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▶ **Rules and Practices of
Severance Pay in Indonesia -
The Labour Law Number 13 of 2003**

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► **Rules and practices
of severance pay
in Indonesia - the Labour
Law Number 13 of 2003**

Ippei Tsuruga
Ekaning Wedarantia

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▶ 1. Introduction

Payments related to employment termination represent one of the most complicated subjects in Indonesia's Labour Law No. 13 of 2003. Under the law, there are 2 types of employment agreements, 5 different types of termination payments, 9 benefit formulas and 21 determinants for these benefit formulas. This paper aims at systematically organizing these multiple factors and presenting a comprehensive framework for calculating termination payments according to the law.

The scope of this paper is therefore limited by the rules stipulated by the law. In fact, the Labour Law offers flexibility to some provisions with regard to termination and related benefits. In practice, this flexibility or ambiguity may lead to misinterpretation of legal rights and obligations among workers and employers in some particular instances, with the consequence being industrial disputes and court cases. Considering such circumstances, it is not possible for this paper to conclude precisely what rights and obligations workers and employers have for all individual cases.

▶ 2. Relationship between employment agreements and termination benefits

The Labour Law stipulates two types of employment contracts: indefinite-term employment agreements (PKWTTs); and fixed-term employment agreements (PKWTs) (article 56). Because employees with PKWTTs and PKWTs are entitled to different types of termination payments, the type of employment agreement held by an employee is the primary factor to determine the legal entitlement of an employee to termination benefits.

As PKWTs offer a more unstable form of employment than PKWTTs, the Labour Law strictly limits the application of PKWTs to certain categories of work (as determined by several criteria) and specifies administrative procedures related to PKWTs. Failure to meeting these conditions and procedures triggers the automatic conversion of an employee's contract from a PKWT to a PKWTT (articles 57 and 59).¹ This is an important implication for determining entitlements to termination benefits. Table 1 summarizes a list of conditions that could trigger the conversion. The application of a PKWT has to be only for jobs of a temporary nature, including seasonal work and other work related to products or activities in a trial phase, and the initial period of a PKWT has to be no longer than two years with a possible extension of one additional year at maximum.

¹ In practice, if an employer refuses to admit that they failed to meet the listed requirements, an employee has to take a legal action to obtain a court ruling. For example, if the employer argues that a PKWT worker's contract is in accordance with the provisions of the law while the worker argues that this is not the case, then this becomes a dispute over rights. In such cases, the employee must initiate legal action to obtain a binding court decision.

More concretely, the Labour Law also puts strict conditions on the procedure of issuing, extending and renewing PKWTs. While PKWTTs can be in a form of oral or written agreement, a PKWT has to be in the form of written agreement in the Indonesian language (article 57(1)). Therefore, when employers and employees orally agree upon a PKWT without a written contract, the employment agreement is regarded under the law as actually being a PKWTT (article 57(2)).

In terms of the duration of the contracts, as noted above, the initial period of a PKWT must be no longer than two years, and can be extended only once for a single year by notifying employees in writing no later than seven days prior to the end of the employment agreement (article 59(4–5)). A PKWT can be renewed 30 days after the previous PKWT has expired, but only once and for no longer than two years (article 59(6)). Thus, the maximum duration of a PKWT at the same enterprise would be five years, which would include a one-year extension and a two-year contract renewal, if all the requirements were met.² Failure to meet these conditions would lead to the conversion of the employment agreement from a PKWT to a PKWTT (article 59(7)).

Similarly, in principle, a PKWT worker with daily or freelance employment agreements cannot work more than 21 days within one month. When they work 21 days or more for 3 consecutive months, the employment contract will be converted to PKWTT (Minister of Manpower and Transmigration Regulation No. 100 of 2004, article 10(3)).

The Labour Law specifies one case of an automatic conversion involving PKWTT employment agreements. Employers are allowed to set a probation period for no longer than three months and only for PKWTTs (article 60(1)). However, this probation arrangement has to be stated in the contract or the letter of appointment.³ Without such a written statement, the probationary period is considered to be non-existent.⁴

Table 1

Conditions for automatic conversion of employment agreements

Type of Conversion	Required conditions (failure to meet triggers automatic conversion)	Reference
PKWT to PKWTT	Employment agreement for PKWT shall be in a written form in the Indonesian language.	Labour Law, article 57(1–2)
	PKWT shall be issued only for jobs of a temporary nature, including seasonal work and other work related to products or activities in the trial phase.	Labour Law, article 59(1–2)
	PKWT shall be issued for no longer than two years with a possible extension of no longer than one additional year. The extension would be possible only once.	Labour Law, articles 59(1), 59(4)

² In practice, an employer can issue PKWT contracts to the same employee up to three times, including an initial contract up to two years, a contract extension up to one additional year and a renewed contract up to two additional years.

³ In common practice, an employer issues a letter of appointment in two cases: (i) when an enterprise expresses their official acceptance of an employee with an indefinite-term employment agreement after the probation period (article 60(1)); or (ii) when an enterprise issues an indefinite-term employment agreement on an oral basis (article 63(1)).

⁴ This statement refers to a supplementary section of the Labour Law. Article 60(1) itself does not explain the consequence of the probationary period being non-existent if not stipulated in the employment agreement or letter of appointment.

Type of Conversion	Required conditions (failure to meet triggers automatic conversion)	Reference
PKWT to PKWTT	PKWT can be extended by notifying employees in writing no later than seven days prior to the end of employment agreement.	Labour Law, article 59(5)
	PKWT can be renewed 30 days after the previous PKWT expired, and only once and for no longer than two years.	Labour Law, article 59(6)
	PKWT holders with daily or freelance employment agreements cannot work for 21 days or more within one month for three consecutive months.	MOM Regulation No. 100 of 2004 article 10(3)
PKWTT with probation to PKWTT without probation	Either employment agreement or letter of appointment is to state the probationary period for the PKWTT.	Labour Law, article 60(1)

MOM = Ministry of Manpower and Transmigration

Source: Author's abstracts from Labour Law, 2003, and MOM Regulation No. 100 of 2004.

▶ 3. Composition of termination payments

Employees with PKWTTs and PKWTs are entitled to different types of termination payments. Workers with a PKWTT are entitled to four types of termination benefits, including:

- ▶ severance pay (Uang Pesangon, or UP);
- ▶ long service pay (Uang Penghargaan Masa Kerja, or UPMK);
- ▶ compensation pay (Uang Penggantian Hak, or UPH); and
- ▶ separation pay (Uang Pisah, or SP) (article 156(1)).

The amounts of these benefits are defined by multiple factors, including wages, years of employment and reason for termination of employment.

The amount of UP, UPMK and UPH owed to a PKWTT employee is calculated based on the employee's monthly wage, including the basic wage and all forms of fixed allowances⁵ granted to the employee and their family (Labour Law, article 157(1)). The Labour Law does not indicate whether the wage should refer to that of the last month prior to termination

⁵ According to articles 4 and 6 of the Government Regulation No. 78 of 2015 concerning wages, "non-wage income" is provided in the form of religious holiday allowances, bonuses, facilities for work, and service charges.

or the average wage across several months or the entire employment period. Yet, it is common for employers to use the wage paid in the last month prior to termination of employment for calculating termination benefits for workers who receive a regular amount every month:

$$\text{Basic wage} + \text{Fixed allowances} = \text{Wage for calculating UP, UPMK and UPH}$$

Termination payments for PKWT employees have the nature of compensation for terminating the employment relationship earlier than what was specified in the employment agreement, rather than appreciation for years of service. Either the employee or employer can initiate the termination of a PKWT (Labour Law, article 62). The one that terminates the PKWT is obliged to pay compensation to the other side. With this principle, when terminating the employment agreement, an employer is obliged to compensate the amount of wages that the employee would have been entitled to receive from the remaining period of contract. The amount of compensation is therefore affected by the wage of the employee and the duration of the remaining contract.⁶

3.1. Reference wage for termination benefits

As noted above, the formula for calculating the UP, UPMK and UPH is based on basic wage plus fixed allowances (article 157(1)). In practice, these wages can be agreed upon in a variety of ways, including as a monthly rate, daily rate or piecework rate.

Employment agreement with a monthly wage rate

If the employment agreement explicitly states a monthly wage rate, the reference wage for calculating the UP, UPMK and UPH is clear. For instance, when an employment agreement states a monthly wage rate, the calculation of termination benefits can simply refer to this rate.⁷

$$\begin{aligned} & \text{Monthly wage stated in the employment agreement} \\ & = \text{Basic wage for calculating UP, UPMK and UPH} \end{aligned}$$

One component of the UPH is compensation for unused annual leave, and to determine this amount one needs to apply a daily wage rate for each unused day of leave. Yet the Labour Law does not specify the formula for calculating the daily wage rate for UPH purposes when the worker has an employment agreement with a monthly wage rate. However, Minister of Manpower (MOM) Regulation No. 15 of 2018 concerning minimum wage does supply formulas for calculating daily minimum wages. Even though these formulas have not been specified for use in calculating UPH compensation for unused annual leave, they may be the only source of reference in legal provisions that indicate how to calculate a daily wage based on a monthly wage.

⁶ The law does not state whether the reason for terminations shall affect the obligation to supply compensation. Therefore, particularly when an employer terminates an employment contract due to grave wrongdoing on the part of the worker, such cases often become a dispute. To avoid such situations, enterprises tend to determine the rights and obligations for compensation over termination of employment in PKWT agreements, company regulations or collective agreements.

⁷ When it comes to a worker with indefinite-term employment (that is, with a PKWTT), an employment agreement is usually signed only at the beginning of the indefinite-term employment or at the time when a fixed-term employment arrangement (PKWT) is changed to indefinite-term employment. In the subsequent years of indefinite-term employment, wage increases or decreases are usually informed by a decision letter from the board of directors or management or via a payroll slip, instead of revising the employment agreement. Thus, as a basis for calculating termination benefits, it is important to refer not only to the employment agreement but also these subsequent documents.

If employment agreement requires employee to work six days a week:

$$\begin{aligned} & \text{Monthly wage stated in the employment agreement} \div 25 \\ & = \text{Daily wage for calculating UPH compensation for unused leave} \end{aligned}$$

If employment agreement requires employee to work for five days a week:

$$\begin{aligned} & \text{Monthly wage stated in the employment agreement} \div 21 \\ & = \text{Daily wage for calculating UPH compensation for unused leave} \end{aligned}$$

Employment agreement with a daily wage rate

For employees whose wages are paid based on a daily calculation, the monthly basic wage should be equal to 30 times the one-day wage (article 157(2)).

$$\begin{aligned} & \text{Daily wage stated in the employment agreement} \times 30 \\ & = \text{Basic wage for calculating UP, UPMK and UPH} \end{aligned}$$

Employment agreement with a piecework rate

For employees whose wages are paid based on a piecework rate instead of regular amounts for each day or month, the daily and monthly wage should be equal to the average daily and average monthly wage over the last 12 months (article 157(3-4)).

$$\begin{aligned} & \text{Average monthly wage in the last 12 months} \\ & = \text{Total wage paid in the last 12 months} \div 12 \\ & = \text{Basic wage for calculating UP, UPMK and UPH} \end{aligned}$$

$$\begin{aligned} & \text{Average daily wage in the last 12 months} \\ & = \text{Total wage paid in the last 12 months} \div 365 \\ & = \text{Daily wage for calculating UPH compensation for unused leave} \end{aligned}$$

Table 2

How to determine reference wages used for calculating termination benefits

Type of wage stated in contract	Type of reference wage		Reference
	Daily wage	Basic wage	
Monthly wage	Monthly wage / 21 or Monthly wage / 25 ^{1 2}	Wage stipulated in contract, letter of Board of Directors, payroll slip etc.	MOM Regulation No. 15 of 2018, article 19
Daily wage	Wage stipulated in the contract	Daily wage x 30	Labour Law, article 157(2)
Piecework rate	Total wage paid in the last 12 months / 365	Total wage paid in the last 12 months / 12	Labour Law, article 157(3-4)

¹ The formulas here are for employees who work five days a week (monthly wage / 21) and employees who work six days a week (monthly wage / 25).

² These formulas are actually in reference to regulations concerning the calculation of daily minimum wages, and are not actually specified in the Labour Law as the means for calculating the daily wage for termination compensation purposes. The authors include these formulas as they may be the only defined methods for determining a daily wage from a monthly wage in Indonesian legal instruments.

Source: Authors' abstracts of relevant legislations.

3.2. Severance pay

Severance pay (UP) is calculated as being equal to one month's worth of wages for each year of employment, up to a maximum of nine months' worth after eight years of service (Labour Law, article 156(2)). As noted above, this monthly wage is equivalent to the "basic wage" plus any fixed allowances.

$$\text{Monthly wage} \times \text{Number of entitled months} = \text{UP}$$

Table 3 gives a more detailed breakdown of the calculation of the UP and UPMK based on the number of years of service.

Table 3

Entitlements for severance pay and long service pay based on years of employment

Years of employment	Severance pay (UP) ¹	Long service pay (UPMK) ¹
Less than 1 year	1 month	None
1 year or more but less than 2 years	2 months	None
2 years or more but less than 3 years	3 months	None
3 years or more but less than 4 years	4 months	2 months
4 years or more but less than 5 years	5 months	2 months
5 years or more but less than 6 years	6 months	2 months
6 years or more but less than 7 years	7 months	3 months
7 years or more but less than 8 years	8 months	3 months
8 years or more but less than 9 years	9 months	3 months
9 years or more but less than 12 years	9 months	4 months
12 years or more but less than 15 years	9 months	5 months
15 years or more but less than 18 years	9 months	6 months
18 years or more but less than 21 years	9 months	7 months
21 years or more but less than 24 years	9 months	8 months
24 years or more	9 months	10 months

¹ Compensation amounts in this column refer to the equivalent of the number of months' worth of pay, as based on the employee's "basic wage".

Source: Authors' abstracts from relevant articles of the Labour Law, 2003.

3.3. Long service pay

Long service pay (UPMK) starts at two months' worth of pay after completing three years of service, plus one month's worth of pay for each additional three years of service, up to eight months' worth of pay after 21 years of service. Then, upon attaining 24 years of service, the UPMK is set at its maximum value of 10 months of pay (Labour Law, article 156(3)). As noted above, this monthly wage is equivalent to the "basic wage" plus any fixed allowances.

$$\text{Monthly wage} \times \text{Number of entitled months} = \text{UPMK}$$

3.4. Compensation pay

The compensation pay (UPH) consists of four components, including:

- ▶ compensation for unused paid annual leave;
- ▶ a housing allowance and medical and healthcare allowance equivalent to 15 per cent of the UP and UPMK;
- ▶ travel costs for employees and their family to the place where they were recruited; and
- ▶ other voluntary allowances defined in the employment agreement (Labour Law, article 156(4)).

$$(\text{Daily wage} \times \text{Number of days of unused annual leave days}) + ((\text{UP} + \text{UPMK}) \times 0.15) + \text{Travel allowance} + \text{Other allowances} = \text{UPH}$$

Employees are entitled to at least 12 days of paid annual leave if they work for 12 consecutive months (article 79(2)(c)). As the Labour Law does not limit the rights for annual leave entitlement to certain categories of workers, both PKWTT and PKWT employees⁸ are entitled after 12 months of consecutive services.⁹ However, there are potential issues with determining the value of the compensation for unused annual leave. In particular, the formula for compensating unspent annual leave entitlements is not clear in the Labour Law. For instance, the Labour Law does not state whether the value of each unit of annual leave entitlement is the same as the employee's daily wage, and even if it is the same, the law does not specify how to calculate an employee's daily wage if their employment agreement only states the monthly wage (as noted above). However, it is common in practice to assume that the value of each day of paid annual leave is equal to the daily wage. Thus, compensation for unused paid annual leave is calculated as the daily wage multiplied by the number of unused paid annual leave entitlements.

⁸ The Labour Law provides PKWT employees with the right to annual leave entitlements, but the law does not entitle PKWT employees to enjoy UPH compensation. However, PKWT employees are eligible to receive termination compensation equivalent to the wages they would be due from the point of termination to the end of the contract period (article 62).

⁹ By law, workers become eligible to obtain the right to take annual leave of up to 12 days only after working for 12 consecutive months. However, enterprises can provide their employees with leave entitlements earlier than the 12 months required by specifying it in company regulations or collective labour agreements. In such cases, the employees would obtain the right to receive compensation for the remaining leave entitlements even when they have not worked for a full 12 months.

Employers have to reimburse the travel costs of a terminated employee and their family members to the place where the employee was recruited. The Labour Law has no provision that helps determine the amount of moving allowance to be paid. It is generally practised that employment agreements determine such allowances for workers and their family members.

An allowance for housing and healthcare is calculated as being equivalent to 15 per cent of the UP and UPMK, while other voluntary compensations follow the clauses of individual employment agreements.

3.5. Separation pay

The separation pay (SP) is a termination benefit agreed at the enterprise level. The Labour Law limits employee's entitlement to mandatory termination benefits – including the UP and UPMK – in cases where employment termination was caused by the employee, including firing due to grave wrongdoings (article 158(4)), resignation with 30 days' notice (article 162(2)), and absence for five consecutive days without good justification (article 168(3)). Instead, the law leaves room for employers and employees to agree upon any payments to be made. For such separation payment schemes, either the employment agreement, enterprise rules and regulations, or collective bargaining agreements shall regulate the amount, procedures, methods and other necessary arrangements for separation payments.

In comparison with the mandatory termination benefits such as the UP, UPMK and UPH, separation pay can be regarded as a termination benefit regulated by each enterprise or at the sectoral level ¹⁰. However, this does not mean that employers can define such benefits without employees' consent. It is mandatory for enterprises with ten employees or more to have staff regulations approved by the provincial labour offices every two years (article 108(1)). Because the regulations have to be agreed by employee representatives before being submitted to the authority (article 110(1)), in theory, separation pay is regulated by an agreement between employees and employers. ¹¹

Amount predefined by employee and employer = SP

3.6. Termination pay

As noted above, the termination pay for PKWT employees is calculated as the remaining contract amount that has not been paid at the time of contract termination, or the employee's wage multiplied by the remaining duration of contract. ¹²

*Total contract amount - Total paid amount
= Monthly wage × Number of remaining months = Termination pay*

¹⁰ In some cases, separation pay is regulated through a sector-wide collective agreement.

¹¹ There have been several court cases, however, where enterprises did not state such separation payment arrangements in employment agreements, enterprise regulations or collective labour agreements in advance. In such cases, judges have tended to be in favour of workers' rights to receive separation pay.

¹² Because the Labour Law does not regulate the formula for termination pay for PKWT employees by different reasons for termination, enterprises often establish regulations around termination pay for instances where PKWT workers are dismissed for committing misconduct. In fact, there have been several court decisions in which the termination pay for a PKWT employee has to be reduced to lower levels than the statutory provision, or not provided at all, depending on the reason for termination. Similarly, there have been some court cases where the court has required employers to pay severance for the termination of a PKWT worker because the employer was in violation of article 59 of the Labour Law, and consequently the worker had to be granted the rights of a PKWT worker.

▶ 4. Formula for termination payments

The Labour Law defines nine different formulas for calculating termination payments depending on the reason for termination of an employment contract. Appendix II below provides a table with a condensed overview of the information contained within this section.

4.1. No termination benefits

It is commonly understood that employees would not be entitled to any termination payments following four cases.

Formula 1

Termination benefits = 0

- a. End of PKWT contract: The Labour Law does not explicitly limit the entitlement for termination benefits for workers with certain types of employment agreements. However, it is commonly understood that employees with a PKWTT are entitled to UP, UPMK, UPH and SP, but employees with a PKWT do not have a right to these benefits.
- b. Dismissal during probation period: An employer is not obliged to pay severance when terminating a PKWTT employee before the end of the probationary period. Even though the Labour Law does not explicitly exclude probationary employees whose PKWTTs were terminated from receiving termination benefits, it is commonly practised not to compensate them in such cases.
- c. Resignation without 30 days' notice: An employee has to submit a resignation letter to their employer no later than 30 days before the date of terminating the employment agreement and continue to deliver their services until the date of resignation in order to become eligible for UPH and SP (article 162(3)). Without compliance with these requirements, employees would not be entitled to these benefits.
- d. Normal retirement with a higher corporate retirement benefit: If an employee is entitled to a corporate retirement benefit that is larger than double the sum of the UP, UPMK and UPH that the employee would be entitled to according to their years of service, they are not eligible to receive termination benefits (article 167(1)).¹³

¹³ Only the employer's contributions to the corporate retirement pension fund should be assessed against the amount that the employer would be supposed to pay for the three kinds of termination benefits (article 167(3)). This rule also applies to sections 4.3.1 and 4.4 below.

4.2. Employment terminations under extenuating circumstances for employers

The following formula is applied to the four cases below. These cases can be categorized as employment terminations not directly caused by employers, thus the benefit level or the employer's liability is set at a lower level than that in section 4.3 below.

Formula 2

$$UP + UPMK + UPH = \text{Termination benefits}$$

- e. Dismissal for contract breaches after three warnings: Employers may terminate employment after sending three consecutive warning letters to an employee who has breached the employment agreement, the enterprise's regulations or collective agreements (article 161(1)).
- f. Resignation due to mergers and acquisitions: Employees may choose to resign after learning about the merger or acquisition of their enterprise (article 163(1)).
- g. Redundancy for downsizing business activities after two consecutive years of losses or as a result of *force majeure*: Employers may terminate employment when ending business activities due to sustaining losses for two consecutive years or as a result of *force majeure* (article 164(1)). The Labour Law does not, however, clarify the range of circumstances that might fall under the banner of *force majeure*. Employers have to prove the two consecutive years of losses through audited financial reports (article 164(2)).¹⁴
- h. Bankruptcy: Employers may terminate employment when going bankrupt (article 165).

4.3. Employment terminations attributable to employers

The following formula is applied to the five cases below. These cases can be categorized as employment terminations caused by employers, thus the benefit level or the employer's liability is set at a higher level than for the instances described in the section 4.2 above.

Formula 3

$$UP \times 2 + UPMK + UPH = \text{Termination benefits}$$

- i. Redundancy due to mergers and acquisitions: Employers¹⁵ may terminate employment when they are not willing to continue to employ certain workers after a merger or acquisition (article 163(2)).

¹⁴ There have been several court decisions that instruct employers to pay termination benefits in instances of redundancy when the enterprises cannot prove the consecutive years of loss.

¹⁵ In this case, the employers who are authorized to terminate employment and pay termination benefits would normally be the new employers.

- j. Redundancy for downsizing business activities even though the enterprise is not facing two consecutive years of losses or *force majeure*: Employers may terminate employment without two consecutive years of losses nor as a result of *force majeure*, for the purposes of reorganization (article 164(3)). The labour law requires employers to pay employees higher benefits than in cases where the enterprises has two consecutive years of losses or as a result of *force majeure* (see 4.2.g above).
- k. Employee's death: When an employee die, their legal heirs become entitled to receive benefits from the employer (article 166).
- l. Normal retirement without any corporate retirement benefits: If employees are not entitled to any corporate retirement benefit programmes, they are eligible to receive the abovementioned termination benefits (article 167(5)). In the case where employers enrol employees in an accumulation plan, the amount of termination benefits paid from the corporate plan is considered in relation to the severance package (see 4.4.n below). However, in the case where enterprises do not have such corporate plans for employees, enterprises have to pay the full amount of severance package following the abovementioned formula.
- m. Resignation attributable to employer's behaviour: Employees may request an authority for dispute settlement to terminate employment (article 169(2)). The labour law specifies 6 cases to apply this provision including when employers batter, humiliate or intimidate employees; persuade or order employees to commit illegal activities; not pay wage at a prescribed time for 3 months consecutively or more; not perform obligations promised to employees; order employees to perform tasks outside of employment agreements; and order employees to perform tasks that put their life, safety, health or morality in danger, tasks which were not part of the employment agreement. Once employees have received such requests and subsequently resigned, employers would have to pay the benefits following the above formula.

4.4. Insufficient corporate retirement benefits

The following formula is applied to only one case.

Formula 4

$$(UP \times 2 + UPMK + UPH) - \text{Corporate pension} = \text{Termination benefits}$$

- n. Normal retirement with insufficient corporate retirement benefits: When employees are entitled to a corporate retirement plan but the value of that plan is lower than the sum of doubled UP, the UPMK and the UPH, they are eligible to receive termination benefits (article 167(2)). The amount should be the difference between the sum of doubled UP, the UPMK and the UPH, and the amount of the corporate pension.

4.5. Termination due to sickness and injury

The following formula is applied to only one case. The following formula provides employees with the highest value termination benefits among all the scenarios found in the Labour Law.

Formula 5

$$UP \times 2 + UPMK \times 2 + UPH = \textit{Termination benefits}$$

- o. Termination due to sickness and injury for longer than 12 months: When employees are absent from work due to illness or injury, employers are prohibited from terminating their employment and have to pay full or reduced wages (articles 93(2) (a) and 93(3)). Once an employee has taken such leave for longer than 12 consecutive months because of a work accident, they may request employment termination. Employers then have to pay the worker termination benefits following the formula above (article 172).

4.6. Employee detained for a long time or declared legally guilty

The following formula is applied to only one case.

Formula 6

$$\begin{aligned} &UPMK + UPH \\ &= UPMK + \{ \textit{Daily wage} \times \textit{Number of unused annual leave days} \\ &\quad + (0 + UPMK) \times 0.15 + \textit{Travel allowance} + \textit{Other allowance} \} \\ &= UPMK \times 1.15 + \textit{Daily wage} \times \textit{Number of unused annual leave days} \\ &\quad + \textit{Travel allowance} + \textit{Other allowance} = \textit{Termination benefits} \end{aligned}$$

- p. Dismissal because of employee found legally guilty: An employer can terminate employment if an employee is detained by the authorities for six months because of criminal allegations and being in the prosecution process (article 160(3)), or if the court finds the employee guilty before six months has passed (article 160(5)).¹⁶ When terminating employment in these cases, employers are obliged to pay employees benefits following the abovementioned formula (article 160(7)). It is noted that UP is not granted in such cases, and therefore, the value of UP in the UPH formula is equal to zero.

¹⁶ If the court finds the employee not guilty within six months, the employer has to re-employ the worker again (article 160(4)).

4.7. Employee detained by authorities

The following formula is applied to only one case.

Formula 7

With 1 dependent: Monthly wage × 25 per cent

With 2 dependents: Monthly wage × 35 per cent

With 3 dependents: Monthly wage × 45 per cent

With 4 dependents or more: Monthly wage × 50 per cent

= Financial assistance for dependents

- q. Dismissal because of employee detained by authorities: An employer is not obliged to pay benefits to an employee who is being detained by the authorities because of criminal allegations and who is in the prosecution process, but the employer does have to provide the employee's dependents with financial assistance for up to six months during the worker's detention (article 160(1-2)).¹⁷ The amount of financial assistance depends on the number of dependents the employee has, and can range between 25 per cent and 50 per cent of the employee's wage. In theory, when employers have employees who have been detained and found guilty, they have to expend both financial assistance for dependents and termination benefits according to the formulas provided in sections 4.6 and 4.7.

4.8. Employment terminations attributable to employees

The following formula is applied to the three cases below. These cases can be categorized as employment terminations caused by employees, thus the benefit level or the employer's liability is set at the lowest among the scenarios found in the Labour Law. It should be noted that UP and UPMK are not granted in this case, and therefore, the values of both the UP and UPMK in the UPH formula are equal to zero.

Formula 8

UPH + SP

= {Daily wage × Number of unspent annual leave entitlement + (0+0) × 0.15 + Travel allowance + Other allowance} + SP

= Daily wage × Number of unspent annual leave entitlement

+ Travel allowance + Other allowance + SP =

Termination benefits

¹⁷ This formula is applied for legal actions taken by the authorities but not for cases where the employers are the ones who filed the complaints. The latter may be referred to as a case of grave wrongdoings, as stipulated in article 158(1) (see 4.8.r).

- r. Dismissal due to grave wrongdoing: Employers may pay termination benefits and terminate employment because an employee has committed grave wrongdoing (article 158(3-4)). The law stipulates ten concrete cases in article 158(1). The major cases include when an employee:
- i. steals enterprise goods or money;
 - ii. provides false information that causes a loss for the enterprise;
 - iii. becomes drunk, consumes or distributes addictive substances, or gambles or commits immoral or violent activities in the workplace;
 - iv. persuades employers or employees to commit crime(s);
 - v. destroys or lets enterprise property be exposed to danger, leading to incurred losses, or exposing employers or employees to danger, whether on purpose or not;
 - vi. leaks enterprise secrets, unless required by the State; or
 - vii. commits other wrongdoings in the work environment that call for imprisonment for five years or more.
- s. Resignation with 30 days' advanced notice: Employees may resign of their own will and receive termination benefits (article 162(1-2)). Employees have to submit a letter of resignation no later than 30 days prior to the date of resignation and carry out their obligations until that date. Employees who are bound by an agreement to work for a certain period after participating in training or education opportunities provided by the enterprise cannot be entitled to receive termination benefits (article 162(3)).
- t. Dismissal due to absence for five consecutive working days without just cause: An employer may terminate employment if an employee is absent from work for five consecutive working days or more and does not submit a written account with valid evidence to justify the absence (article 168(1)). Upon employment termination, the employer has to pay such an employee termination benefits following the formula above (article 168(3))

4.9. Termination of PKWT

The following formula is applied to only the one case below. As discussed in Section 3, the termination pay for PKWT workers is calculated as the remaining contract amount that has not been paid at the point of contract termination, or the wage multiplied by the remaining duration of contract that was agreed in the employment contract.

Formula 9

$$\begin{aligned} & \text{Total contract amount} - \text{Total paid amount} \\ & = \text{Monthly wage} \times \text{Number of remaining months} = \text{Termination pay} \end{aligned}$$

- u. Termination of PKWT contract: Either the employee or employer may terminate a PKWT (article 62). The one that terminates the PKWT is obliged to pay compensation to the other side.

▶ 5. Conclusion

This paper identifies three steps to determining the benefit formula that will be used to define the amount of termination payment due to an Indonesian employee whose employment has been terminated, and which are summarized in the flowchart provided in Appendix I below. The primary factor for determining which benefit formula is to be applied is the contract format. Employees with a written contract may have nine possible formulas, while those with an oral contract may have eight possible formulas. The secondary factor is the contract type. Workers with a PKWT may have two different formula depending on the reason for their employment being terminated, while those with PKWTTs have eight potential benefit formulas. It is noted that failure to meet five specific conditions would trigger the automatic conversion of a PKWT into a PKWTT, and similarly, failure to explicitly stipulate a probation period in a PKWTT would revoke any probation period for the employee. Finally, the tertiary factor is the reason for employment termination, with 21 different potential reasons available under the law, each associated with a particular benefit formula.

The Labour Law does not fully clarify some issues concerning a reference wage or the value of paid leave entitlements for the purpose of calculating termination payments. In particular, the law does not provide the formula to calculate a reference wage per day when an employment agreement only states the monthly wage. Similarly, the law does not regulate the value of paid leave entitlements per unit. In other words, employment agreements may enjoy freedom to determine the formula for these factors.

Having said that, the application of statutory provisions leaves room for interpretation depending on each industrial dispute case. These ambiguities or flexibilities result in a variety of interpretations of the original text given in laws and regulations. Thus, it is not possible for this paper to conclude precisely what rights and obligations workers and employers have for all individual cases.

▶ List of relevant legal instruments

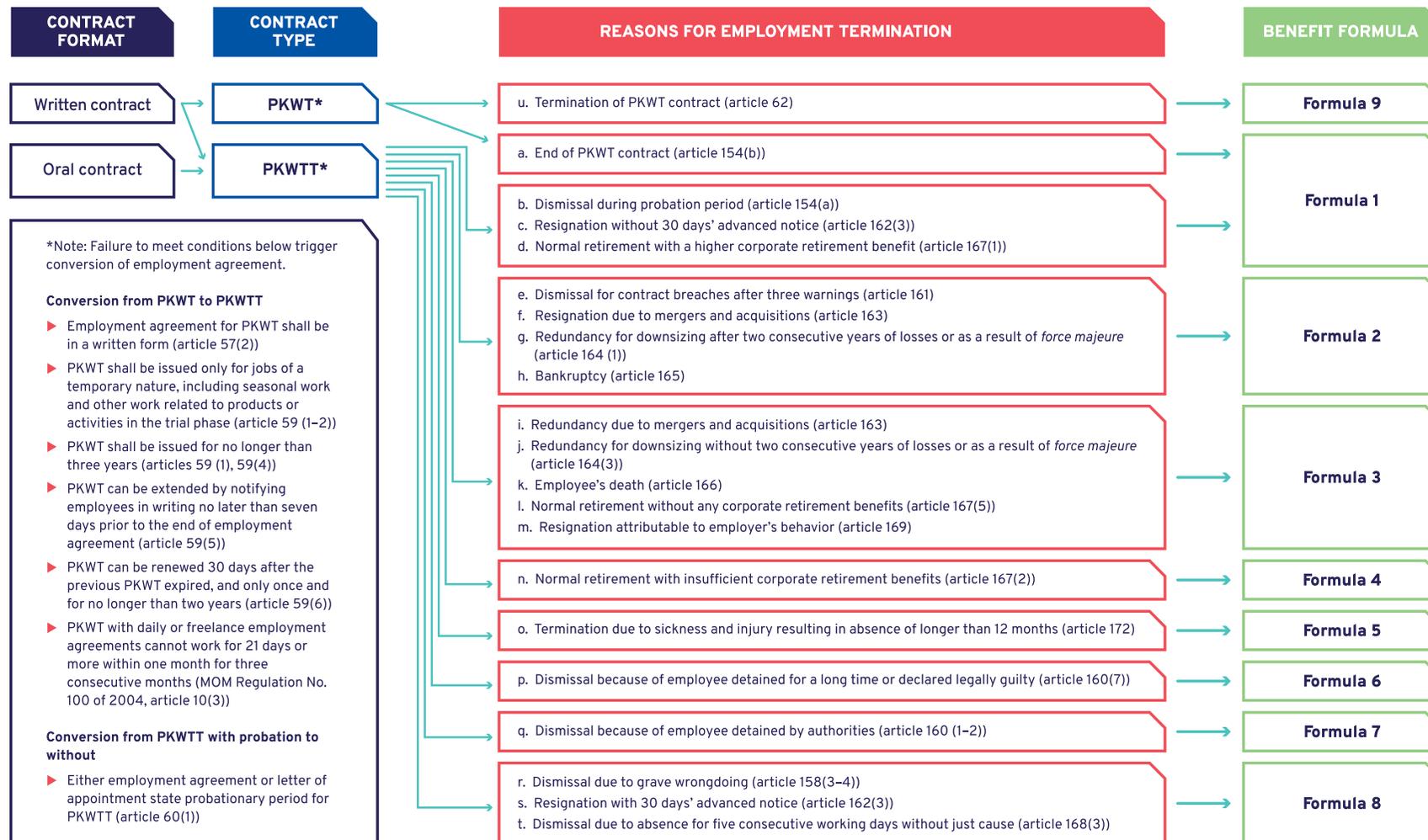
Labour Law No. 13 of 2003

Government Regulation No. 78 of 2015 concerning wages

Minister of Manpower and Transmigration Regulation No. 100 of 2004 concerning stipulations on the implementation of work agreements for a specified period of time

Minister of Manpower Regulation No. 15 of 2018 concerning minimum wage

► Appendix I. Flow chart for determining the formula to be used to calculate termination payments



Source: Authors' summary from relevant articles of the Labour Law, 2003, and MOM Regulation No. 100 of 2004

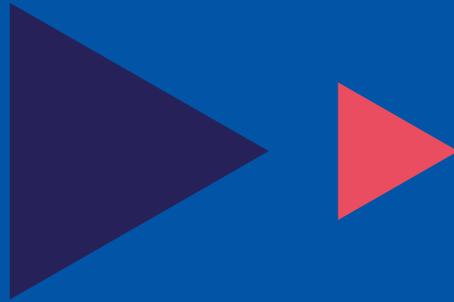
► Appendix II. Reason for employment termination and associated formula components for calculating termination benefits

Reason for employment termination	Termination benefit					Relevant article in Labour Law
	None	UP	UPMK	UPH	SP	
a. End of PKWT contract	√	n.a.	n.a.	n.a.	n.a.	article 154(b)
b. Dismissal during probation period	√	n.a.	n.a.	n.a.	n.a.	article 154(a)
c. Resignation without 30 days' advanced notice	√	n.a.	n.a.	n.a.	n.a.	article 162(3)
d. Normal retirement with a higher corporate retirement benefit	√	n.a.	n.a.	n.a.	n.a.	article 167(1)
e. Dismissal for contract breaches after three warnings	n.a.	√	√	√	n.a.	article 161
f. Resignation due to mergers and acquisitions	n.a.	√	√	√	n.a.	article 163
g. Redundancy for downsizing business activities with two consecutive years of losses or as a result of force majeure	n.a.	√	√	√	n.a.	article 164(1)
h. Bankruptcy	n.a.	√	√	√	n.a.	article 165
i. Redundancy due to mergers and acquisitions	n.a.	√ × 2	√	√	n.a.	article 163
j. Redundancy for downsizing business activities without two consecutive years of losses or as a result of force majeure	n.a.	√ × 2	√	√	n.a.	article 164(3)
k. Employee's death	n.a.	√ × 2	√	√	n.a.	article 166
l. Normal retirement without any corporate retirement benefits	n.a.	√ × 2	√	√	n.a.	article 167(5)
m. Resignation attributable to employer's behaviour	n.a.	√ × 2	√	√	n.a.	article 169

Reason for employment termination	Termination benefit					Relevant article in Labour Law
	None	UP	UPMK	UPH	SP	
n. Normal retirement with insufficient corporate retirement benefit	(UP × 2 + UPMK + UPH) – Corporate pension					article 167(2)
o. Termination due to sickness or injury causing an absence of longer than 12 months	n.a.	√ × 2	√ × 2	√	n.a.	article 172
p. Dismissal because employee found legally guilty and jailed	n.a.	n.a.	√	√	n.a.	article 160(7)
q. Dismissal because employee detained by authorities	Monthly wage × 25, 35, 45 or 50 per cent					article 160(1–2)
r. Dismissal due to grave wrongdoing	n.a.	n.a.	n.a.	√	√	article 158(3–4)
s. Resignation with 30 days' advanced notice	n.a.	n.a.	n.a.	√	√	article 162(3)
t. Dismissal due to absence for five consecutive working days without just cause	n.a.	n.a.	n.a.	√	√	article 168(3)
u. Termination of PKWT contract	Total contract amount – Total paid amount					article 62

√ = applicable; n.a. = not applicable.

Source: Authors' summary based on relevant articles from the Labour Law, 2003.



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International Labour Organization (ILO)
Office for Indonesia and Timor Leste
Menara Thamrin Lt. 22
Jalan MH Thamrin Kav. 3
Menteng, Jakarta Pusat
Jakarta 10250
Telp. 021 3913112

▶ ilo.org/jakarta