

The New Law on Manpower

Dr. Payaman J. Simanjuntak



Foreword

*T*he Manpower Act (Act No. 13/2003) is the second major labour legislation to be promulgated under the 1998 Labour Law Reform Programme of Indonesia. It follows the enactment of the Trade Union Act in 2000 (Act No. 21/2000) and will be followed by new laws on Industrial Dispute Settlement, which are currently before Parliament.

The completion of major and far-reaching reforms in labour legislation is not an easy task in any country especially given the present-day complexities, changes and challenges in the world of work. The aim is to make laws relevant and practical in promoting workplace efficiency and equity and consistent with international labour standards, particularly the fundamental principles and rights at work. In a democratic society, the legislative process also requires full consultations with and involvement of the representatives of the social partners – workers' and employers' organizations.

The *ILO/USA Declaration Project* (Phase I and II), which is supported by the United States Department of Labour, was designed to assist Indonesia to promote and realize freedom of association, the right to collective bargaining and sound industrial relations. These are objectives pursued by Indonesia in protecting basic rights and in modernising labour laws in the era of *reformasi* and the new democracy.

One of the Project's specific objectives is to assist government, workers and employers to understand and exercise their rights and obligations under the legislation covered by the Labour Law Reform Programme. Activities include assistance in the formulation, publication and dissemination of manuals and guides on legislation, primarily for use by government officials, employers and workers. The Project has published two booklets on

the Trade Union Act, one of which was prepared by the author of the present publication. The Project has also published “A Guide on the Salient Provisions of the Manpower Act” in collaboration with the Ministry of Manpower and Transmigration.

As a part of continuing efforts to assist with the understanding of new labour laws, the Project is pleased to have been able to enlist once again the services of Prof. Dr. Payaman J. Simanjuntak, a well-known labour law expert and former senior official of the Manpower Ministry. This booklet provides an explanation of the main provisions of the Manpower Act, together with background information and suggestions on how to interpret and implement the law. The views expressed in the book, as in previous publications, are those of the author and not necessarily those of the Project or the ILO.

In publishing the booklet, the ILO and the Project express the hope that it will assist the tripartite constituents and the general public in understanding the new laws and thereby contribute to the proper implementation of the laws and improved industrial relations in Indonesia.

Jakarta, July 2003

Alan J. Boulton
Country Director
for ILO Jakarta

Carmelo C. Noriel
Chief Technical Advisor of ILO/USA
Declaration Project in Indonesia

Preface



This book is intended to make Manpower Act No 13/2003 easier to understand by employers and associations of employers, workers and trade unions, government officials and officers, organizations of professions, lawyers and legal consultants, those involved in education, non-government organizations and the general public.

There are three reasons why it is not easy to understand Act No 13/2003 on Manpower by merely reading through it. Firstly, this Act contains provisions of several ordinances and other Acts that it revoked. This Act also include provisions concerning several labor aspects that have not been clearly regulated thus far and this makes the contents of this Act very broad and compact.

Secondly, this Act is the final result of a set of compromises and dialogues intended to bring together all stakeholders, particularly through meetings between workers and trade unions on one hand and employers and associations of employers on the other. However, compromises achieved on certain provisions may be felt to be inconsistent with another compromise clinched on another provision.

Thirdly, this Act stipulates several implementing regulations in the form of government regulations, presidential decisions and ministerial decisions that have not been issued up to now.

This book is compiled in such a way so as to facilitate the readers' understanding of the meaning of the articles provided under the Act and the role of each stakeholder when it comes to the application of the law.

The author would like to thank the representatives of the ILO/USA Declaration Project in Jakarta who have given me the opportunity to prepare this book.

This book will be continuously improved in accordance with the developments in the implementation of the Act through the issuance of its implementing regulations. Therefore, recommendations for the improvement of this book from the readers and users will be very much welcome and appreciated.

Jakarta, 4 July 2003

Dr. Payaman J. Simanjuntak

Table of Contents

Foreword	3	
Preface	5	
chapter one	Introduction	9
chapter two	Legal Basis and Objective	18
chapter three	Equal Opportunity and Treatment	19
chapter four	Manpower and Planning Information	21
chapter five	Occupational Training	23
chapter six	Manpower Placement	25
chapter seven	Extension of Employment Opportunities	27
chapter eight	The Use of Foreign Workers	28
chapter nine	Employment Relationships	30
chapter ten	Protection, Wages and Welfare	33
chapter eleven	Industrial Relations	37
chapter twelve	Termination of Employment	41
chapter thirteen	Development	49
chapter fourteen	Inspection	50
chapter fifteen	Investigation	51
chapter sixteen	Criminal Regulations and Administrative Sanctions	52
chapter seventeen	Transitional Regulations and Closing Paragraphs	57
chapter eighteen	Future Challenges	58

Introduction

Act No 13/2003 on Manpower can be referred to as the substitute for Act No 25/1997 on Manpower, with some changes for the better. Act No 25/1997 should have come into force on October 1, 1998. But due to the rejection by groups of workers and other groups, the government had to issue Act No 11/ 1998 to postpone its coming into force for two. However, the two-year postponement proved to be insufficient for them to understand and accept the law, if not futie. Those who opposed the law continued with their objections to have the law applied. They even demanded that the law be revoked and annulled. To accommodate this demand, which seemed to represent the will of the majority of the workers, the Government was forced, once again, to postpone the coming into force of Act No 25/1997, which was formalized through the issuance of Government Regulation in lieu of Law No 3 of the year 2000, while a draft bill to replace it was being considered.

It must be acknowledged that Act No 13/2003 is much better than Act No 25/1997. The change from Act No 25/1997 to Act No 13/2003 is a definitely marked improvement. It reflects a process of major transformation. To understand this developments, it is necessary to know the background against which Act No 25/1997 was made in the first instance.

Act No 25/1997

The draft bill which was eventually enacted as Act No 25/1997 on Manpower was prepared and deliberated in a delicate setting when emotions easily ran high and where people, both at home and abroad, were strongly expecting fundamental changes to the Indonesian labor laws. The

strong expectation has to do with the following factors:

Firstly, several years prior to the deliberation of the draft bill and even until now, the general public, both at home and abroad, tended to perceive that Indonesian workers are not protected, that Indonesian laws and regulations offer insufficient protection to workers and that workers are generally victimized whenever there are disputes between employers and workers, particularly when the disputes lead to the termination of workers' employment. This explains why legislators in charge of making labor laws were inclined to provide intensive protection for workers, as reflected in Act No 25/1997.

Secondly, there were serious misunderstanding and misleading perceptions on the part of some groups who thought that several articles under the draft bill made it easier for employers to terminate the employment of their workers. These groups thought that Act No 25/1997 provided employers with an easier way to dismiss their workers. Therefore, Act No 25/1997 was considered to provide less protection to workers than Act No 12/1964, which required employers to first obtain legal permission before they were allowed to terminate the employment of their workers. Because of the misunderstanding, many groups, both at home and abroad, mobilized efforts to foil the deliberation of the draft bill. The legislators in charge of making labor laws tried to accommodate the demands of these groups.

Thirdly, there was an impression among many, both at home and abroad, that Indonesian workers were not sufficiently entitled to freedom to organize and to bargain collectively with employers, in particular due to police and military interference. Many workers' organizations from foreign countries protested against the Indonesian government and the military's interference in the development of trade unions in Indonesia. That's why legislators in charge of making labor laws were inclined to provide workers with as much opportunity as possible to establish trade unions.

Fourthly, over the last several years prior to the deliberation of the draft bill, there was the impression that employers were less compliant to labor regulations because the sanctions for not honoring the regulations (that take the form of a lockup for a period of just three months or a fine of mere Rp100,000) were considered too light. This explains why Act No 25/1997 imposed quite a lot of sanctions, from administrative sanctions up to criminal sanctions in the form of imprisonment for four years and/or a fine of Rp400 million.

Fifthly, there was a lot of work that went to the drafting of the bill

which eventually became Act No 25/1997 but the time available to do it properly was limited. On one hand, the Government had the big ambition of producing a new law that would revoke six ordinances and eight old laws it initially planned for revocation, which implied an enormous amount of materials to work on and a lot of preparations to complete the job. On the other hand, the time spent on deliberating the bill was very short. The deliberations took place for only three months, that is, from mid-June until mid-September 1997. So, due to the limited time available for deliberation and the enormous amount of materials to work on, it was understandable that Act No 25/1997 suffered from substantive and technical imperfections.

The New Manpower Law (Act No. 13/2003)

The new manpower law [Act No 13/2003] is basically an enhancement of Act No 25/1997 even though it was initially prepared as a Law for Manpower Development and Labor Inspection. Most of the materials for this new labor law were adopted from Act No 25/1997. From the initial phase of preparing it when it was still a bill until the phase in which it was deliberated at the House of Representatives, all the concerned constituents with an interest in it had been involved: employers' representatives and associations of employers, workers' representatives and trade unions, government institutions/agencies and non-governmental organizations. In each session of deliberations, including the ones at the House of Representatives, ILO representatives had been invited to be present as resource persons to monitor what was going on in order to ensure that the bill contained no provisions that stood in opposition to ILO Conventions.

Act No 13/2003 covers a very broad range of issues. Like Act No 25/1997, this new labor law incorporates the contents of six revoked ordinances and seven revoked laws. This law also contains, explicitly, prohibition against discrimination, manpower planning and information, job training, and industrial relations. In contrast to Act No 25/1997, this Act does not contain provisions on industrial relations in the informal sector. This act contains, among others, the following:

- Statutory bases, basic principle and objectives of manpower development;
- Equal opportunity and treatment or prohibition against discrimination in employment;

- Manpower planning as the basis for making policies, strategies, and manpower development programs;
- Occupational training directed to improve and develop skills and expertise in order to improve work productivity and enterprise productivity;
- Manpower placement service for optimal manpower empowerment, putting the right person in the right job without discrimination in accordance with the nature, value and dignity of human being;
- The use of foreign manpower;
- Provisions on employment relations and development of industrial relations in accordance with Pancasila values and directed to develop and foster harmonious relations among actors of production process;
- Institutional development and development of industrial relation structures including enterprise regulations, bipartite cooperation institutes, trade unions and associations of employers, collective work agreements, tripartite cooperation institutes, dissemination of information on and promotion of industrial relations, and institutes for the settlement of industrial disputes;
- Manpower protection including the protection of the fundamental rights of the worker to organize and bargain with the employer, protection of occupational safety and health, special protection for female workers, young workers and disabled workers, as well as wage and social security protection;
- Labor inspection intended to ensure that statutory labor regulations are implemented as they should be.

Definitions

There are 33 definitions provided in Chapter One on General Definitions. Some of them are given below.

- a. Person available for a job/manpower (*tenaga kerja*)

A person who is available for a job (*tenaga kerja*) is every individual or person *who is able to perform work* in order to produce goods and/ or services either to fulfill his or her own needs or to fulfill the needs of the society.

In textbooks, *tenaga kerja* or manpower is defined as working-age population. Under this law, *tenaga kerja* is defined as workers as well as job seekers, who are referred to in textbooks as *labor force*.

[Note: According to the Great Dictionary of the Indonesian Language written by the Language Center of the Ministry of National Education and published by state-owned printing enterprise, Balai Pustaka, the word *tenaga kerja* has two meanings. The first meaning is one who works or is employed, which translates into workers or employees or labor (especially those who do practical work with their hands). The second meaning is one who is able to work (irrespective of whether he/she has a job or not or whether he/she is employed or not) to which the above definition applies. However, *tenaga kerja* may also mean 'manpower' (supply of people available and fitted for service) depending on the context of the sentence where it is used. On the other hand, manpower is also taken to mean workers when they are being considered as a part of the process of producing goods or providing services.]

b. Manpower affairs or labor (*ketenagakerjaan*)

Manpower affairs refer to matters related to people who are needed or available for a job (*tenaga kerja*) before, during and after their employment.

Matters related to a person prior to his or her employment here refer to efforts to equip him or her with special skills through training programs, efforts to provide him or her with job market information, efforts to provide him or her with guidance and orientation of his or her future occupation and efforts to place him or her.

Matters related to a person during his or her employment refer to his or her placement, wages, efforts to increase productivity, industrial relations, occupational safety and health, protection and other matters.

Matters pertaining to a person after his or her employment refer to old age security.

[Note: the word *ketenagakerjaan* means 'labor,' which can be referred to in a narrow sense as 'the services performed by workers for wages,' or in the broadest sense of the term as 'human activity that provides the goods or services in an economy,' which includes the activity of not just workers but also enterprises and the government as well. However, the word

ketenagakerjaan may also mean 'every matter that is related to manpower or workers' and therefore, the phrase 'manpower affairs' is here also used in the translation.]

c. Worker (*pekerja*)

A worker is every person who works for [literal translation: by receiving] a wage or other forms of remuneration. Included in this definition are those who work outside of employment relations, that is, those who are self-employed or work in a business of their own family, who receive remuneration in the form of the fruit of their work or production sharing.

d. Employer (*pemberi kerja*)

Employers are individuals, entrepreneurs, legal entities, or other bodies that employ manpower [workers] by paying them wages or other forms of remuneration.

Employers in this context may also be taken to have the same meaning as entrepreneurs.

e. Enterprise (*perusahaan*)

An enterprise refers to every form of business [undertaking], which is either a legal body or not, which is owned by an individual, a partnership or a legal body that is either privately owned or state owned, which employs workers/laborers by paying them wages or other forms of remuneration.

The keyword here is that enterprises employ workers. This means that with the existence of enterprises, employment relationship is created and wages are paid. Enterprises include private businesses, state-owned enterprises (BUMN) and enterprises owned by provincial/district/city governments (collectively known as BUMD), foundations, educational institutes, training institutes and community organizations.

f. Occupational competency (*kompetensi kerja*)

Occupational competency refers to the capability of each individual that covers aspects of knowledge, skills and work attitude which accords with prescribed standards.

g. Job placement service (*pelayanan penempatan tenaga kerja*)

Job placement service is an activity aimed at matching up manpower with employers so that manpower get jobs that are suitable to their talents, interest and capability and employers get the manpower who meet the qualifications they need.

h. Work agreement (*perjanjian kerja*)

A work agreement is an agreement between a worker and an entrepreneur or an employer. The agreement specifies work requirements, rights and obligations of both sides.

A work agreement may be made in writing or orally. Oral work agreements are still considered necessary because there are many small businesses/enterprises, particularly in rural villages, which are not able to make written work agreements.

i. Employment relationship (*hubungan kerja*)

Employment relationship is a relationship between an employer and a worker based on a work/employment agreement, which deals with aspects relating to the job that the worker has to do, the wage that the worker earns, and orders and instructions that the worker has to carry out.

j. Industrial relation (*hubungan industrial*)

Industrial relation refers to a system of relations that take shape among actors in the process of producing goods and/or services, which consist of employers, workers/laborers and the government, which is based on the values of the Pancasila and the 1945 Constitution of the Republic of Indonesia.

k. Bipartite institute (*lembaga kerjasama bipartit*)

Bipartite Institute refers to a communication and consultation forum on matters pertaining to industrial relations in an enterprise whose members consist of employers and trade unions or workers.

l. Tripartite institute (*lembaga kerjasama tripartit*)

Tripartite institute refers to a communication, consultation and deliberation forum on manpower issues whose members consist of representatives from employers' organizations, trade unions and the government.

m. Enterprise regulations (*peraturan perusahaan*)

Enterprise regulations refer to regulations made in writing by an employer that specify work requirements and the enterprise's discipline and rule of conduct.

n. Collective labor agreement (*perjanjian kerja bersama*)

Collective labor agreement is an agreement resulted from negotiations between a trade union or several trade unions and an employer or several employers or an association of employers. The agreement shall specify work requirements, rights and obligations of both sides.

o. Industrial relations dispute (*perselisihan hubungan industrial*)

Industrial relations dispute is a difference of opinion that results in a conflict between an employer or an association of employers and a worker or a trade union because of dispute over rights, interests and termination of employment and dispute between trade unions.

p. Strike (*mogok kerja*)

A strike is a collective action of workers/laborers, which is planned and carried out by a trade/labor union to stop or slower work. A strike is carried out as a result of failed negotiations to settle an industrial dispute.

q. Lockout (*penutupan perusahaan*)

A lockout is the employer's action of refusing the worker/laborer in whole or in part to perform work. Lockout is performed when no agreement is reached to settle an industrial relations dispute, as a result of workers' demands that are considered to be too much and go beyond the ability of the enterprise.

r. Employment termination (*pemutusan hubungan kerja*)

Employment termination is termination of employment relationship because of a certain thing that results in the coming of an end of the rights and obligations of both the worker and the employer.

s. Wage (*upah*)

Wage is the right of the worker that is received and expressed in the form of money as remuneration from the employer to the worker, whose amount is determined and paid according to a work agreement (*perjanjian kerja*), a deal (*kesepakatan*), or laws and regulations, including allowances for the worker and his or her family for a job and or service that has been performed or will be performed.

t. Workers' welfare (*kesejahteraan pekerja*)

Workers' welfare is a fulfillment of physical and spiritual needs and/or necessities of the worker either within or outside of employment relationship that may directly or indirectly enhance work productivity.

Statutory Bases, Basic Principle and Objectives

This chapter confirms that the new labor law contains provisions on manpower development. Manpower development is an integral part of the national development on the statutory bases of the Pancasila state ideology and the 1945 Constitution. National development is implemented within the framework of the development of Indonesians as fully integrated, whole human beings and within the framework of the overall development of Indonesia's society in order to enhance the dignity, values and status of manpower, driven towards the creation of Indonesian society based on prosperity, justice and welfare in which material and spiritual benefits are evenly distributed.

Manpower development has many dimensions. Manpower development interconnects with employers, workers, trade unions, the government and the public. Therefore, manpower development must be administered on the basic principle of integrativity [integrative interconnectivity] through mutually supportive cooperation within either functional coordination or cross-sector coordination on both the central level and the regional levels.

The objectives of manpower development are:

- a. To optimally and humanely empower and 'culture' [civilize] manpower;
- b. To ensure that job opportunities are evenly distributed and manpower is made available according to the need of both national and regional [provincial, district, city] developments;
- c. To provide protection to workers in the best interest of their welfare; and
- d. To improve the welfare of the worker and his or her family.

Chapter Three

Equal Opportunities and Treatment

Chapter III contains two articles:

Article 5

Manpower [every person who is available for a job] shall have the same opportunity to get a job without being discriminated against.

Article 6

Every worker/laborer has the right to receive equal treatment without discrimination from their employer.

This means that everybody who is available for a job shall have the same right and the same opportunity to get a decent job and to earn a decent living that suits his or her interest and ability. Because of this, when it comes to recruiting workers, every employer must give equal opportunity to all jobseekers. Likewise, employers must also treat all their employees equally when they give them assignments, when they give them promotion in their jobs, when they give them appreciation, and when they discipline them, according to prescribed criteria.

According to ILO Convention No 111/1958, which Indonesia has ratified with Act No 21/1999, discrimination in recruitment and treatment of workers on the grounds of race, color, sex, religion, political orientation and ethnicity is not allowed.

This provision pertains to a fundamental workers' right. But the new labor law, Act No 13/2003, does not indicate how this provision should be regulated and implemented. Under Act No 25/1997, infringements of this

provision are categorized as a felony and are subjected to a criminal sanction in the form of imprisonment for a maximum period of five years and or a fine of Rp400 million. However, Act No 13/2003 imposes only administrative sanctions for infringements of this provision.

Nevertheless, every employer must make efforts to avoid discriminatory practices. Employers must be protected from being accused of, or from being blamed because of, being assumed to have committed discrimination. To prevent employers from indulging in discrimination, or being accused of practicing discrimination, every enterprise needs to immediately formulate:

- a. Recruitment criteria or requirements for accepting new workers;
- b. System of ranks and occupations;
- c. Criteria for employment promotion and for filling job vacancies/positions;
- d. Wages system;
- e. Criteria for disciplinary measures.

Manpower Planning and Information

One of the functions of the government is to prepare manpower planning as a basis and reference for formulating policies, strategies and implementation of manpower development, be it macro or micro manpower planning.

Macro manpower planning is intended to guarantee the optimal, productive and efficient use of workers in order to support economic and social growths and to open up productive employment opportunities as broad as possible, nationally or throughout the regions. Micro manpower planning is intended to optimally increase efficient use of manpower in order to improve the performance and productivity of an enterprise, government agency or work unit. In order to prepare manpower planning, manpower information is needed. Manpower information involves information on population and workers, job opportunities, occupational training, manpower productivity, industrial relations, work environment conditions, wages, workers' welfare, and social security for employees.

Manpower information is collected from all related organizations, be they government agencies or private organizations. Education institutes and training institutes, for instance, need to give information on the number and quality of school graduates as well as the number of school dropouts. Enterprises need to give information on vacancies, needs for training, wages, occupational accidents, and other information. Further provisions shall be specified with Government Regulations.

In line with Act No 7/1981 on the Obligation of Enterprises to Report the Working Conditions, an employer is obliged to submit to the Minister of Manpower or to another government official appointed by him a report that shall contain, among others, information on the following:

- a. The establishment of the employer's enterprise, including information on the identity of the enterprise, industrial relations, workers protection and job opportunities in the enterprise within a period of no longer than 30 (thirty) days after the enterprise is established;
- b. Labor conditions in the enterprise, which shall be reported every year;
- c. Plans to relocate the enterprise, to stop the operation of the enterprise or to dissolve the enterprise.

Occupational Training

Occupational training is intended to equip workers with the ability, competency and productivity required by the enterprise as well as to increase their ability, competency and productivity. Occupational training may be administered by the government, a private training institute, and by an enterprise in the form of in-house training, by considering the need of labor market and the world of business both at home and abroad. Occupational training programs must refer to competence standards and must be able to be carried out in stages from the elementary level, intermediate level and up to the advanced level.

To operate, a private occupational-training institute is required to have an operational permit from the government agency responsible for manpower affairs in the district/city where it intends to operate. Occupational training institutes owned by government agencies, too, shall also register their activities with the said government agency. Private and government occupational training organizers must fulfill the following requirements:

- a. They have to have available trainers;
- b. They have to have curricula that accord with the levels of training being offered;
- c. They have to have structures and infrastructures for making the occupational training they offer possible;
- d. They have to have financial resources to ensure that their activities of administering occupational-training programs can be continued.

Private occupational training institutes need to get accreditation from the Accreditation Institute. The work competence of the graduates of a training program is acknowledged through certificates of job competence

after successful completion of competence tests.

In providing occupational training to the disabled, the type and severity of the disability and the ability of the disabled participants shall be taken into consideration.

Apprenticeship shall be offered as part of a occupational training system and shall be administered among occupational training institutes in an integrated manner. Apprenticeship shall be performed by working directly in an enterprise under the tutelage and supervision of an instructor or a more experienced worker. Apprenticeship programs shall be prepared on the basis of occupational requirements and qualifications and can be provided in grades. There must be an apprenticeship agreement between the employer who administers an apprenticeship program and apprenticeship participants who take part in the program. The apprenticeship agreement must contain provisions on the apprenticeship period, the rights and obligations of the apprentices, and the authority and obligations of the employer.

Enterprises with a legal status are allowed to administer apprenticeship programs in foreign countries if they have permission from Minister. Organizers of apprenticeship programs in foreign countries must see to it that:

- a. The dignity and value of Indonesians as a nation are honored;
- b. The apprenticeship participants get the mastery of a higher level of competence;
- c. The protection of apprenticeship participants and their welfare are ensured.

Manpower Placement

Everybody who is available for a job shall have the same right and opportunity to choose a job, to get a job or to move from one job to another and earn decent income both at home and abroad.

Manpower placement shall be performed openly, freely, objectively, fairly and without discrimination, directed to place everybody who is available for a job in the right position according to his or her expertise, skills, talent, interest, and ability by taking into consideration human dignity and values, human rights and legal protection.

Entrepreneurs or employers at home may recruit for themselves workers they need or may recruit them through job placement agencies [or employment agencies]. Job placement may be carried out by government agencies or private agencies. Job placement agencies shall be obliged to provide protection to jobseekers since their recruitment until their eventual placement. After that, employers who employ them shall be obliged to protect their occupational safety and health and welfare.

Private job placement agencies shall take the form of a legal entity and shall obtain a license to operate from Minister of Manpower. Pursuant to ILO Convention No 88/1948, which Indonesia has ratified through Presidential Decision No 36/2002, government-run job placement agencies are not allowed to require jobseekers whom they help to find a job to pay them placement fees. However, private job placement agencies may collect fees from users of the workers they supply and from jobseekers of certain categories.

Placement of manpower in foreign countries will be regulated with a separate law. Whilst the separate law in question is yet to be issued, issues pertaining to the placement of manpower in foreign countries shall be regulated with what is provided for under the existing valid national laws and regulations.

Extension of Employment Opportunities

The government is responsible for making efforts to extend employment opportunities both at home and abroad by, among others:

1. Formulating and determining various national, sector-based and regional policies to push the growth and extension of business;
2. Mobilizing the support of the people, financial and banking institutions and enterprises that are able to help and encourage the development of other businesses and are able to create new employment opportunities;
3. Making efficient use of the potentials of natural resources, human resources and simple, practical and efficient technologies;
4. Providing help to the self-employed to enable them to develop themselves/their businesses, applying labor-intensive systems; applying simple, practical and efficient technologies, and making efficient use of volunteers;
5. Establishing coordinating bodies/agencies for the extension of employment opportunities with constituents from the government and private sector as their members.

The Use of Foreign Workers

Foreign workers may work in Indonesia but only within an employment relationship in a certain position or occupation and for a certain period of time upon the issuance of a working permit from Minister of Manpower. Individuals are prohibited from employing foreign workers. The use of foreign workers must be selective so that job opportunities for Indonesian workers remain open. The use of foreign workers must also guarantee transfers of technologies. For this purpose, every enterprise that will use foreign workers shall be obliged to make a plan on the use of foreign workers, which shall be legalized by Minister of Manpower. The plan shall contain:

1. Reasons why the use of foreign workers are necessary;
2. Occupations and or positions of the foreign workers within the organizational structure of the enterprise;
3. The timeframe or period during which the foreign workers will be used;
4. The appointment of Indonesian workers as the counterparts to accompany the foreign workers in question.

Enterprises or employers who employ foreign workers are obliged:

- a. To obey provisions on the required competence standards;
- b. To appoint Indonesian workers as the counterparts for the foreign workers for the sake of transfers of technologies and transfers of expertise from the foreign workers;
- c. To provide education and training to Indonesian workers who serve as the counterparts for the foreign workers;

- d. To pay compensation fees for employing foreign workers;
- e. To repatriate the foreign workers they employ to their countries of origin upon the termination of their employment.

Foreign workers are prohibited from occupying positions that give them control over personnel and are prohibited from occupying certain positions that are specified by Minister.

Employment Relationships

Employment [relationship] exists because of the existence of work agreements between employers and workers. Employment agreements are made on the basis of agreement of both sides. The work that the employer agrees to submit to the worker who agrees to undertake it must not run against public order, morality and valid laws and regulations. Written employment agreements must at least contain information on:

- a. Enterprise name, enterprise addresses and line of business;
- b. Name, sex, age and address of the worker;
- c. The position to be occupied by the worker or the type of work that the worker will undertake;
- d. The place where the work is to be carried out;
- e. The amount of wages and method of its payment [how the wages should be paid]
- f. Working conditions that contain the rights and obligations of both the employer and the worker;
- g. The start of the period during which the employment agreement is effective;
- h. The place in which and the date on which the employment agreement is made;
- i. Signatures of each party to the employment agreement.

A employment agreement may be made for a definite/specified period of time and for an indefinite/unspecified period of time. A employment agreement cannot be withdrawn and or changed unless so agreed by both sides. Any employment agreement for a definite period of time shall stipu-

late no probationary period. A employment agreement for an indefinite period of time may stipulate a probationary period but the wages paid to a worker during his or her probationary period must not be lower than the government-sanctioned minimum wages set by Minister of Manpower. If a employment agreement for an indefinite period of time is made orally, the employer is obliged to issue a letter of appointment for the worker employed through such an agreement. The letter of appointment shall among others contain:

- a. Name and address of the worker;
- b. The date on which the worker starts working;
- c. The type of work that the worker undertakes; and
- d. The amount of wages that the worker will receive.

Employment Agreement for A Definite Period of Time

A employment agreement for a definite period of time cannot be made for work that is permanent by nature. A employment agreement for a definite period of time can only be made for certain work which, because of its type and character, will finish within a definite or specified period of time. Such work includes:

- a. Work that can be performed and completed at one go or work which is temporary by nature;
- b. Work whose completion is estimated at a period of time which is not too long and no longer than 3 (three) years;
- c. Seasonal work; or
- d. Work that is related to a new product, a new [type of] activity or an additional product that is still in the experimental stage or try-out phase.

A employment agreement for a specified period of time shall be made for a period of no longer than two years but can be extended or renewed. The extension of a employment agreement for a specified period of time can be made only once and for a period of no longer than one year. The renewal of a employment agreement for a specified period of time can be made only once and for a period of no longer than two years following a period of no less than thirty days after the expiration of the first employment agreement for a specified period of time.

Outsourcing Agreement/Agreement for Contract for Work

An enterprise may submit part of the completion of its work to another enterprise through a contract agreement. However, an enterprise is not allowed to contract out to another enterprise its main activities or its core business or work that is directly related to production process. Work that can be contracted out to another enterprise, which in this case serves as a contractor, is auxiliary work that can be carried out separate from the enterprise's core business such as cleaning service, catering service and security service.

Contractors must take the form of a legal entity. In line with the nature of the employment being contracted out, the employment relationship between a contractor and the workers that the contractor employs may be based on a employment agreement for an unspecified period of time or a work agreement for a specified period of time. Protection and employment requirements for workers in the contractor's enterprise must be the same or even better than the protection and employment requirements for workers in the enterprise that contracts out work to the contractor.

Protection, Wages and Welfare

Protection for Disabled Workers, Children, Young People and Women

Disabled people must be given opportunity to work as far as their disability permits them to work. In order to protect children, young people, and women, employers are basically prohibited from employing:

- a. Children aged less than 15 years old; however, there is no prohibition to employ children aged between 13 and 15 years old to perform light work;
- b. Children aged less than 18 years old for performing work in a mine, in dangerous places, and in certain time in the night;
- c. Children in bad working conditions such as in slavery, prostitution, in the business of pornography, gambling, the trafficking of spirits, alcoholic beverages, narcotics and psychotropic substances;
- d. Women aged less than 18 years old and pregnant women between 11pm and 7am.

Working Hours and Periods of Rest

It is established that there are 40 working hours a week, of which the following alternatives apply:

- a. Alternative one: workers are required to work for a maximum of seven hours a day for six days a week, or
- b. Alternative two: workers are required to work for a maximum of eight hours a day for five days a week.

If the employer requires/causes the worker to work longer than the prescribed working hours, the employer is obliged to pay the worker overtime pay. Overtime shall not exceed three hours a day, 14 hours a week.

Each worker is entitled to:

- a. A period of rest of no less than half an hour after working for four hours consecutively;
- b. A period of rest of one day every week if he or she works for six days a week or a period of rest of two days every week if he or she works for five days a week;
- c. A yearly period of rest or annual leave of 12 workdays if he or she works for six days a week and a yearly period of rest or annual leave of 10 workdays if he or she works for five days a week;
- d. A long period of rest of two months for workers who have been working for six years consecutively at an enterprise that can afford providing its workers with such a long period of rest provided that the first one month be taken during the seventh year of service and the other one month during the eighth year of service.

Especially for female workers, employers:

- a. Are not allowed to oblige/ require them to work on the first and second days of their menstrual period;
- b. Shall entitle them to a period of rest of 1,5 months prior to the time for delivery according to the estimation of the doctor/ mid-wife and another period of rest of 1,5 months after delivery;
- c. Shall entitle them to a period of rest of 1,5 months if they suffer from a miscarriage;
- d. Shall give them reasonable opportunities to breastfeed their babies during working hours.

Workers are not obliged to work during official public holidays. Workers are entitled to receive their wages in full for not working during official public holidays, weekly periods of rest, annual periods of rest or annual leave, long leave, and also during their menstrual periods, maternity leave, and miscarriage leave if they are women.

Occupational Safety and Health Protection

Every worker shall be entitled to the protection of his or her occupa-

tional safety and health, morality, decency and treatment that honors his or her dignity and value as a human being, and religious values. For this purpose, employers are obliged to apply an occupational safety and health system that integrates with the management of their enterprise. Employers are obliged to prepare programs and to make available structures for securing occupational safety and health in accordance with Act No 1/1970 and its implementing regulations.

Wages

Each worker is entitled to earn income that enables him or her to lead a decent life and honors his or her values as a human being. In order to provide the worker with protection of their wages and to enable the worker to lead a decent life, the Government sets up policies or provisions concerning:

- a. Minimum wages, including provincial, city, district minimum wages as well as sector-based and sub-sector-based minimum wages;
- b. Overtime pay;
- c. Wages for being absent from work because of being hindered/handicapped to come to work;
- d. Wages for being absent from work because of performing other activities;
- e. Wages for exercising the right to take a rest;
- f. Forms and ways of paying wages including wages scales, payment of severance pay and collection of taxes.

Each employer is requested to prepare wages structures and scales by taking into account categories of occupation, years of service, education and competence. Employers shall also review the wages of their workers periodically.

Employers are obliged to continue to pay the wages of workers who cannot come to work because:

- a. They are ill; for the first four months of being absent from work because of illness, a worker shall be entitled to receive his or her wages in full; for the second four months, however, the worker will receive only 75% of the wages; for the third four months, 50% of the wages and for the fourth four months, 25%;

- b. They get married and are absent from work for three days; they marry off their children and are absent from work for two days; they have their sons circumcised or have their children baptized and are absent for two days; the worker's wife gives birth to a baby or suffers from a miscarriage and the worker is absent from work for two days; a member of the worker's family or relatives dies and the worker is absent from work for two days;
- c. They are performing their duties/obligations to the State;
- d. They are performing religious duties/obligations that are commanded by their religion;
- e. The work that the employer has promised to give to the worker is not available;
- f. The worker exercises his or her right to take a rest or to take a leave;
- g. The worker carries out their trade union duties with the permission of the employer;
- h. The worker is undergoing a study or education program required by the enterprise.

If the enterprise is declared bankrupt or is liquidated, the payment of its workers' wages and other entitlements shall be prioritized. Any claim/demand for the payment of the worker's wages and all other claims/demands for payments that arise from an employment relation shall expire after the passage of a period of 2 (two) years since such claims first come into being.

Welfare

In order to improve the welfare of the worker and his or her family, the employer:

- a. Is obliged to include the worker in the government-sanctioned social security scheme for employees (*jamsostek*);
- b. Should provide welfare facilities, when financial conditions permit, such as family planning service, babysitting facilities for working mothers, housing facilities for workers, construction of places of worship, sports facilities and canteens;
- c. Should establish workers' cooperatives.

Industrial Relations

Industrial relations refer to a system of relations among actors in the production process: the employer, the worker and the Government. The objective of the system is to create and develop secure and harmonious relations between the employer and the worker by:

- a. Pushing each employer to develop the attitude of treating workers as humans on the basis of equal partnership in accordance with the nature, dignity, values and self-esteem of the worker;
- b. Pushing workers to have a sense of belonging and to maintain the continuity of business.

The structures of industrial relations consist of:

- a. Enterprise regulations,
- b. Bipartite cooperation institutes,
- c. Trade unions,
- d. Collective work agreements
- e. Associations of employers,
- f. Tripartite cooperation institutes,
- g. Labor legislation [labor laws and regulations], and
- h. Institutes for the Settlement of Industrial Disputes

Enterprise regulations

Every employer who employs 10 workers or more is obliged to make enterprise regulations. Employers shall make their enterprise regulations

after or without consulting the representatives of their workers. Enterprise regulations shall be made legal by Minister of Manpower or another government official appointed to act on Minister's behalf. Enterprise regulations shall contain provisions concerning:

- a. The rights and obligations of the employer,
- b. The rights and obligations of the worker,
- c. Work requirements,
- d. The enterprise's code of conduct and discipline
- e. The timeframe during which enterprise regulations are effective.

Enterprise regulations shall be effective for two years. Every change to enterprise regulations must be made legal by Minister of Manpower or another government official appointed to act on Minister's behalf. Employers are obliged to give information and explanation to workers about enterprise regulations.

Bipartite institutes

Every employer who employs 50 workers or more must establish bipartite institute. A bipartite institute consists of employer' representatives and workers' representatives who are appointed by workers or trade unions. A bipartite institute functions as communications and consultation forums on labor issues at the enterprise.

Trade unions

Every worker is entitled to establish and become a trade union member. Pursuant to Act No 21/2000, trade unions have the right to:

- a. Negotiate with the employer/management in the preparation of a collective work agreement;
- b. Settle industrial disputes.

Employers are prohibited from blocking workers to establish a trade union and to become the union's officials or members by:

- a. Transferring workers who have the initiative to establish a trade union to a less desirable and less advantageous position/ place;
- b. Not paying the wages of the workers who are involved in legally permitted union activities;

- c. Not giving them proper opportunities or facilities to establish a trade union;
- d. Using various reasons to terminate the employment of union officials who carry out the duties of the organization in accordance with the collective work agreement;
- e. Organizing anti-union campaigns and taking anti-union action;
- f. Influencing the formation of and selection of union officials.

Collective Labor Agreements

Collective labor agreements are negotiated and prepared by employers together with a trade union or several trade unions that have been registered and represent the majority of workers in the enterprise. A collective labor agreement shall at least contain provisions concerning:

- a. Rights and obligations of employers;
- b. Rights and obligations of workers and trade unions;
- c. The timeframe during which and date on which the collective work agreement starts to take effect;
- d. The signatures of those involved in the making of the collective work agreement.

It may be agreed upon that there can only be one collective labor agreement in a given enterprise and that the collective labor agreement shall apply to all workers who work in the enterprise. Every collective labor agreement shall be effective for a period of no longer than two years and may be extended once for a period of no longer than one year. Employers are obliged to print the agreement, distribute the printouts of the agreement and explain to all the workers the contents of the agreement.

Associations of employers

Employers are entitled to establish and become members of organizations or associations of employers who specifically deal with labor issues within the framework of the implementation of industrial relations.

Tripartite institutes

Tripartite institutes consist of Government, employer and worker constituents. The functions of the institutes are to provide considerations, recommendations and opinions to the Government and other related parties on policies and solutions of labor problems.

Tripartite institutes may be set up at national and regional levels and according to economic sectors or sub-sectors.

Institutes for Industrial Disputes Settlement

Every industrial relation dispute basically must be settled at a bipartite forum or institute by the employer and the worker or trade union through deliberations aimed at reaching a consensus. Industrial relation disputes that cannot be settled in a bipartite manner shall be settled through Industrial Relation Dispute Settlement Board. Regulations concerning Industrial Relation Dispute Settlement Board will be provided under a separate law.

Alternatively, an industrial relation dispute can be dealt with by taking coercive action or unilateral action in the form of a strike or a lockout. Coercive action in the form of a strike and lockout is a right that can be exercised when bipartite institutes or mediators fail to settle the dispute.

Seven days before a strike plan is actually carried out, the employer and the authorities [the local government agency responsible for manpower affairs] must be notified of the plan. The notification must explain:

- a. The day and the date on which, and the hour at which the strike will be started;
- b. The place where the strike will take place;
- c. The reasons on why the strike has to be carried out;
- d. The signatures of the chairperson and secretary of the striking union and/or the signature of each of the chairpersons and secretaries of the unions participating in the strike, who shall be held responsible for the strike.

Workers shall have their wages fully paid despite the period of time not worked during a strike provided that the strike is carried out legally in order to demand the fulfillment of their normative rights, which are provided for under valid statutory legislation, work agreements, enterprise regu-

lations or collective work agreements but which their employer has denied.

The employer is not justified to lock out his or her workforce in retaliation for the strike performed by the trade union. The employer may lock out his or her workforce if the negotiation with the trade union is considered to have failed.

An employer who plans to perform a lockout is under an obligation to give a notification of the plan to the worker or the trade union and the authorized government agency [the local government agency responsible for dealing with manpower affairs] seven days before the actual lockout takes place by informing:

- a. The day and the date on which, and the hour at which, the entrepreneur will start and end the lockout; and
- b. The reason(s) and cause(s) for the lockout.

The authorized government agency within a period of seven days since the notification of the strike plan or the lockout plan is made is obliged to approach the employer and the trade union involved in the dispute and to make efforts to enable both sides to make peace and settle their dispute themselves. If the government agency feels that it has been unsuccessful in settling the dispute, the agency is obliged to immediately refer the case to the Industrial Dispute Settlement Board. As long as the legal process is ongoing at the Board, the trade union and the employer are not allowed to take unilateral action. Thus, theoretically, there is no opportunity to exercise the right to strike and the right to lockout.

Termination of Employment

Employers, workers and or trade unions must jointly make efforts to prevent termination of employment from taking place. Employers may terminate the employment of their worker(s) only after they receive a decision from the institute for the settlement of industrial relation disputes that authorizes them to do so. Requests for the termination of the employment of one's workers must be made in writing and addressed to the institute for the settlement of industrial relation disputes, and must be supplied with the reasons on why the termination has to be performed. Employers are prohibited from terminating the employment of their workers because of the following reasons:

- a. The worker is absent from work because he or she is taken ill as attested by a written statement from the physician who treats him or her provided that he or she is not absent from work for a period of longer than 12 (twelve) months consecutively;
- b. The worker/laborer is absent from work because he or she is fulfilling his or her obligations to the State in accordance with what is prescribed in the valid statutory legislation;
- c. The worker/laborer is absent from work because he or she is practicing what is required by his or her religion.
- d. The worker/laborer is absent from work because he or she is getting married.
- e. The worker/laborer is absent from work because she is pregnant, giving birth to a baby, or having a miscarriage;
- f. The worker/laborer is related by blood [birth] and or through marriage to another worker in the enterprise unless so stipulated under

the collective work agreement or the enterprise's rules and regulations.

- g. The worker/laborer establishes, becomes a member of and or an administrator/official of a trade/labor union;
- h. The worker/laborer reports to the authorities the crime committed by the entrepreneur.
- i. Because the worker/laborer is of different understanding/ belief, religion, political orientation, ethnicity, color, race, sex, physical condition or marital status.
- j. Because the worker/laborer is permanently disabled, ill as a result of a work accident, or ill because of an occupational disease [literal translation: employment relationship].

As long as the institute for the settlement of industrial relation disputes has not issued any decision concerning the dispute, both sides (the employer and the worker) in the dispute must keep on performing their respective obligations as usual. While the process of terminating the employment of the worker is ongoing, the employer may suspend the worker provided that the employer continues to pay the worker's wages and other entitlements as usual.

Severance pay and service pay [**money paid as reward for service rendered by the worker during the worker's period of employment**]

In case termination of employment takes place, the employer is obliged to pay:

- a. Severance pay according to period of employment, starting from one-month wages for a period of employment of less than 1 (one) year until nine-month wages for a period of employment of eight years or more;
- b. Service pay starting from two-month wages for a period of employment of three years or more but less than six years until ten-month wages for a period of employment of 24 years or more;
- c. Compensation pay for entitlements that have not been used including annual leave that has not been taken, costs or expenses for transporting the worker back to the point of hire where he or she was recruited and accepted to work for the enterprise; compensation pay for housing allowance, medical and health care allowance at 15% of the severance pay and or service pay, and other compensations.

Termination of employment because of grave wrongdoings

Without the decision from the Industrial Relation Dispute Settlement Institute, the employer may terminate the employment of a worker or workers who has or have been proved guilty of committing the following grave wrongdoings:

- a. The worker has stolen or smuggled goods and/or money that belong to the enterprise or obtained them by means of deceptions;
- b. The worker has given false or falsified information that causes the enterprise to incur losses;
- c. The worker has got drunk, drunken intoxicating alcoholic drinks, consumed and or distributed narcotics, psychotropic substances and other addictive substances in the working environment;
- d. The worker has been committed immorality/ indecency or gambled in the working environment;
- e. The worker has attacked, battered, threatened, or intimidated his or her co-workers or the employer in the working environment.
- f. The worker has persuaded his or her co-workers or the employer to do something that runs against laws and regulations.
- g. The worker has either carelessly or intentionally destroyed or let the property of the employer exposed to danger, which caused the enterprise to incur losses;
- h. The worker has either intentionally or carelessly let his or her co-workers or the employer exposed to danger in the workplace;
- i. The worker has unveiled or leaked the enterprise's secrets, which he or she is supposed to keep secret unless otherwise required by the State; or
- j. The worker has committed other wrongdoings within the working environment, which call for imprisonment for 5 (five) years or more.

Workers whose employment is terminated because of the above-mentioned reasons may receive compensation pay for entitlements left unused and detachment money. Workers who object to their employer's decision to terminate their employment may file a lawsuit to the Industrial Relation Dispute Settlement Institute.

The worker is detained by the authorities

In case the worker is detained by the authorities because he or she is alleged to have committed a crime, the employer is obliged to provide [financial] assistance to the members of his or her family who are his or her dependents for a maximum period of six months according to the number of dependents:

- a. If the worker has 1 (one) dependent, the employer is obliged to pay 25% of the worker's wages.
- b. If the worker has 2 (two) dependents, the employer is obliged to pay 35% of the worker's wages.
- c. If the worker has 3 (three) dependents, the employer is obliged to pay 45% of the worker's wages.
- d. If the worker has 4 (four) dependents or more, the employer is obliged to pay 50% of the worker's wages.

The employer is obliged to reemploy a detained worker who has been declared not guilty before the maximum period of six months is over.

The employer may terminate the employment of the worker who after the passing of 6 (six) months are unable to perform his or her work as he or she should because of the legal process associated with the legal proceedings taking against him or her for the crime he or she is alleged to have committed or after he is declared guilty by the court. In this case, the employer is obliged to pay service pay and compensation pay.

Violations and disciplinary action

The employer may terminate the employment of a worker who breaks the enterprise's discipline, which constitutes a breach of the provisions that are specified under his or her individual work agreement, the enterprise's rules and regulations, or the enterprise's collective work agreement, after the employer precedes it with the issuance of the first, second and third warning letters consecutively. Upon the termination of his or her employment, the worker shall receive severance pay, service pay, and compensation pay in accordance with valid laws and regulations.

Worker resignation

A worker who is not being bound by a contract to work for/ serve the enterprise for a certain period of time in return for the training/ education provided to him or her and paid by the enterprise may resign of his or her own free will and submit a resignation letter to the management no later than 30 (thirty) days prior to the date on which he or she will effectively terminate the employment. During the 30-day period, the worker shall continue to carry out his or her job and receive his or her rights as usual until the letter of the termination of his or her employment comes into force. Resigning workers are entitled to compensation pay for entitlements left unused and detachment money according to valid regulations.

Termination of employment because of changes in enterprise conditions

An employer may terminate the employment of their workers on the following conditions:

- a. The status of the enterprise changes; the enterprise is merged with or fused into another enterprise;
- b. The enterprise closes because it suffers losses over the last two years;
- c. The enterprise increases staff efficiency (employing only workers that it really needs);
- d. The enterprise goes bankrupt.

The employer is obliged to pay severance pay *twice*, service pay and compensation pay to workers whose employment is terminated if the employer:

- a. Changes the status of the enterprise, merges the enterprises with or fuses the enterprise into another enterprise and has no intention to continue employing the workers; or
- b. Increases staff efficiency.

The employer is obliged to pay severance pay, service pay, and compensation pay to workers whose employment is terminated if:

- a. The employer changes the enterprise's status, merges the enterprise with another enterprise, fuses the enterprise into another enterprise, or changes the ownership of the enterprise but the worker is

- not willing to continue the employment.
- b. The enterprise has to close because of continual losses in the last two years;
 - c. The enterprise goes bankrupt.

Deceased worker

If the worker dies, his or her legal heirs shall be entitled to receive severance pay twice, service pay and compensation pay.

The worker retires

The employer basically must include all his or her workers in a Pension Fund program by paying all the contributions or sharing the contributions with the worker. In this case, the employer:

- a. Does not need to pay anything if the pension benefit from the employer's contribution is the same or more than the total amount of *twice* the amount of severance pay, service pay and compensation pay;
- b. Is obliged to pay the difference between the total amount of *twice* the amount of severance pay, service pay and compensation pay and the pension benefit from the employer's contribution.

The employer is obliged to pay severance pay twice, service pay, and compensation pay to retired workers who are not included in the Pension Fund program.

Absent without leave for five days

A worker who has been absent from work for no less than 5 (five) days consecutively or more without acceptable reasons and has been summoned twice by the employer may be considered to have resigned and his or her employer may terminate his or her employment, upon which the worker in question shall have the right to receive compensation pay and detachment money.

Worker requests for employment terminated

A worker may make an official request to the institute for the settlement of industrial relation disputes to terminate his/her employment if his or her employer is proven to:

- a. Have battered, rudely humiliated or intimidated the worker;
- b. Have persuaded and/or ordered the worker to commit acts that run against statutory laws and regulations; or
- c. Have not paid wages on time for three months consecutively or more;
- d. Have not performed obligations promised to workers;
- e. Have ordered the worker to perform work outside of that which has been agreed upon by the worker to undertake;

Workers who have their employment terminated because of the above-mentioned reasons are entitled to receive severance pay twice, service pay and compensation pay. However, if the institute for the settlement of industrial relation disputes rules that the charges brought by the worker against the employer are not proven, the employer may terminate the employment of the worker without paying him or her severance pay and service pay.

Termination of employment without the approval of the Institute for Industrial Relation Disputes Settlement

If workers whose employment is terminated without the decision of the institute for the settlement of industrial relation disputes cannot accept the termination of their employment, the workers in question may file a lawsuit to the institute for the settlement of industrial relation disputes within a period of 1 (one) year since the date on which their employment was terminated because:

- a. They have committed grave wrongdoings;
- b. They have not worked for six months because of the legal process associated with the legal proceedings taking against them for the crime they are alleged to have committed;
- c. They have resigned of their own free will.

Development

The government serves as a patron for the implementation of this law in an integrated and coordinated manner by involving associations of employers, trade unions and related professional organizations and by making international cooperation in the field of labor/ manpower.

In order to encourage the general public to participate in the implementation of this law, the Government provides persons or institutes that have done great/ meritorious service for manpower development with awards in the form of official documents of acknowledgement and recognition, money and other tokens of appreciation.

Inspection

Labor inspection shall be carried out to ensure that all labor laws and regulations are complied and implemented by relevant stakeholders. Hence, labor inspection shall be carried out by competent labor inspectors who are grouped under a separate unit at the Central Government, Pronvincial Governments, and District/City Governments. In this way, labor inspectors may perform their duties and make decisions independently without being influenced by other parties.

The implementation of labor inspection refers to Act No 3/1951 and its implementing regulations. In line with this law, labor inspectors are authorized:

- a. To collect information materials on the implementation of laws and their implementing regulations;
- b. To enter and examine all workplaces;
- c. To ask for and collect information from employers, workers and trade unions and from other related parties;
- d. To examine and investigate cases of law breaches.

Investigation

Special authority to act as civil servant investigators (*Penyidik Pegawai Negeri Sipil*) may also be given, in addition to the one assigned to the investigating officials of the Police of the State of the Republic of Indonesia, to competent labor inspectors who fulfill the requirements to do so. The civil servant investigators are authorized, as far as labor is concerned,

- a. To examine whether or not reports and accounts about crimes are true;
- b. To investigate individuals suspected of having committed a crime;
- c. To require explanations and evidences from persons or legal bodies considered to be relevant to the labor crime being investigated;
- d. To examine or confiscate objects or evidences found in a criminal case;
- e. To examine papers and/or other documents connected with crimes;
- f. To request the help of experts in performing labor-related criminal investigations; and
- g. To stop investigation if there is not enough evidence to prove that a crime has been committed.

Criminal Regulations and Administrative Sanctions

A 2-5 year prison sentence

Employers may be liable to or put under threat of and subjected to a jail sentence between two to five years and or a fine amounting to from Rp200 million to Rp500 million if found guilty or convicted of the felony of employing/engaging children in extremely hazardous jobs (as referred to under *Article 74*), involving:

- a. Slavery or practices similar to slavery;
- b. The use of, the procurement of, or the offering of children for prostitution, the production of pornography, or gambling;
- c. The use of, the procurement, or the involvement of children for the production and trade/trafficking of spirits/alcoholic beverages and narcotics;
- d. All kinds of job harmful to the health, safety and moral of the child.

A 1-5 year prison sentence

Employers may be liable to or put under threat of and subjected to a jail sentence between one year to five years and or a fine amounting to from Rp100 million to Rp500 million if found guilty or convicted of the felony of not paying pension compensation (as referred to under subsection 5 of Article 167) amounting to twice the amount of severance pay, one time the amount of service pay, and one time the amount of compensation pay for unused entitlements.

A 1-4 year prison sentence

Employers may be liable to or put under threat of and subjected to a jail sentence between one year to four years and or a fine amounting to from Rp100 million to Rp400 million if found guilty or convicted of the felony of

- a. Employing foreign workers without permission from Minister (which is against subsection 1 of Article 42);
- b. Employing foreign workers while operating as individual employers (which is against subsection 2 of Article 42);
- c. Employing children (which is against Article 68);
- d. Employing children for light work without fulfilling the requirements provided under subsection 2 of Article 69 such as employing children without written permission from their parents or employing children for more than three hours a day;
- e. Not giving workers a chance to perform their religious rituals/duties (which is against Article 80);
- f. Not allowing pregnant female workers to have a 1.5 (one-and-a-half) month period of rest before the time at which they are estimated by an obstetrician or a midwife to give birth to a baby and another 1.5 (one-and-a-half) month period of rest thereafter or after a miscarriage (which is against Article 82);
- g. Paying wages that are lower than that which is required under the provision on minimum wages (which is against Article 90);
- h. Making things difficult for workers and or trade unions by persistently blocking their effort to exercise their right to strike legally, orderly and peacefully (which is against Article 143);
- i. Refusing to reemploy workers who in the first instance are alleged to have committed a crime but are later found not guilty by the court and cleared of the crime within a period of six months (which is against subsection 4 of Article 160);
- j. Not paying service pay and compensation pay for unused entitlements to workers who are alleged to have committed a crime and whose employment has been terminated (which is against subsection 7 of Article 160).

One-month to 4-year prison sentence

Employers may be liable to or put under threat of and subjected to a jail sentence between one month to four years and or a fine amounting to from Rp10 million to Rp400 million if found guilty of:

- a. Not providing welfare and occupational safety and health protection to workers (subsections 2 and 3 of Article 35);
- b. Not paying the wages of their workers when the workers do not come to work because they are ill, get married, marry off their children or have their sons circumcised, exercise their right to take a rest and because of other conditions as referred to under subsection 2 of Article 93.

One month to 12-month prison sentence

Employers may be liable to or put under threat of and subjected to a jail sentence between one month to 12 months and or a fine amounting to from Rp10 million to Rp100 million if found guilty of:

- a. Employing foreign workers not in line with the occupational requirements and competence standards stipulated under subsection 1 of Article 44;
- b. Not appointing counterparts for foreign workers employed (which is against subsection 1 of Article 45);
- c. Not providing protection to disabled/ handicapped workers according to the severity of their disability (which is against subsection 1 of Article 67);
- d. Not fulfilling the requirements for employing children (which is against subsection 2 of Article 71);
- e. Not fulfilling the requirements for employing female workers at night (which is against Article 76);
- f. Not fulfilling the requirements for requiring workers to work overtime (which is against Article 78);
- g. Not fulfilling the requirements for providing workers with periods of rest and leave (which is against Article 79);
- h. Not paying overtime pay to workers who are required to work overtime during official public holidays (which is against subsection 3

of Article 85);

- i. Replacing workers who are striking legally in compliance with what is provided for under regulations for strike action or imposing sanctions on them or taking retaliatory actions against them (which is against Article 144)

A Rp 5million to Rp 50million rupiah

Employers may be liable to or put under threat of and subjected to a fine amounting to from Rp5 million to Rp50 million if found guilty of:

- a. Not issuing a letter of appointment to workers who have been employed for an unspecified period of time based on an oral employment agreement (which is against Article 63);
- b. Not fulfilling the requirements for requiring workers to work overtime (which is against subsection 1 of Article 78);
- c. Not making enterprise regulations according to that which is provided under Article 108;
- d. Not renewing enterprise regulations which have expired within a period of two years as stipulated under subsection 3 of Article 111;
- e. Not explaining the contents of enterprise regulations to workers as required under Article 114;
- f. Not notifying workers or trade unions or relevant government agencies in charge of manpower affairs of the plan to close the enterprise.

Administrative sanctions

Administrative sanctions may be imposed in the form of a letter of rebuke, written warnings, restriction on business activities, freeze on business activities, cancellation of approvals, cancellation of registration, temporary suspension of [the operation of] part of or all production equipment, or revocation of [operating] permit because of the following infringements:

- a. Discriminatory actions upon recruitment (Article 5);
- b. Discriminatory actions in treating workers (Article 6);

- c. Not fulfilling the requirements for administering/ organizing training (Article 15);
- d. Not obtaining permission for organizing apprenticeship in foreign countries (Article 25);
- e. Collecting placement fees from jobseekers (subsection 2 of Article 38);
- f. Not appointing counterparts for foreign workers (Article 45);
- g. Not paying compensation fees for using foreign workers (Article 47);
- h. Not repatriating foreign workers whose employment has come to an end (Article 48);
- i. Not applying an occupational safety and health management system (Article 87);
- j. Not establishing a bipartite cooperation institute despite employing 50 workers or more (Article 106);
- k. Not printing/ making copies of the text of collective work agreement and distributing them to workers (subsection 3 of Article 126);
- l. Not providing assistance to the family of a worker who is detained by the authorities for an alleged crime (Article 160).

Transitional Regulations and Closing Paragraphs

All implementing regulations that regulate manpower affairs shall remain in place as long as they are not against and or have not been replaced by new regulations.

With the promulgation of Act No 13/ 2003, six ordinances and seven acts, including six old acts which have actually been revoked by Act No 25/ 1997, and two acts and one Government Regulation in lieu of Law which postpones the coming into force and implementation of Act No 25/ 1997 are declared null and void.

Future Challenges

As mentioned previously, the contents of Act No 13/ 2003 are sufficiently board and compact. It needs to be understood that many of the formulations of the articles and subsections of this act resulted from compromises and long dialogues among employers' representatives, workers' representatives, trade unions and other community groups. Thus, it can be understood that:

- It is felt that several articles are not consistent;
- Both employers and trade unions are not fully happy with the formulations of certain articles;
- This act is still waiting for a number of Implementing Government Regulations, Presidential Decisions and Ministerial Decisions

It can be concluded that this act requires understanding and cooperation, particularly on the part of the employer, the worker and the trade union. New constellations and paradigms of industrial relations in Indonesia and increasingly sharper competitions among countries in today's world of globalization demand intensive cooperation between employers and workers/trade unions in order to give effect to this Act despite its weaknesses and shortcomings.

Waste of time and energy must be avoided. It is useless to point finger to each other, to blame each other and to take digs at the weaknesses of this Act. To overcome this insufficiency, it would be more productive to find agreements aimed at improving the Act. In this case, what is of utmost importance in the future is that:

- a. The management and trade union leadership should jointly build partnership and cooperation;

- b. The management and trade union leadership should have joint commitments to build up the enterprise because only in this way can the continuity of the enterprise and the job opportunities that may be available in it be maintained and the welfare of the worker be increased;
- c. The management and trade union leadership need to jointly improve the quality of workers, not only in order to make them professional in performing their work but also to enable them to compete in international constellations;
- d. The management and trade union leadership must jointly build harmonious industrial relationship and jointly avoid coercive actions taken unilaterally and strikes because such actions will always be detrimental to both sides;
- e. Efforts should be made to solve each industrial relation problem internally. Therefore, consultation and dialog forums such as bi-partite institutes need to be made functional;
- f. The management and workers and trade unions need to make joint efforts to give effect to this act and agree on the best solution when they find themselves in situations where their interests are at odds with each other.