



Client Alert

SUPREME COURT CIRCULAR LETTER NO 3 OF 2023 CONCERNING THE IMPLEMENTATION OF THE FORMULATION OF THE RESULTS OF THE PLENARY MEETING OF THE SUPREME COURT CHAMBERS IN 2023 AS GUIDELINES FOR THE IMPLEMENTATION OF DUTIES FOR COURTS

1. Background

On 29 December 2023, the Supreme Court of the Republic of Indonesia released the Circular Letter No. 3 of 2023 regarding the legal formulation of the plenary meeting of the Supreme Court chamber in 2023 ("**SEMA 03**"), to all heads/chiefs of High Courts and District Courts.

SEMA 03 is a guidance and principle for Indonesian Courts in handling various cases, among others, cases related to general private and industrial relationship disputes.

Please find below some of the key features of the SEMA 03 that we would like to highlight and inform.

2. General Private - The Use of Indonesian Language in the Agreement

According to Article 31 of Law No. 24 of 2009 on Language Flags, and State Institutions, as well as the National Anthem the Indonesian language must be used in memorandum of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions, or individual Indonesian citizens.

However, SEMA 03 declares that the absence of an Indonesian language translation in the agreement between an Indonesia private agency or an Indonesian individual with foreign parties will not be a ground for cancellation of the agreement, except if it can be proven that the absence of an Indonesian language translation is done without a good faith by one of the parties.

3. Industrial Relationship Disputes - Compensation and Indemnity Pay for Employee

Pursuant to Article 62 of Law number 13 of 2013 as amended by Law No. 6 of 2023 on the stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation to Become a Law ("**Article 62**"), a party that ended a Fixed-Term Employment Agreement ("**PKWT**") before its expiry date must pay an indemnity (*ganti rugi*) to the other party. The amount of indemnity is the salary of the employee for the remaining period of the PKWT. For example, the period of PKWT is 6 (six) months but if one of the parties terminates on the third month of PKWT, then the party which terminated the agreement shall pay indemnity in the amount of 3 months of the employee's wage.

Furthermore, Article 17 of Government Regulation No. 35 of 2021 (“**Article 17**”) stipulates that at the end of PKWT period, the employer shall pay compensation with the following formula:

- a. PKWT for 12 (twelve) months continuously shall be granted 1 (one) month Salary;
- b. PKWT for 1 (one) month or more but less than 12 (twelve) months or for more than 12 (twelve) months, shall be calculated proportionally with the following calculation:

$$\frac{\text{Working Period}}{12} \times 1 \text{ (one) month Salary;}$$

(Note: The calculation of Salary consists of basic wages and fixed allowances, unless the Company does not have fixed allowances).

According to SEMA 03, an employee who worked based on PKWT and terminated before the expiry of the PKWT period is entitled to receive an indemnity pay based on Article 62 and compensation pay based on Article 17 by calculating the work period based on PKWT which has been delivered by the employee.

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