

Indonesia

Introduction

The right to organize and bargain collectively has been recognized in Indonesia since the 1950s. Indonesia ratified the ILO Convention No. 98/1949 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (“Convention 98”) by issuing Law No. 19/1956. Convention 98 grants protection to workers to enjoy adequate protection against: (i) acts of anti-union discrimination in respect of their employment; and (ii) any acts of interference by the employers or the employer’s agents or members in the union’s establishment, functions, or administration.

Indonesia has also ratified the ILO Convention No. 87/1948, concerning Freedom of Association and Protection of the Right to Organize (“Convention 87”) by issuing Presidential Decree No. 83, 1998. Under Convention 87, workers have the right: (i) to establish and, subject only to the rules of the organization concerned, to join an organization of their own choice without prior authorization; (ii) to draw up their constitutions and rules, to elect their representatives freely, to organize their administration and activities, and to formulate their programs; (iii) to establish and join federations and confederations and (iv) to exercise the right to organize freely. Convention 87 also grants the right to labor organizations, federations, or organizations to affiliate with international organizations of workers and employers.

Following the ratification of Convention 87, the government issued Law No. 21 of 2000 concerning Labor Unions (“Law No. 21 of 2000”), which covers the principles of the above Conventions that are applicable to employee rights. There are implementing regulations of Law No. 21 of 2000 issued by the Minister of Manpower, which relate to labor unions and their activities:

- (a) Minister of Manpower Decree No. Kep-16/Men/2001 on the Procedure for Registration of Labor Union (“Decree 16”);
- (b) Minister of Manpower Decree No. Kep-48/Men/IV/2004 on the Procedure for Drafting and Publication of Company Regulation and Drafting and Registration of Collective Labor Agreement (“Decree 48”);

- (c) Minister of Manpower Decree no. Kep-187/Men/IX/2004 on the Contributions for Membership to labor Union (“Decree 187”); and
- (d) Minister of Manpower Regulation No. Per-06/Men/IV/2005 on the Guidelines for Verification of Labor Union Membership (“Decree 06”).

In addition, Law No. 13 of 2003 on Labor (“Law No. 13 of 2003”) also governs matters relevant to the union’s activity, such as the majority requirement in the negotiation of the collective labor agreement and the principle of one collective labor agreement in one company.

These laws and regulations govern the definition of a union, how it can be established and registered, its rights and functions, its obligations, the limits on its powers, how employers can and cannot act, and how employers must and must not act.

Trade Unions

Definition

Article 4 of Law No. 21 Of 2000 defines a labor union as an organization of workers with the purpose of protecting, defending, and advancing the rights and interests of its members and their families, and increasing their welfare. The employees of a single company or employees from different companies can establish a union. Under Article 6.5, five or more unions can establish a union federation, which works for the benefit of its member unions. Article 7.3 provides that three or more union federations can unite and form a confederation to further advance union interests. Article 10 permits labor unions, union federations, or union confederations to be formed based on the business sectors, the type of job, or other forms in accordance with the interest of the workers.

The Establishment Of A Union

The membership of employees in a union is voluntary. Under Article 5.1 of Law 21 of 2000, every employee has the right to form or join a union. However, the union cannot force the employees to join the organization. As mandated by Convention No. 87, neither the employer, a union, government, nor anyone else can pressure or interfere in the establishment of a union.

A union can be established by a minimum of 10 employees. The procedure to establish a union is simple, i.e., by holding a meeting, in which the employees appoint the officers of the union and create the articles of association and bylaws.

Registration Of A Union

A union does not have the power to exercise its rights (including but not limited to entering into a collective labor agreement) until it has registered itself with the Local Manpower Office. In order to have such power, under Article 18 of Law No. 21 of 2000, a union has to notify the Local Manpower Office (at the municipal level) in writing for registration purposes. Under Decree 16, the Local Manpower Office must register the union and issue the registration number if it complies with the legal requirements regarding the establishment of union, within 21 working days from the receipt of written notification from the union. For registration purposes, the union is obligated to submit the list of the founders, the articles of association and bylaws, and the list of officers to the Local Manpower Office.

The Local Manpower Office may delay the registration and the granting of the registration number if the union has not fulfilled the registration requirements. The Local Manpower Office has to notify the union in writing regarding the reasons for the delay. Any amendment to the union's articles of association and bylaws must also be provided to the Local Manpower Office no later than 30 days from the date of the amendment.

Because the registration of the union empowers the union to exercise its function, the employer is entitled to ask the union about its registration status. The employer may ask the union to provide the original copy of the registration. If the union refuses to provide its registration, the employer can obtain proof through the Local Manpower Office (municipal level), as the registration is accessible and open to the public.

Notification To The Employer

Under Article 23 of Law No. 21 of 2000, the union is required to notify the employer in writing after it has registered with the Local Manpower Office. The employer does not have the right to object to the creation or establishment of the union.

Membership Of A Union

Article 14 of Law No. 21 of 2000 provides that any employee (either managerial or non-managerial level) is entitled to join a union. However, under Article 15, certain employees cannot be elected as officers in a union because there would be a conflict of interest between their responsibilities to the employer and to the union (for example, human resources managers, finance or accounting managers, and general managers).

The bylaws and articles of association may set forth standards for the union to terminate the membership. An employee is entitled to withdraw from the union membership by submitting written notice. An employee is only entitled to become a member of one union.

Rights Of A Registered Union

Under Law No. 21 of 2000, a union that has properly registered with the Ministry is entitled:

- (a) To enter into a collective labor agreement (CLA) with the employer;
- (b) To represent workers in industrial disputes (including the termination of employment disputes);
- (c) To represent workers in a manpower institution;
- (d) To establish an entity or to engage in activities which relate to the improvement of the employees' welfare; and
- (e) To conduct other activities in the manpower area that are consistent with the existing laws and regulations.

The existing law permits the establishment of multiple unions within the same company based on geography, site location, job differences, and other factors. However, Law No. 13 of 2003 requires that a company have only one CLA, which is applicable to all employees in the company.

Union Membership Contributions

As provided under Law No. 21 of 2000 and Decree 187, the finances of the union originate from:

- (a) Membership contributions in the amount stipulated in the articles of association or bylaws;
- (b) Revenues resulting from the union's legal businesses; and
- (c) Donations from members or other parties that are not binding.

It is possible, under Decree 187, that the membership contributions are conducted by deducting the employees' salary. For this purpose, the union has to socialize the plan for collecting membership contributions by salary deduction and the use of the membership contributions to its members.

Under Government Regulation No. 8 of 1981 on Wage Protection ("GR 8/81") and Decree 187, a company can only deduct the employee's salary pursuant to a power of attorney from the employee. Without a power of attorney, the salary deduction is not only deemed void (Article 22(4) of GR 8/81), but the employer is also subject to a criminal punishment of three months' detention or Rp. 100,000 (approximately US\$11) fine.

Restrictions For The Employer In Facing Unionization

Article 9 of Law No. 21 of 2000 stipulates that unions are established by the workers voluntarily, without "any pressure or interference" from the employer and others. Law No. 21 of 2000 does not specifically define the meaning of "pressure or interference." Convention No. 98, however, describes that acts which are designed to promote the establishment of the union under the domination of employers or employers' organizations, or to support the union by financial or other means, with the object of placing such organization under the control of employers or employers' organization shall be deemed to constitute acts of "interference." For example, in the process of establishing a union, an employer's request that the employees meet only on the company's premises and during the company's working hours might constitute employer's interference.

Article 28 of Law No. 21 of 2000 forbids anyone "to obstruct or force" a worker to "form or not to form," "be an officer or not be an officer," "be a member or not be a member," or "engage in or not engage in union activities." But it limits the above restrictions by setting out categories of actions by which the worker may not be obstruct or forced. These activities are:

- Terminating or suspending the employee;

- Demoting or significantly modifying the employee's job responsibilities;
- Failing to pay the employee his or her wages or to reduce his or her wages;
- Intimidating in any way; and
- Conducting a campaign against the establishment of a union.

Examples of the employer's actions that are strictly prohibited:

- Threatening to fire workers if they are involved in union activities;
- Threatening to close the company if the workers establish a union;
- Establishing or implementing a security force or system to spy on union activists.

Dissolution Of A Union

Pursuant to Article 37 and Article 38 of Law No. 21 of 2000, a union can be dissolved in the following situation:

- (a) The union is declared dissolved by the members of the union pursuant to the union's articles of association and by laws;
- (b) The company is closed down or has permanently terminated its operations, causing termination of employment of all its employees after all obligations of the employer toward its employees have been settled according to the prevailing laws and regulations (e.g., all payments in relation to termination of employment have been made to the employees);
- (c) The dissolution is declared by a court judgment in the event:
 - (i) The union's principles contravenes Pancasila (the Indonesian state ideology) and 1945 Constitution;
 - (ii) The management and/or members of the union on behalf of the union is proven to have committed a crime against the state's security and is sentenced by a final and binding decision to imprisonment of at least five years.

Sanctions

Under Article 42 of Law 21 of 2000, the penalty for violating Article 28 of Law No. 21 of 2000 can include imprisonment of between one and five years, and fines of between Rp.100,000,000 and Rp.500,000,000. The Labor Inspectors have the authority to investigate alleged violations.