for outsourcing, which is the subcontracting of part of the company's job or the assignment of part of the company's job to workers/labourer provided by another company. Principally it can be said that the worker/labourer should not be adversely affected by any outsourcing system made by the main company. Therefore, the bill sets certain requirements regulating outsourcing to provide

a certain level of protection for the workers/labourers. The outsourcing company, as a minimum, must apply the same working conditions and other protective measures and rights as practices by the main company or must comply with the laws and regulations.

The main company may only outsource parts of its work by a written agreement with the outsourcing company. Furthermore, only particular types of work are allowed to be subject to outsourcing. Those are:

a. work performed separately from the main activities;
b. work performed either by direct or indirect instruction from the provider of the work;
c. work which supports the company as a whole;
d. work which does not directly inhibit production process.

If the requirements for the outsourcing as mentioned above are not fulfilled, the employment relations between the outsourcing company and the worker shall be deemed as employment relations between the worker/labourer and the employer who is the provider of the work.

V. Workers Protection and Wages

The Manpower Act provided extensive care for workers and other persons involved in the working relationships in order to protect these people from abuse and other unacceptable treatment. The Act gives special attention to the protection of "weaker parties" in an employment relationship, such as children or disabled persons, and provides a special legal framework to avoid unjust and unfair employment. Regulations covering working hours, safety and health issues, and wages and welfare are all aiming to assure an appropriate and healthy working environment for the benefit of the worker/labourer as well as the employer. Chapter X of the act specifically deals with matters of disabled persons, children, women, working hours, safety and health, and wage and welfare.

A. Child Labour

Employers are prohibited from employing children, unless they are 13 to 15 years old to do light jobs, and the employer must fulfill these requirements:

a. obtain written permission from his/her parents or guardian;
b. secure a working agreement with the parents or guardian;
c. allow no more than 3 hours working time;
d. allow work to be done during day time only without infringing upon school time;
e. safeguard safety and health;
f. maintain a clear working relationship;
g. provide wages in accordance with legislation. (*Articles 68,69*)

If a child works at the same place as adult workers, the work place for the child must be separate (*Article 72*).

Everyone is prohibited from employing children for the worst forms of work, those being:

a. slavery in its various forms;
b. all forms of pornography;
c. all work relating to narcotics, etc.;
d. all work which may endanger the health, safety, and/or morals. (*Article 74*).

B. Women Workers

Article 76 stipulates that women under 18 years of age are not allowed to work between the hours of 23.00 – 07.00. The prohibition also applies to pregnant women because of the potential health risk. Employers who employ women workers between the hours of 23.00 – 07.00 hours must:

- provide a nutritious meal and drink;
- maintain decency and safety at work;
- provide transportation to and from the work place.

C. Working Hours

Working hours can be arranged as follows:

- 7 hours per day and 40 hours per week for 6 days per week, or
- 8 hours per day and 40 hours per week for 5 days per week.

Overtime work can only be carried out provided the worker/labourer concerned is agreeable, and overtime is a maximum of 3 hours a day and 14 hours a week.

Women workers who give birth are entitled to 1½ months leave before and 1½ months leave after the birth. Women workers who have a miscarriage are also entitled to 1½ months leave.

Every employee who has been working for 6 years continuously at the same company is entitled to 2 months leave which may be taken 1 month in the seventh and eighth years, respectively. The entitlement comes every 6 years. This long leave only applies to certain companies which are regulated by the minister.

D. Occupational Safety and Health

Article 86 stipulates that workers/labourers have the right to protection of their safety and health, moral and decency standards, treatment as human beings, and religious values. Furthermore, an employer is under obligation to apply the Safety and Health Management System which is integrated into the management of the company (*Article 87*).

E. Wages

Provisions for wages are extensively stipulated in Articles 88 to 98. It is mentioned that any worker/labourer is entitled to get a proper level of wage to cover the expenses as human beings. The government has to set up a wage policy which, among other things, covers:

a. minimum wages;
b. overtime wages;
c. wages for workers who are unable to perform the work;
d. wages during rest periods;
e. forms and systems of wage payment;
f. wage structure and wage scale;
g. calculation of wages for severance payment

An employer is under obligation to formulate a wage structure, which takes into consideration the level, designation, years of service, education, and competency of any group of workers. The employer must also periodically review the level of wages with consideration to the ability and productivity of the company.

Wages are not paid if the worker/labourer does not perform work. Exceptions, among others, are:

a. the worker/labourer is sick;
b. the sickness of a woman worker in the 1st and 2nd day of menstruation;
c. the worker/labourer gets married (3 days), his/her son/daughter gets married, circumcision of his/her son, baptism of his/her son/daughter, wife giving birth or having a miscarriage, death of husband/wife/worker's child/parent/parent in law (2 days respectively), death of other relative living in the same house (1 day);
d. the worker/labourer is doing the state obligation;

e. the worker/labourer is doing a religious devotion.

Complaints of demanding workers wage payments and other payments expire after two years.

VI. Industrial Relations

A. Introductory Remarks

Chapter XI of the Manpower Act deals with industrial relations. It describes the roles of the government, workers, and employers in regard to industrial relations. The Act also specifies the basic rights for the employer and the worker/labourer, such as:

- The right to form and join a trade union (worker's right);
- The right to strike (worker's right);
- The right to form and become a member of an employers association (employer's right);
- The right to lock-out (employer's right).

According to Article 103, industrial relations shall be applied through the instruments of the:

a. Trade Union
b. Employers Organization;
c. Bipartite Co-operation Institution;
d. Tripartite Co-operation Institution;
e. Company Regulations;
f. Collective Labour Agreement;
g. Manpower Laws and Regulations;
h. Dispute Settlement Institution;.

In conducting industrial relations, workers/labour and their organizations (trade unions) shall perform their function for the continuation of the company's business in the economy, to enhance their skills, to be

aware of their responsibility for their company, to channel workers aspirations, and to improve the welfare of the workers/labourers and their families.

Employers and their associations shall be responsible for creating partnerships, developing business, creating employment, and providing welfare to their workers, all accomplished through open and democratic means.

In this context the government and its agencies/ institutions establishes policies and enforcement of The Manpower Act. In cases of violations of statutory manpower rules and regulations it shall take appropriate actions to assure the compliance with these regulations.

B. Trade Union

The right to form and become a member of a trade union as a worker/ labour is stipulated in Article 104. It also mentions that a trade union has the right to collect and manage union members' dues, including a strike fund. The amount and procedure for collecting strike funds is regulated by the union constitution.

C. Employers' Organization

An employer also has the right to form and become a member of an employer's organization as laid down in Article 105.

D. Co-operative Institutions

a. Bipartite Co-operation Institution

In order to provide a harmonious environment in industrial relations and to ensure mutual understanding between workers/labourers and employer at the company's level, a frequent and helpful process of communication and consultation between them on manpower matters shall take place in the *Bipartite Co-operation Institution*. The formation of this institution is required in any company employing 50 workers or more. A Bipartite Cooperation Institution consists of the company's representative and workers representative. The workers of the company shall democratically appoint the worker representatives who will represent the workers interest (*Article 106*).

b. Tripartite Co-operation Institution

Unlike the Bipartite Co-operation Institution, the *Tripartite Co-operation Institution* is established at district/municipal, province, as well as national levels. The members of this institution consist of 3 parties, namely the representatives of government, employer, and trade unions. According to article 107, the institution aims to provide a forum for a continuous communication process between the three parties to offer considerations, suggestions, and opinions to the government for the drafting of new regulations and laws as well as for consideration in setting up policies to solve manpower issues (*Article 107*).

E. Company Regulations

Standards and requirements for company regulations are specifically covered by Articles 108-115. The articles are an instrument to regulate terms of employment (rights and obligations for workers/labourers and employer). Company regulations are unilaterally drafted documents, and it is compulsory for every company employing 10 or more workers to have company regulations, unless it already has a collective labour agreement (Article 108).

In the process of making company regulations the management or employer must consult with workers/labourers representatives or trade unions. According to Article 111(1), company regulations shall govern at least the following issues:

a. Rights and obligations of the employer;
b. Rights and obligations of the worker;
c. Term of employment;
d. Enterprise rule of conduct;
e. Period of validity.

Company regulations only come into force after being approved by the minister responsible for manpower matters or his/her appointed official (*Article 108(1)*). The approval has to be given within thirty days after the enterprise regulation has been submitted to the government. If the official fails to approve or refuse the enterprise regulations within the stipulated thirty days and no evident inconsistency with the stated requirements of Article 108(1) and (2) are given, the company regulation shall become

applicable (*Article 112(2)*).

In case of a need for further improvement to the company regulation, the government official has to provide a written recommendation to the employer. The employer is then under the obligation to deliver an improved version of the enterprise regulation with consideration to the government officials opinion on the regulation. The changed regulation shall be submitted to the government official by the employer not later than fourteen days after the employer received the official's notice (*Article 112(4)*). According to Article 114 the employer shall provide and explain the company regulation to the company's workers.

F. Collective Labour Agreement

a. Introductory Remarks

A collective labour agreement (CLA) is one of the most essential instruments in industrial relations particularly in formulating terms of employment. The importance derives from the fact that it is one the most efficient ways of creating harmonious and dynamic industrial relations within the company. The forming of a CLA is through negotiations between the company/employer and trade union (worker/labour union) as representatives of workers which will then apply to the company as a whole. The CLA also covers potential issues of possible disputes by stipulating the rights and obligations of the parties involved, primarily those of the employer/company and employee. By doing so, the CLA will likely avoid misunderstandings between the parties.

According to Article 118, there can only be one CLA in a company which shall apply to all workers of the company. This rule simply avoids any potential clashes and/or controversy over different CLAs, which are applicable at the same time in one company but for different workers belonging to separate trade unions. Two or more CLAs in one company would likely lead to overlapping issues causing disputes and to competition between the established trade unions as to which has negotiated the best CLA for the workers.

b. Requirements for a Valid CLA

A CLA can only be negotiated between trade unions that are registered at the government agency responsible in manpower matters as required by

law, and the employer(s). The CLA must be written in bahasa Indonesia, or in the case that it is in another language, must be translated into bahasa Indonesia by a sworn translator (*Article 116(4)*).

A collective labour agreement must be registered at the government agency responsible for manpower affairs (*Article 132*).

In case negotiation between employer and trade union(s) does not achieve an agreement, it is then regarded as being under dispute, and is settled by the Institution for Industrial Relations Dispute Settlement (IIRDS) (*Article 117*).

The CLA shall be valid for no longer than 2 years and may be extended for no more than 1 year (*Article 123*). Changes to a valid collective labour agreement before its expiry date can only be made by mutual consent between the parties (*Article 125*).

c. One Trade Union in the Company

If there is only one trade union established in the company it shall have the right to represent the workers/labourerss in the negotiations for the CLA, provided that more than 50% of the company's workers are members of this trade union (*Article 119(1)*).

If the trade union does not have more than 50% membership of the workers concerned it may still represent the workers in the negotiation by obtaining support from more than 50% of the total workers of the company through a vote for its mandate (*Article 119(2)*). The election has to be conducted by a committee consisting of trade union and worker representatives and shall also be witnessed by the responsible government official as well as the employer. If the trade union does not obtain more than 50% support from the workers, the union may ask the employer 6 months after conducting the election to again attempt to gain support of more than 50% of the workers (*Article 119(3)*).

d. More than One Trade Union in the Company

The trade union with more than 50% membership of the company's workforce may represent the workers in the CLA negotiations. If there is no trade union having more than 50% membership, the trade unions may form a coalition for obtaining support of more than 50% of the workers to represent them. The negotiation team membership consists of all trade unions in proportional numbers to their respective membership (*Article 120*).

e. Period of the CLA

A CLA is valid for no longer than 2 years and can be extended for no longer than 1 year if both the employer and the trade union agree in writing. Negotiation for a new CLA must be conducted not more than 3 months before the expiration of the existing CLA. If the negotiation does not result in an agreement, the existing CLA shall remain valid for no longer than 1 year (*Article 123*). When the CLA has expired and will be renewed or extended and the company has only 1 union, it is not necessary to fulfill the requirement stated in Article 119 of this act (*Article 130*). The CLA becomes effective from the date of signing unless it is stated otherwise in the CLA (*Article 132*).

f. Contents of the CLA

A collective work agreement shall at least contain:

a. rights and obligations of the employer;
b. rights and obligations of the trade union and worker;
c. start and expiry date of the CLA;
d. signatures of all parties involved. (*Article 124*).

g. Other Rules Governing the CLA

The employer is obliged to print and distribute the CLA to all workers at the company at his expense (*Article 126*). Provisions of the CLA prevail over individual work agreement stipulations in case of contradictions (*Article 127*). Provisions of the CLA apply if there is no stipulation in the individual work agreement concerning the provision (*Article 128*).

The employer is prohibited from changing the CLA by company regulation as long as the trade union still exists in the company. If there is no trade union in the company, the CLA can be replaced by company regulations provided that the terms of employment stipulated by the company regulations are not lower than the ones in the CLA (*Article 129*). The dissolution of a trade union or transfer of the enterprise's ownership does not affect the validity of the CLA. When companies with separate CLAs merge, the most favourable CLA to the workers shall apply in the newly found company. If, in the case of merger, one company does not have a CLA, then the CLA of the other company shall apply in the newly established company (*Article 131*).

G. Strike

a. Introductory Remarks

The right to strike is a basic right of workers. It results from the failure of negotiation, and must be conducted legally, orderly, and peacefully (*Article 137*). A strike has to be planned and carried out by the trade union. If the workers/trade union would like to ask other workers to join an orderly and peaceful strike, the workers/labour who are asked can join or refuse to join this action (*Article 138*).

In order to conduct a strike the responsible trade union or workers/labouers are under the obligation to give a written notification 7 days before their intention to carry out a strike to the employer concerned as well as to the local government agency responsible for manpower affairs (*Article 140*). According to this article, the notification shall at least contain:

a. Date and time when the strike is intended to be conducted;
b. The place where the strike will be conducted;
c. Reason for the strike and the trade unions/workers/labourers demands;
d. Signature of the responsible persons.

If a strike is conducted without notification, in consideration of the safety of the company's assets, the employer is able to take the temporary action of prohibiting the strikers from entering the company's compound (*Article 140*).

After receiving notification of a strike, before or during the time the strike is conducted, the government agency will assist the parties to settle the reasons behind the strike. In case of the party's failure to reach an agreement, the agency will submit the dispute to the IIRDS for settlement (*Article141(4)*). If the negotiation fails, the strike can be continued, stopped, or temporarily stopped (*Article141(5)*).

b. Who Cannot Strike

Although the law clearly states the right to strike, there are reasonable exceptions. Article 139 stipulates situations in which a strike is prohibited and cannot be carried out, particularly in the sector of public service and for those securing and protecting the lives and safety of human beings. These include: hospitals, fire brigades, air traffic controllers, water dam controllers, railway crossing guards, and sea traffic controllers.

c. What is Prohibited During A Strike

i. For the Employer

The employer must not replace any worker from outside the company or penalize or exact revenge on those who take part in a strike (Article 144).

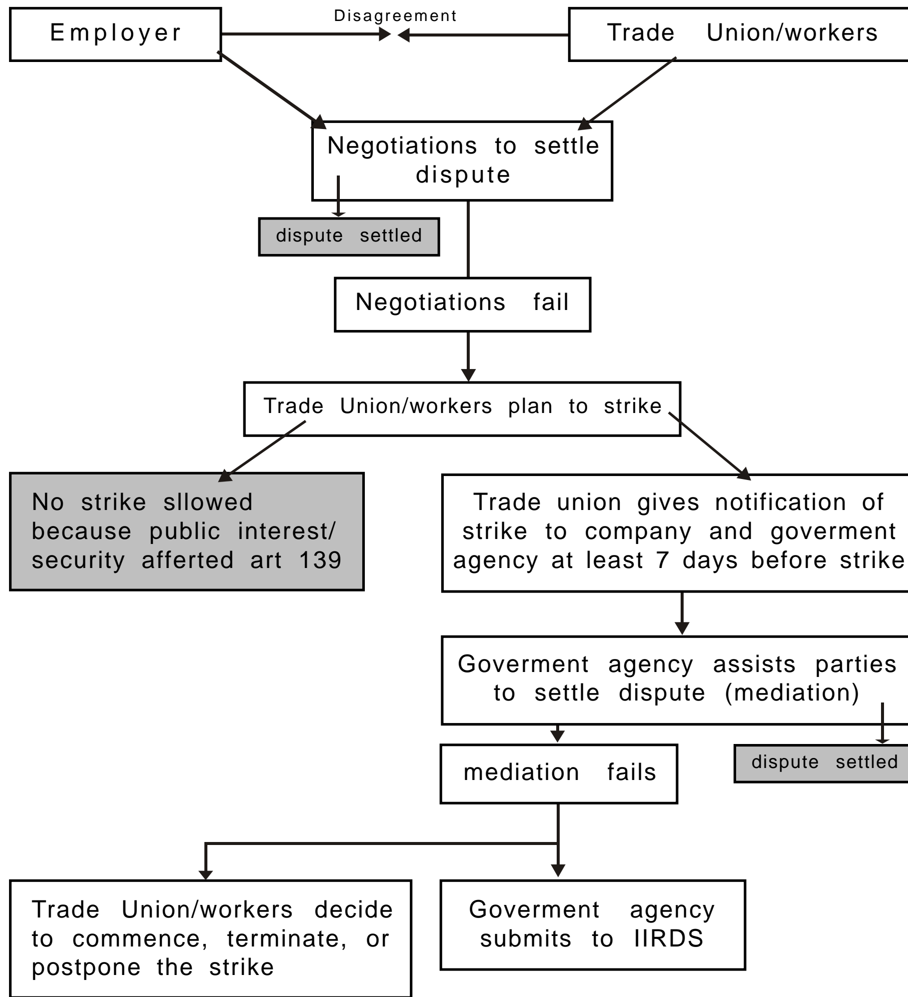
ii. For Other Parties

No one is permitted to prevent workers/labour from invoking their right to participate in a strike as long as the strike is conducted legally, orderly, and peacefully. Nor is anyone permitted to detain the strikers (Article 143).

d. Wages During A Strike

Employers must pay wages to the workers while they are on strike provided that the strike is conducted due to normative demand, such as the employer violates laws and regulations, the employment agreement, the company regulations, or the collective labour agreement (Article 145).

e. *Chart of A Strike Procedure*



H. Lock Out

a. Introductory Remarks

A lock-out is a basic right of the employer to prevent either part or all of the workers/labourers from doing their work resulting from a failed negotiation. This action is prohibited as revenge in response to a strike demanding normative rights (Article 146). Similar to the provisions concerning the *Right to Strike* for the workers, the provisions covering the *Right to Lock Out* as guaranteed for the employer in Article 147 sets particular requirements and limitations.

As in the situation for a strike, the government agency responsible will assist the parties to settle the dispute, and in case of the parties failure to reach an agreement, the lock-out can take place (Article 149).

b. Requirements for Lock Outs

An employer may only conduct a lock-out if the requirements set out in Article 148 are met. According to Article 148 the employer is under the obligation to give a written notification at least 7 days before the intended lock-out to the:

a. Workers/Trade union(s);
b. Local government agency responsible for manpower issues.

The notification shall at least contain:

a. Date and time when the lock-out is intended to commence;
b. Reason for the lock-out.

c. Limitations on the Right to Lock-Out

Although the employer's right to conduct a lock-out is guaranteed in Article 146, there are still some limitations to this right. Similar to the provisions of the right to strike, a lock-out also can adversely affect safety and other public interests. Consequently, lock-outs are prohibited in particular companies providing public service as well as at places where a lock-out can endanger people's lives and safety.

The following sectors of business/service are excluded from the right to conduct a lock-out (Article 147):

a. Hospitals;
b. Clean water supply network;

c. Telecommunication control centers;
d. Power supply plants;
e. Oil and gas processing;
f. Railway service.

I. Termination of Employment

a. Introductory Remarks

Chapter XII of the bill deals with the *Termination of Employment*. The Act attempts to encourage the employer and the worker/trade union to avoid termination as long as possible. Employment can only be terminated after being decided by the IIRDS provided the employer has extensively negotiated with the workers/trade union concerned and they are unable to reach an agreement (Article 151).

The employer is prohibited from dismissing workers for particular reasons, which are listed in the bill in order to prevent unjust and unreasonable dismissals.

b. Prohibited and Legitimate Reasons for Termination of Employment

i. By the Employer – Prohibited Reasons

The employer cannot terminate employment because of the worker being absent from work or for other reasons outlined in Article 153:

a. Illness for no longer than 12 months consecutively;
b. Obligations to the state/country;
c. Doing religious devotion;
d. Getting married;
e. Pregnancy, giving birth, having a miscarriage, or breastfeeding her baby for women workers;
f. Blood or marital relationship with another employee;
g. Establishing or being a member of a trade union or conducting union activities outside working hours;
h. Reporting to the responsible authority criminal actions committed by the employer;
i. Different belief, race, sex, physical condition, or marital status, etc.

j. A condition of permanent disability, illness resulting from occupational accident, or illness due to employment conditions which cannot be cured in a certain period of time.

Any termination of employment based on reasons which are not recognized by the law as a valid basis for dismissal as listed above shall be declared null and void by law. The employer is obliged to reemploy the affected worker with immediate effect.

ii. By the Employer Legitimate Reasons

Under certain circumstances the employer can terminate the employment, which is then recognized and considered valid by the law. In order to protect the worker from an unfair and unjustified dismissal by the employer the law expressly stipulates the situations and requirements under which the termination of employment is valid and enforceable.

iii. Worker Commits Certain Actions

The worker may be dismissed for committing the following actions (Article 158):

a. The worker has deceived, stolen or smuggled goods or money which belongs to the company;
b. The worker has given false or falsified information resulting in financial loss to the company;
c. The worker is intoxicated or has consumed or distributed addictive substances at the company;
d. The worker has committed immoral practices or has gambled in the working place;
e. The worker has attacked, threatened, or intimidated his employer or other employee of company while at work;
f. The worker has persuaded his employer or another employee of the company to break the law or regulations;
g. The worker has carelessly or intentionally damaged or exposed to danger the company's property which resulted in financial loss to the company while at work;
h. The worker has carelessly or intentionally put the health of other workers including the management/ employer at risk while at work;
i. The worker has disclosed or supported disclosure of confidential

information from the company to an unauthorized person;

j. The worker has committed criminal actions, which are subject to 5 years or more of imprisonment ;

The termination of employment based on the actions committed by the worker according to Article 158 as listed above may be subject to appeal to the IIRDS if the worker does not admit to having committed the alleged actions (*Article 159*).

If a worker is detained by the authorities because of the suspected involvement in a crime which is not reported by the employer, the employer has to provide financial assistance to the worker's family and dependants whose amount depends on the number of dependants under the responsibility of the detained worker. The assistance from the employer will be provided for no longer than six months after the detention of the worker. The amount of assistance required is :

a. for one dependant : 25% of wage,
b. for 2 dependants : 35% of wage,
c. for 3 dependants : 45% of wage,
d. for 4 or more dependants : 50% of wage.

The employer is entitled to dismiss a worker if the authority detains the worker for more than 6 months since the worker is unable to work. If the worker is declared not guilty of criminal action, the employer is obliged to reemploy the worker. Regardless of the length of the trial, employment can be terminated by the employer if the worker is found guilty by the court to have committed the crime. The termination of employment based on the inability to perform work or the workers conviction in the criminal trial do not need to be approved or declared by the IIRDS. The employer is under obligation to the terminated worker to pay service payment and compensation of right (*Article 160*).

iv. Violation of Work Agreement, Company Regulations or CLA

Termination of employment by the employer is valid if the worker violates provisions from the individual work agreement, company regulations, or the collective labour agreement after being given first, second, and third consecutive written warnings which are valid for 6 months each. For termination of employment based on this reason, the employer is obliged to pay severance payment, service payment, and compensation of rights

(*Article 161*).

In the case that a worker resigns voluntarily, he/she is entitled to get compensation of rights only. For a worker who does not directly represent the employer's interest, he/she is also entitled to get handshake money, the amount of which is regulated by the employment contract, company regulations or the collective labour agreement,

v. Other Legitimate Reasons for Termination

The worker does not want to continue employment because of a change of the company's status, merger, fusion, or change of ownership of the company (*Article 163(1)*).

- The company has to be closed down as a consequence of continual financial losses for two consecutive years or force majeure (*Article 164(1)*).
- The company goes bankrupt (*Article 165*).
- The worker passes away (*Article 166*).
- The worker reaches retirement age. In the case that the employer participates in a pension program and the whole contribution is paid by the employer, the worker has no right to get severance pay and service payment, but he/she still has the right to get compensation of right (*Article 167(1)*). If the company does not participate in a pension program, the retired worker is entitled to get twice severance payment, service payment, and compensation of rights (*Article 167(5)*).
- If the worker has been absent from work for five or more workdays consecutively without submitting any explanation and legal evidence to the employer, and the employer has summoned the worker twice in writing, the employer can terminate the worker. In this case the worker gets compensation of right and handshake money which is stipulated in the work agreement, company regulations, or the collective labour agreement (*Article 168*).

vi. By the Worker

According to Article 169, the worker may ask for termination of employment addressed to the IIRDS if the employer has done any of the following acts:

a. battery, cruelty, humiliation, or threats against the worker;

b. persuades or orders the worker to commit acts violating laws or regulations;
c. has not paid wages when due for three months or more consecutively;
d. has not fulfilled the obligations as agreed with the worker;
e. has ordered the worker to carry out work which is not covered under the work agreement;
f. has ordered the worker to carry out work which jeopardizes the life, safety, or health of the worker concerned and the job was not included in the employment agreement.

For this kind of termination of employment, the worker/labour is entitled to twice severance payment, service payment, and compensation of rights. If the IIRDS declares that the employer did not perform the accused acts, the employer can terminate the worker without the decision of IIRDS and the worker is not entitled to get severance payment and service payment.

c. Severance Payment, Compensation and Other Financial Assistance

Article 156 of the act provides guidance for financial benefits for workers from the employer in the event of termination of employment. These payments can be divided into four categories:

1. Severance payment;
2. Length of service payment or service payment;
3. Compensation of rights;
4. Other benefits.

The amount of the financial benefit is as follows:

i. Severance Payment

Years of Employment	Severance payment (minimum)
Less than 1 year	One month wage
More than 1 year and less than 2 years	Two months wages
More than 2 years and less than 3 years	Three months wages
More than 3 years and less than 4 years	Four months wages
More than 4 years and less than 5 years	Five months wages
More than 5 years and less than 6 years	Six months wages
More than 6 years and less than 7 years	Seven months wages
More than 7 years and less than 8 years	Eight months wages
More than 8 years	Nine months wages

ii. Service Payment

Years of Employment	Service payment (minimum)
Three years until six years	Two months wages
Six years until nine years	Three months wages
Nine years until twelve years	Four months wages
Twelve years until fifteen years	Five months wages
Fifteen years until eighteen years	Six months wages
Eighteen years until twenty one years	Seven months wages
Twenty one years until twenty four years	Eight months wages
Twenty four years or more	Ten months wages

iii. Compensation of Rights Payment

- paid annual leave which is still unused;
- transportation cost for the worker and his/her family to the place where he/she was recruited;
- housing and medical allowance, determined at 15% of the severance
- payment and/or service payment for those who are entitled to receive it.

iv. Other Benefit

Other benefits are stipulated in the employment agreement, company regulations, or the collective labour agreement.

VII. Labour Inspection

According to Articles 176 and 177, the enforcement of this act is carried out by labour inspectors who have competency and independence of judgment. The labour inspector is appointed by the minister or by assigned officials.

VIII. Criminal Sanctions and Administrative Sanction

Chapter XVI of this act stipulates criminal sanctions and administrative sanctions to be imposed when certain articles of the act are violated. Compared to the previous laws, which were nullified by this act, the sanctions are much heavier.

A. Criminal Sanctions

Any one who violates Article 74 respecting *employment of child workers* can be subject to a criminal sanction of 2 to 5 years imprisonment and/or be fined Rp. 200,000,000 to Rp. 500,000,000 (Article 183).

Any one who violates Article 167(5) respecting *the obligation of the employer to pay twice severance money, once service money, and compensation of right for workers who retire if the worker has not participated in an employer sponsored pension program,* can be subject to a criminal sanction of 1 – 5 years imprisonment or/and be fined Rp. 100,000,000 - Rp. 500,000,000 - (Article 184).

Any one who violates Article 68 concerning *the prohibition of child labour,* Article 69 (2) concerning *the requirements of employing child labor in light jobs,* Article 80 concerning *giving opportunity to workers to carry out religious devotion,* Article 82 concerning *maternity leave,* Article 90(1) concerning *minimum wages,* Article 143 concerning *prevention of the right to strike,* and Article 160(4) and (7) concerning *the re-employment of workers who are declared not guilty by the court,* and *does not pay service money, and compensation of rights to the terminated employee* can be subject to a criminal sanction of 1 – 5 years imprisonment and/or be fined of Rp. 100,000,000 - Rp.400,000,000 - (Article 185).

Any one who violates Article 93(2) concerning *the exception of wages for workers who are not able to perform work,* Article 137 and Article 138(1) concerning *strikes* can be subject to a criminal sanction of 1 – 4 months imprisonment and/or be fined Rp. 10,000,000 - Rp.400,000,000 - (*Article 186*).

Any one who violates Article 67(1) concerning *protection of handicapped workers,* Article 71(2) concerning *requirements for employing child workers, A*rticle 76 concerning *women workers,* Article 78(2) concerning *overtime payment,* Article 79(1) (2) concerning *rest periods and leave,* Article 85(3) concerning *overtime payment during public holidays,* and Article 144 concerning *the prohibition of employers to change workers and to sanction workers who join a strike* can be subject to a criminal sanction of 1 – 12 months imprisonment and/or be fined of Rp.10,000,000 - Rp.100,000,000 - (*Article 187*).

Any one who violates Article 63(1) concerning *the obligation to make letter of appointment for unwritten of unspecified time of the working agreement,* Article 78(1) concerning *the requirement for overtime work,* Article 108(1) concerning *the obligation of making company regulations,* Article 111(3) concerning *the renewal of company regulations,* and Article 148 concerning *notification of lock-outs,* can be subject to a fine of Rp.5,000,000 - Rp.50,000,000 - (*Article 188*).

B. Administrative Sanction

The Minister or appointed officials can impose administrative sanctions in the forms of oral and written warnings, limitations or freezing of business activities, cancellations of permits or registrations, stoppage of part or all production tools, and withdrawal of permits. The administrative sanctions can be imposed to any one who violates Article 87 concerning *the obligation of applying a safety and health management system,* Article 106 concerning *the obligation of establishing a bipartite consultation body,* Article 126(3) concerning *the distribution of CLA text to all employees,* and Article 160(1) (2) concerning *financial assistance to the detained worker* (*Article 190*).

IX. Transitional Regulation

Chapter XVII of the bill stipulates that all existing implementing regulations are still valid provided they do not contradict this bill and have not been replaced.