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NAVIGATING EMPLOYMENT ISSUES AMIDST COVID-19 PANDEMIC

Introduction

Over the past few weeks, global economic growth has been significantly affected due to Covid-19 pandemic, so does Indonesia. As of 13 April 2020, the Indonesian government has effectively declare Covid-19 as national disaster pursuant to Presidential Decree Number 12 of 2020. Throughout these past few months, in response of such global emergency, Indonesian government has rapidly issued various regulations across several sectors, in both national as well as regional scale, all of which bear hope to contain the spreading of disease as well as maintaining the stability of national economy. These regulations inevitably impact numerous business sector, put forth restriction for some companies to conduct business as usual and raise concern to business practitioners on navigating the employee management under current circumstances.

This publication aims to provide the latest regulation update on the rapidly issued and everchanging regulations during this outbreak, including the Ministry of Manpower Circular Letter No. M/3/HK.04/III/2020 on Employees Protection and Business Continuity in order to Prevent and Overcome Covid-19 (“**MoM Letter No. 3/2020**”) which was specifically issued in relation to employment matters during this pandemic, and its implication as well as providing insights with regard to overcoming the employment issues during these uncertain times.

Notable Issues

1. **Mandatory Work from Home Policy**

On 9 April 2020, Governor of DKI Jakarta stipulates Governor of DKI Jakarta Decree Number 380 of 2020 which determine the implementation of large-scale social restriction within Jakarta area and effective immediately on the following day.

This action is subsequently followed on 12 April 2020 by the Governor of West Java under Governor of West Java Decree Number 443/Kep.221-Hukham/2020 of 2020 as well as on 15 April 2020 by the Governor of Banten under Governor of Banten Decree Number 443/Kep.140-Huk/2020 of 2020, thereby effectively putting the entire Jabodetabek area under large scale social restriction as of 18 April 2020. The implementation of large-scale social restriction requires companies located within Jabodetabek area to implement work from home policy with the exception of business under the following sector:

1. health;
2. staple foods;
3. energy;
4. communication and information technology;
5. finance;
6. logistics;
7. hospitality;
8. construction;
9. strategic industries;
10. basic services, public utilities and industry which determined as national vital objects and certain objects; and/or
11. daily needs.

Pursuant to such governor decrees, work from home policy shall be implemented until 23 April 2020 for DKI Jakarta; 28 April for West Java; and 3 May 2020 for Banten , however such period may be extended depending on the development of containment of Covid-19 within each respective region.

Further, the employers located within Jakarta area are also required to submit report regarding the adopted policy of their choice in connection with the preventive measures against the spreading of Covid-19 pursuant to Circular Letter of Manpower, Transmigration and Energy Agency of DKI Jakarta Number 14/SE/2020. Such report is submitted online via the following link: bit.ly/laporanpelaksanaanwfh. In addition, pursuant to Decree of Head of DKI Jakarta Manpower, Transmigration and Energy Agency Number 837 of 2020, companies whose line of business are included in the eleven (11) excluded sectors as mentioned above are also required to submit a report on the implementation of large scale social restriction within their office via the following link: bit.ly/psbbkantor-tempatkerja.

2. Employment Salaries

In connection with the large-scale social restriction enforced within the entire Jabodetabek area, companies may also opt to temporarily cease their business, instead of implementing work from home policy as referred to above. However, it is important for the employer to note that pursuant to MoM Letter No. 3/2020, notwithstanding whichever option was taken by the companies, the companies are still required to continue paying full salary and benefits to the employees, unless the employees (or the labor union, if any) agree otherwise. Thus, it is clear that any salary reduction policy may only be implemented with prior consent from the employees.

This provision also applies for employees who are unable to work and have to go into self-isolation due to being declared as a person under monitoring (*orang dalam pemantauan/ "ODP"*) or a patient under surveillance status (*pasien dalam pengawasan/ "PDP"*). Whilst, in the event that an employee is declared to be positive Covid-19, such employee would be categorized as 'on sick leave' and is entitled to salary policy as stipulated under Law Number 13 of 2003 on Manpower ("**Manpower Law**") i.e.,:

- a. 100% of salary during the first four (4) months of sick leave;
- b. 75% of salary during the second four (4) months of sick leave;
- c. 50% of salary during the third four (4) months of sick leave; and
- d. 25% of salary during each subsequent month of sick leave (until the termination of employment is agreed upon).

3. Paid and/or Unpaid Leaves

Pursuant to Manpower Law, any paid and unpaid leave shall be initiated, requested or agreed by the employees. Thus, under current situation, the companies are not allowed to single-handedly determine or force the employees to take leave, unless such employee is declared as an ODP or PDP or positive Covid-19 under a medical certificate. Under this circumstance, the employer must allow such employee to not come to work for fourteen (14) days or the number of days recommended by the authorized agency at the relevant time. Whilst it is clear that the employers may not force the employees to take leave, employers may still encourage employees to take paid or unpaid leaves for a specific period of time pursuant to agreement with the employee by providing explanation and on the basis of preserving the best interest of the business in the long run.

4. Termination of Employees

As a general principle, employers are expected to “make all efforts” to prevent termination. As of the date of this publication, Indonesian government has yet to stipulate any specific additional regulation with regard to termination of employees. Thus, the general provisions regarding the process and requirements for employee termination shall be subjected to the Manpower Law.

Termination of employment by the employer raises an obligation for the employer to pay certain amount of compensation to the employee in accordance with Article 156 of the Manpower Law, which consists of:

- a. severance pay;
- b. reward money (sum of money as a reward for service rendered during his or her term of employment);
- c. compensation payment for rights or entitlements, which shall encompass:
 - i) annual leaves that have not expired and not have taken;
 - ii) costs or expenses for transporting the employee and his/her family back to the point of hire;
 - iii) compensation for housing allowance, medical and health care allowance which is determined at 15% (fifteen percent) of the severance pay and/or reward money for those who are eligible;
 - iv) other compensations as stipulated under the work agreement, company regulations or collective labor agreements.

Under current circumstances, should the employer wishes to terminate its employees, the employers may refer to the basis of termination of employment as contemplated under Article 164 of the Manpower Law, namely:

- a. closure of the company due to continual losses for 2 (two) years consecutively or force majeure; or
- b. closure of the company due to optimization of efficiency which is not caused by continual losses for 2 (two) years consecutively or force majeure.