

Implication Coronavirus (Covid-19) Pandemic against Indonesian business

Employment Issue - Balancing Business Continuity and Manpower's Rights due to the Pandemic

1. Overview

Since the Covid-19 pandemic in Indonesia came into attention, each regional government have been implementing policies to deal with the COVID-19 outbreak, including work from home policy and certain reduction of operation. Consequently, number of businesses are disrupted due to the above policies.

Facing this unforeseen moment, from the business perspective, there are questions remains such as:

- "Can an employer terminate employees with the reason of outbreak of COVID-19?"
- "Can an employer unilaterally reduce the amount of salary or change the way of paying salary?"
- "Should an employer pay to employees who do not work because they are subject to monitoring or quarantined/isolated, even though they are not yet sick?"

In this client update, we will first explain what measures are expected to be taken by companies in Jakarta, as the capital city of Indonesia, home to offices and central business in Indonesia. Then, we will address each of the questions above.

2. Measures expected to be taken by companies in Jakarta

Jakarta have been implementing Work From Home (WFH) policy started as of the issuance of Instruction of the Governor of DKI Jakarta No. 16 of 2020 on 25 February 2020 regarding Increasing Alertness to the risk of Transmission of COVID-19 Infection (the "Governor Instruction 16/2020"). Based on the Governor Instruction 16/2020, the Governor instructed all officers under his authority to support the socialization and risk management towards the COVID-19 outbreak in Jakarta area with specific duties and objectives.

Moreover, DKI Jakarta also being declared as an emergency situation (tanggap darurat) from 20 March 2020 until 2 April 2020 based on the Decision of Governor of DKI Jakarta No. 337 of 2020 regarding The Determination of Emergency Status of DKI Jakarta Province. As a latest update, the Governor of DKI Jakarta have extend the emergency status until 19 April 2020 based on Decision of the Governor of DKI Jakarta No. 361 of 2020 on the COVID-19 Emergency Status of DKI Jakarta Province dated 31 March 2020.

As a follow up of the Governor Instruction 16/2020, the Head of Manpower, Transmigration and Energy Office of DKI Jakarta Province (Kepala Dinas Tenaga Kerja, Transmigrasi dan Energi

Provinsi DKI Jakarta) ("**Manpower Office**") issued a Circular Letter No. 14/SE/2020 of 2020 dated 15 March 2020 ("**Manpower Office Circular Letter 14/2020**") urging the head of companies and or business owners to implement Work From Home policy and expecting them to implement preventive measures, according to their type of business.

The Manpower Office note that there are 3 types of preventive measures, which are: (i) temporarily halt all their business activities; (ii) temporarily reduce parts of their business activities; and (iii) continue their business for providing health and basic necessities. There are no specific criteria as to which measure should be taken by each company. Therefore, it is understood that each company shall choose one of these options based on their own assessment. It should also be noted, it is required for the companies to involve employees and unions when choosing preventive measure.

3. Can employer terminate employees with the reason of outbreak of COVID-19?

Some may wonder whether there are any regulations or circular letter related to employment termination due to the reasons that the business operation has been reduced because of COVID-19 related policies. However, to date, there is no specific regulations or circular letter dealing with termination due to COVID-19.

Therefore, the termination of employees will still need to be conducted pursuant to Law No. 13 of 2003 regarding Manpower (the "**Manpower Law**") and Law No. 2 of 2004 regarding Industrial Dispute Settlement. Note that under the Manpower Law, employers/companies should treat termination of employment as the last resort¹. In that sense, companies shall do every means available to maintain employment relationship with their employees.

4. Can employer unilaterally reduce the amount of salary or change the way of paying salary?

The Ministry of Manpower on 17 March 2020 issued a Circular Letter of the Ministry of Manpower of the Republic of Indonesia ("**MOM**") Number M/3/HK.04/III/2020 of 2020 regarding Employees Protection and Business Continuity in the framework of COVID-19 Prevention and Countermeasures (the "**MOM Circular Letter 3/2020**") which provides protection for companies/employers who restrict their business activities due to the government's policies in their own region by considering the continuity of business are allowed to arrange the amount of the wages or how the wages are paid as agreed by themselves.

It needs to be noted that, the above means that reduction of amount of wages or change to how the wages are paid shall not be done unilaterally by the employer and shall obtain consent

¹ Article 151 of the Manpower Law

from the employees.

If the companies and the employees are entering into new arrangement regarding their salary, it is important to have it in writing as required by the Manpower Law² to avoid dispute in later stage.

Also, it should be noted that even through agreement between employer and employees, the employers/companies must consider the regulation related to minimum wages, which differs in every province in Indonesia depending on where the business is domiciled, i.e, Governor of DKI Jakarta Regulation No. 10 of 2020 regarding Sectoral Minimum Wage of Province Year 2020 and the Decree of the MOM Number KEP-231/MEN/2003 Tahun 2003 regarding the Procedure on the Implementation of Postponement of Minimum Wages, in case companies have to postpone the minimum salary payment in full during the pandemic period.

5. Should employer pay to employees who do not work because they are subject to monitoring or quarantined/isolated, even though they are not yet sick?

(i) Basic Principles under Indonesian Manpower Regulations

The payment of employment salary is regulated under Government Regulation Number 78 of 2015 (the “**GR 78/2015**”) with the basic principle of ‘no work no pay’ which means that salary should not be paid if the employee does not work³. However, the employer are obliged to pay salary to employees whom do not work if the reason that the employees whom do not work is due to being unable to work, conducting other activity outside the work or exercising right of break from work⁴. It is stipulated that “being unable” includes situations where employees are ill, women that are sick for the first and second day of period and so on⁵. There are no specific provisions as to whether it is included as “being unable” if employees are not ill but are monitored or suspected to be ill.

Therefore, it brings question whether the employer will be obliged to pay salary to employees whom do not work because they are categorized as Person Under Monitoring (Orang Dalam Pengawasan – ODP) or COVID-19 suspected.

(ii) Covid-19 related regulations

The Ministry of Manpower through MOM Circular Letter 3/2020 also requested Governors through-out Indonesia to: (i) sought for prevention of the spreading of and

² Article 55 of the Manpower Law

³ Article 24.1 of the GR 78/2015

⁴ Article 24.2 of the GR 78 /2015

⁵ Article 24.3 of the GR 78/2015

handling cases related to COVID-19 within the work environment; and (ii) implement wages protection for employees related to COVID-19.

MOM Circular Letter 3/2020 stipulates points that are worth to be taken into account in relation to the protection of employment salaries who are affected directly with COVID-19, which are as follow:

- a. For employees categorized as Person Under Monitoring (Orang Dalam Pengawasan – ODP) based on a doctor’s statement and thus unable to work for no longer than 14 (fourteen days) or based on the Ministry of Health’s standards, their salary should be paid in full;
- b. For employees categorized as COVID-19 suspected and were quarantined/isolated based on a doctor’s statement, their salary should be paid in full while in quarantin/isolation;
- c. For employees who are not coming to work due to COVID-19 and evidenced with a doctor’s statement, their salary should be paid according to the laws.

These provisions give clear answer to the above questions. From the legal perspective, it can be understood that the above situations will be included as “being unable” under article 24.2.a of the GR 78/2015 and the employer will be obligated to pay salary pursuant to the said provision.

6. Are there any requirements for companies to report the measure towards the pandemic?

All companies to report their preventive measures to the DKI Jakarta Manpower Service Office through <http://bit.ly/laporanpelaksanaanwfh>.

In particular for companies in the sector of: (i) health; (ii) food/basic needs; (iii) energy; (iv) finance and payment system; they are expected to submit the preventive measure to the Manpower Office where the office is located in Jakarta area, as mentioned in Circular Letter No. 3950/SE/2020 regarding Follow Up on Governor Appeal 6/2020:

- a. hikesja.nakertrans@jakarta.go.id (the Manpower Office of Jakarta Province);
- b. sudinakertrans.selatan@jakarta.go.id (the Manpower Office of Jakarta Selatan);
- c. sudinakertrans.pusat@jakarta.go.id (the Manpower Office of Jakarta Pusat);
- d. sudinakertrans.barat@jakarta.go.id (the Manpower Office of Jakarta Barat);
- e. sudinakertrans.utara@jakarta.go.id (the Manpower Office of Jakarta Utara);
- f. sudinakertrans.timur@jakarta.go.id (the Manpower Office of Jakarta Timur); and
- g. sdnakertransgi.p1000@gmail.com (the Manpower Office of Kepulauan Seribu).

We note that the Covid-19 pandemic situation is moving rapidly, and we will continue to keep

informed in accordance with recent developments.

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