

## Client Alert

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### *Constitutional Court Ruling on Case Number 168/PUU-XXI/2023 altering the Indonesian Manpower Law Landscape*

The Constitutional Court of the Republic of Indonesia recently ruled on Case Number 168/PUU-XXI/2023, which was pronounced on 31 October 2024 (“**CC Ruling 168/2023**”).

The CC Ruling 168/2023 altered several provisions in the Indonesian manpower law, as regulated under Law Number 13 of 2003 on Manpower, last amended by Law Number 6 of 2023 (“**Indonesian Manpower Law**”).

#### **Provisions Altered**

CC Ruling 168/2023 alters the following provisions under the Indonesian Manpower Law. We summarize them as follows:

##### 1. On Foreign Manpower

Some terms are fixed and provisions added:

- a. The legalization of the Foreign Manpower Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing/RPTKA*) is to be exercised by the ‘Ministry of Manpower’, replacing the previous term of ‘Central Government’ (amending Article 42 paragraph (1)).
- b. The employment of foreign manpower must take into consideration the preferential use of local Indonesian manpower (adding a new provision in Article 42 paragraph (4)).

##### 2. On Definite Period (Fix-Term) Employment Agreement

- a. The period is for no longer than 5 (five) years, including if there is an extension (amending Article 56 paragraph (3)).
- b. An affirmation that a definite period employment agreement must be made in writing, by using Indonesian language and Latin letters (amending Article 57 paragraph (1)).

##### 3. On Outsourcing (*Alih Daya*)

The minister is to stipulate a part of the work assigned in accordance with the type and field of outsourced work that is agreed upon in the outsourcing agreement (amending Article 64 paragraph (2)).

Previously, it was only the part of the work assigned.

##### 4. On Resting Time – Weekly Rest

Adding a new provision that the employer must provide ‘2 (two) days weekly rest for 5 (five) working days within 1 (one) week’, as an alternative to a ‘1 (one) day weekly rest for 6 (six) working days within 1 (one) week’ (amending Article 79 paragraph (2)).

Previously, the law only mentioned '1 (one) day weekly rest for 6 (six) working days within 1 (one week)'.

## 5. On Long Resting Time (*Istirahat Panjang*)

Certain companies are to provide 'long resting time' as regulated under the employment agreement, company regulation or collective labour agreement (amending Article 79 paragraph (5)).

It is no longer optional, as stipulated in the previous law.

## 6. On the Right to a Decent Living for Humanity.

Although the old law stated that every Worker/Laborer has the right to a decent living for humanity, the new law elaborates on the definition. The new law says that companies must ensure that the income of their employees meets a liveable standard, which constitutes the total earnings or income of workers/laborers from their work, enabling them to reasonably fulfil the living needs of themselves and their families, including food and beverages, clothing, housing, education, health, recreation, and old-age security (amending Article 88 paragraph (1)).

Previously, the regulation only mentions the 'decent living for humanity' without its elaboration.

## 7. On the Involvement of the Regional Wage Council in Establishing Wage Policies

In establishing the wage policies, the central government must also involve the regional wage council, which includes elements of the regional government in formulating wage policies that serve as material for the central government in establishing wage policies (amending Article 88 paragraph (2)).

Previously, the wage policies were determined by the central government.

## 8. On the Wage Structure and Scale as Part of the Wage Policy

As part of the wage policy, the wage structure and scale are to be made proportional (amending Article 88 paragraph (3)).

Previously, there was no requirement for it to be made proportional.

## 9. On Sectoral Minimum Wages

Governors are required to stipulate/establish sectoral minimum wages at the provincial level, and this is optional for regencies/cities (adding Article 88C).

Previously, sectoral minimum wages were not regulated or required.

## 10. On Certain Index In Determining the Minimum Wages

Calculating the minimum wages must also take into account the certain index that represents a variable that reflects the contribution of labor to the economic growth of the province or

regency/city, taking into account the interests of companies and workers/laborers as well as the principle of proportionality to meet the Decent Living Needs (*Kebutuhan Hidup Layak* - KHL) for workers/laborers (amending Article 88D paragraph (2)).

Previously, the 'certain index' was not elaborated.

## 11. On Certain Circumstances in Determining the Minimum Wages

The Government, in a 'certain circumstance', can regulate a minimum wage that is different than in point 10 above, provided that the 'certain circumstance' includes, among other things, natural or non-natural disasters, including extraordinary conditions of the global and/or national economy as determined by the President in accordance with the provisions of the law (amending Article 88F).

Previously, 'certain circumstance' was not elaborated.

## 12. On the Parties in Determining Wages above the Minimum Wage

Bargaining on wages should be determined based on an agreement between employers and workers/labourers in the company or the labour union/trade union of the company (amending Article 90A).

Previously, the labor union/trade union in the company was not involved in negotiating wages with a company.

## 13. On Certain Thresholds when Determining the Wage Structure and Scale

Determining the wage structure and scale in the company must now consider the company's capabilities and productivity, as well as classifications, positions, length of service, education, and competencies (amending Article 92 paragraph (1)).

Previously, the company only needed to consider its capabilities and productivity when determining the wage structure and scale.

## 14. On Other Rights of Workers Prioritized Over Creditors

'Other rights' of workers/laborers in bankruptcy or liquidation proceedings shall be prioritized for payment over all creditors including 'preferred creditors' except for secured creditors (amending Article 95 paragraph (3)).

Previously, 'preferred creditors' were not mentioned as part of creditors.

Note: Other rights are usually rights as regulated under the employment agreement, company regulation, or collective labour agreement, which is usually received by the workers/labourers.

## 15. On Active Participation by the Wage Council

The wage council is to actively participate in providing advice and considerations to the central government or regional government in formulating wage policies and developing the wage system (amending Article 98 paragraph (1)).

Previously, there was no mention of the wage council actively participating.

## 16. On Deliberation to Reach a Consensus (*musyawarah mufakat*) when Conducting a Bipartite related to Employment Termination

Any employee who refuses a termination of employment by the employer must undergo bipartite meetings/negotiations in a deliberative manner for consensus (*musyawarah mufakat*) between employers and workers/laborers and/or labor unions (amending Article 151 paragraph (3)).

Previously, there was no requirement for such bipartite meetings to be conducted in a deliberative manner for consensus (*musyawarah mufakat*).

## 17. On Termination of Employment Upon Obtaining a Legally Binding Decision

If no agreement is reached in the bipartite negotiations on the termination of employment, then such termination of employment can only be carried out after obtaining a stipulation/determination from the institution for resolving industrial relations disputes whose decision has permanent legal force/legally binding decision (amending Article 151 paragraph (4)).

Previously, there was no mention that termination of employment requires a permanent legal force/legally binding decision from the institution to resolve industrial relations disputes.

## 18. On Obligation by Employer and Employee during Industrial Relations Disputes

The obligations of an employer and employee to each other during an industrial relation dispute must resume until the conclusion of the industrial relations dispute resolution process that has permanent legal force/legally binding decision in accordance with the provisions of the industrial relation disputes settlement law (Law Number 2 of 2004) (amending Article 157A paragraph (3)).

Previously, the obligations of an employer and employee to each other would resume until the completion of the industrial relations dispute resolution process according to its level, not until a permanent legal force/legally binding decision was made.

## 19. On Payment Limit of Severance Payment

The employer must pay a severance payment (*uang pesangon*) at least, or at minimum, with the calculation as stipulated under the Indonesian Manpower Law (amending Article 156 paragraph (2)).

Previously, there was no mention of 'at least' or 'at minimum', meaning that the severance payment must conform to the calculation stipulated under the Indonesian Manpower Law.

## **What Comes Next?**

Following the CC Ruling 168/2023, we envisage the following possibilities:

### 1. Formation of a New Manpower Law

In its Consideration 3.16 of the CC Ruling 168/2023, the Constitutional Court urges lawmakers to form a new manpower law that adopts the substances of the old manpower law and the current

Indonesian Manpower Law, within the period of no later than 2 (two) years (possibly since 31 October 2024, when the ruling was pronounced). The court wishes an active participation and involvement from labour unions in the drafting process. The court views that the current Indonesian Manpower Law has too many inconsistencies and overlaps the previous intentions regulated under the old manpower law.

This point may prompt lawmakers to contemplate whether the new manpower law would need to be drafted and subsequently passed. Another point to consider is that the drafting process should involve active participation by the labour union. The lawmakers probably would implement mechanisms where the labour union is involved.

## 2. Adjustment or Passing of New or Current Implementing Regulations

Several regulations for implementing the Indonesian Manpower Law would probably need to be adjusted to mirror the CC Ruling 168/2023. The regulations that could possibly be directly affected are, among others: Government Regulation Number 36 of 2021 on Remuneration; Government Regulation Number 35 of 2021 on Definite Period Employment Agreement, Outsourcing, Working Time and Resting Time, and Termination of Employment; and Government Regulation Number 34 of 2021 on Usage of Foreign Manpower as these regulations stipulate the implementing provisions as set out under CC Ruling 168/2023.

## 3. Implementation of the CC Ruling 168/2023

Another question raised is whether the provisions of the Indonesian Manpower Law affected by CC Ruling 168/2023 must be immediately applied or exercised,

Mirroring the previous Omnibus Law (Law Number 11 of 2020, effective since November 2020), the laws of the manpower cluster could only be fully implemented upon the passing of its implementing regulations (Government Regulation Number 36 of 2021 on Remuneration, Government Regulation Number 35 of 2021 on Definite Period Employment Agreement, Outsourcing, Working Time and Resting Time, and Termination of Employment, which were effective since February 2021).

We expect that, arguably, the Indonesian Manpower Law affected by CC Ruling 168/2023 could only be fully implemented when the implementing regulations have been fully passed/enacted.

Nonetheless, pending the passing of these implementing regulations, arguably, the provisions affected by CC Ruling 168/2023 are already in effect. Therefore, we also need to adhere to the provisions of the Indonesian Manpower Law, which were affected by CC Ruling 168/2023.

A Semi-Quote of the Main Verdict/Decision of CC Ruling 168/2023 is available in the [Appendix](#) of this Client Alert.

As of the issuance of this Client Alert, we understand that the Ministry of Manpower is working closely with other government authorities on how to properly address CC Ruling 168/2023. We are closely monitoring this move and will issue a follow-up Client Alert should there be any significant development.

# NURJADIN SUMONO MULYADI & PARTNERS

If you have further questions on this matter, please contact us via email at:

Ilya Sumono – Senior Partner  
[ilya.sumono@nurjadinet.com](mailto:ilya.sumono@nurjadinet.com)

Ruben Soeratman – Partner  
[ruben.soeratman@nurjadinet.com](mailto:ruben.soeratman@nurjadinet.com)

You can also access this Client Alert through our website: <https://nurjadinet.com/>

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## Appendix

Semi-Quote of the Main Verdict/Decision of CC Ruling 168/2023 (Un-Official English Translation)

1. Declares that the phrase 'Central Government' in Article 42 paragraph (1) in Article 81 number 4 of Law No. 6/2023 is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"the minister responsible for (affairs of) labor, in casu, the Minister of Manpower"**;
2. Declares that Article 42 paragraph (4) in Article 81 number 4 of Law No. 6/2023, which states that "Foreign Worker may be employed in Indonesia only in employment relationships for certain positions and specific periods and must have competencies in accordance with the positions they will occupy," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"Foreign Worker may be employed in Indonesia only in employment relationships for certain positions and specific periods and must have competencies in accordance with the positions they will occupy, while prioritizing the use of Indonesian manpower"**;
3. Declares that Article 56 paragraph (3) in Article 81 number 12 of Law No. 6/2023, which states that "The duration or completion of a certain job as referred to in paragraph (2) is determined based on the Employment Agreement," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"The duration for completing a certain job shall not exceed a maximum of 5 (five) years, including any extensions"**;
4. Declares that Article 57 paragraph (1) in Article 81 number 13 of Law No. 6/2023, which states that "fix-term employment agreements must be made in writing and must use the Indonesian language and Latin letters," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"fix-term employment agreements must be made in writing using the Indonesian language and Latin letters"**;
5. Declares that Article 64 paragraph (2) in Article 81 number 18 of Law No. 6/2023, which states that "the Government determines part of the implementation of the work referred to in paragraph (1)," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"the Minister determines part of the implementation of the work as referred to in paragraph (1) in accordance with the type and field of outsourced work agreed upon in the written outsourcing agreement"**;
6. Declares that Article 79 paragraph (2) letter b in Article 81 number 25 of Law No. 6/2023, which states that **"weekly rest is 1 (one) day for 6 (six) working days in 1 (one) week,"** is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted to include the phrase **"or 2 (two) days for 5 (five) working days in 1 (one) week"**;
7. Declares that the word "may" ("*dapat*") in Article 79 paragraph (5) in Article 81 number 25 is contrary to the 1945 Constitution and has no binding legal force;
8. Declares that Article 88 paragraph (1) in Article 81 number 27 of Law No. 6/2023, which states that "Every Worker/Laborer has the right to a decent living for humanity," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted to include the provision **"including income that meets a living standard which constitutes the total earnings or income of workers/laborers from their work, enabling them to reasonably fulfill the living needs of themselves and their families, including food and beverages, clothing, housing, education, health, recreation, and old-age security"**;
9. Declares that Article 88 paragraph (2) in Article 81 number 27 of Law No. 6/2023, which states that "the Central Government establishes wage policies as one of the efforts to realize the rights of workers/laborers to a decent living for humanity," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"involving the regional wage council, which**



- includes elements of the regional government in formulating wage policies that serve as material for the central government in establishing wage policies;**
10. Declares that the phrase "wage structure and scale" in Article 88 paragraph (3) letter b in Article 81 number 27 is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"a proportional wage structure and scale"**;
  11. Declares that Article 88C in Article 81 number 28 of Law No. 6/2023 is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"including the governor being required to establish sectoral minimum wages at the provincial level and may do so for regencies/cities"**;
  12. Declares that the phrase "certain index" ("*indeks tertentu*") in Article 88D paragraph (2) in Article 81 number 28 of Law No. 6/2023 is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"the certain index represents a variable that reflects the contribution of labor to the economic growth of the province or regency/city, taking into account the interests of companies and workers/laborers as well as the principle of proportionality to meet the Decent Living Needs (*Kebutuhan Hidup Layak* - KHL) for workers/laborers"**;
  13. Declares that the phrase "in certain circumstances" ("*dalam keadaan tertentu*") in Article 88F in Article 81 number 28 of Law No. 6/2023 is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"the term "in certain circumstances" includes, among other things, natural or non-natural disasters, including extraordinary conditions of the global and/or national economy as determined by the President in accordance with the provisions of the law"**;
  14. Declares that Article 90A in Article 81 number 31 of Law No.6/2023, which states that "Wages above the minimum wage are determined based on an agreement between employers and workers/laborers in the company," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"Wages above the Minimum wage are determined based on an agreement between Employers and Workers/Laborers in the company or the Labor Union/Trade Union in the company"**;
  15. Declares that Article 92 paragraph (1) in Article 81 number 33 of Law No. 6/2023, which states that "Employers are required to establish a wage structure and scale in the Company by considering the Company's capabilities and productivity," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"Employers are required to establish a wage structure and scale in the Company by considering the Company's capabilities and productivity, as well as classifications, positions, length of service, education, and competencies"**;
  16. Declares that Article 95 paragraph (3) in Article 81 number 36 of Law No. 6/2023, which states that "Other rights of Workers/Laborers as referred to in paragraph (1) shall be prioritized for payment over all creditors except for secured creditors," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"Other rights of Workers/Laborers as referred to in paragraph (1) shall be prioritized for payment over all creditors including preferred creditors except for secured creditors"**;
  17. Declares that Article 98 paragraph (1) in Article 81 number 39 of Law No. 6/2023, which states that "To provide advice and considerations to the Central Government or Regional Government in formulating wage policies and developing the wage system, a wage council shall be established," is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as **"To provide advice and considerations to the Central Government or Regional Government in formulating wage policies and developing the wage system, a wage council shall be established that actively participates"**;
  18. Declares that the phrase "must be conducted through bipartite negotiations between employers and workers/laborers and/or labor unions" in Article 151 paragraph (3) in Article 81 number 40 of Law No. 6/2023 is contrary to the 1945 Constitution and has no binding legal force as long as it is



- not interpreted as "**must be conducted through bipartite negotiations in a deliberative manner for consensus between Employers and Workers/Laborers and/or Labor Unions**";
19. Declares that the phrase "Termination of employment is carried out through the subsequent stages in accordance with the mechanism for resolving industrial relations disputes" in Article 151 paragraph (4) in Article 81 number 40 of Law No. 6/2023 is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "**If no agreement is reached in the bipartite negotiations referred to in paragraph (3), then termination of employment can only be carried out after obtaining a determination from the institution for resolving industrial relations disputes whose decision has permanent legal force**";
20. Declares that the phrase "is conducted until the completion of the industrial relations dispute resolution process according to its level" in the norm of Article 157A paragraph (3) in Article 81 number 49 of Law No. 6/2023 is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "**until the conclusion of the industrial relations dispute resolution process that has permanent legal force in accordance with the provisions of the PPHI law**";
21. Declares that the phrase "is provided with the following provisions" in Article 156 paragraph (2) in Article 81 number 47 of Law No. 6/2023 is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "**at least**".