

# LABOUR & EMPLOYMENT 2019 EXPERT GUIDE

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## Women's rights at workplace under Indonesian laws

By Johannes C. Sahetapy-Engel & Merari Sabati

Women's participation in the workforce has increased over decades, and it appears that it would not stop here. The previous stereotype of women being the homemaker and men being the breadwinner has shifted, and such representation seems outdated. Increases in cost of living, standard of living, demand for better quality of life, and the awareness of gender equality are a few factors why more women are entering the workplace. In Indonesia alone, there were around 124 million people actively working in 2018 – and women contribute nearly 48 million to that number. The number is expected to increase in the coming years.

With the increasing trend of women's contribution in the workforce, it is important to know and understand the labour and employment rights of women.

Worldwide movements to increase awareness on gender equality and women's rights in the workplace have been worked on and initiated. For instance, UN Women with their HeForShe global solidarity movement invites all of us, men included, to become the agent of change towards gender equality. The implementation of this movement is expected to be seen in all aspect of life, including in the workplace. The most recent issue shown up in our news feed is the #MeToo movement, which bring people's attention to sexual harrasment and sexual assault against women,

especially in the workplace.

### What is Indonesia's stance amidst all of this?

As basic principles, Indonesia's Constitution of 1945 (the "Constitution") guarantees the opportunity to work and earn humane livelihood equally for both men and women. The Consitution also guarantees that every person must receive fair and proper remuneration and treatment in employment. Not only that, the Constitution seeks to ensure the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness. Those rights for proper jobs, equal terms of employment, equal and fair wages are also proctected under our Human Rights Law (Law No. 39 of 1999 dated 23 September 1999 regarding Human Rights).

Indonesia also has done impressive homework by ratifying several ILO conventions which are in line with mandate of our founding fathers as set forth in the Consitution. The conventions include the ILO Convention No. 100 [1951] on Equal Remuneration for Men and Women Workers for Work of Equal Value through Law No. 80 [1957], the ILO Convention No. 111 [1958] concerning Discrimination in Respect of Employment and Occupation through Law No. 21 [1999], and the Convention on Elimi-

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nation of All Forms of Discrimination against Women (CEDAW) through Law No. 7 [1984]. To support the implementation of those aforementioned convensions, the Minister of Manpower and Transmigration issued several handbooks among others for *Equal Employment Opportunity, Equality and Non-Discrimination in the Work Place and Sexual Harrasment Prevention in the Workplace* which is meant to be used as guideline for corporates/employers.

### Employee's Rights Under Manpower Law

At the national law level, Law No.13 [25 March 2003] on Manpower (as amended several times by the Constitutional Court, the "Manpower Law") provides general rights of employees, for all genders, including the following:

- Rights to receive equal and non-discriminatory treatment (Article 6 of the Manpower Law);
- Rights to receive job training (Article 11 of the Manpower Law);
- Rights to work during the determined work time and to work overtime (Article 77 and 78 of the Manpower Law);
- Rights to have a break during the work time, holiday, leaves and absent (Article 79, 85 and 93 of the Manpower Law);
- Rights to practice their religion (Article 80 of the Manpower Law);
- Rights to receive work health and safety, moral and decency, treatment in accordance with human dignity and honour and religious values protection (Article 86 of the Manpower Law);

- Rights to receive proper and fair wages (Article 88 of the Manpower Law);
- Rights to receive work social security protection (Article 99 of the Manpower Law);
- Rights to join a labour union (Article 102 of the Manpower Law);
- Rights to conduct strikes (Article 137 of the Manpower Law); and
- Rights to receive termination package/benefit where it applicables (Article 156 of the Manpower Law).

Other than the rights listed above, women in the workplace are entitled for several matters below.

### Additional Leave/Break:

- The Manpower Law allow women who suffer from menstrual pain to not work during the first and second days of their periods by informing the employer with full salary (Article 81 of the Manpower Law);
- Maternity leave is available for women to be taken 1.5 months before and 1.5 months after the childbirth (Article 82 (1) of the Manpower Law);
- Women are entitled to take leave for 1.5 month after a miscarriage (Article 82 (2) of the Manpower Law); and
- Women are entitled to breastfeed their children during working time when needed (Article 83 of the Manpower Law).

**Protection:**

- Women of less than 18 years old are prohibited from working between 11pm – 7 am (Article 76 of the Manpower Law);
- The prohibition also applies to pregnant women who based on doctor's statement states that such work assignment would be dangerous to the women's body or to the fetus (Article 76 (2) of the Manpower Law).
- Employers that employ women between 11pm-7am must provide nutritious food and beverages and to maintain decency and security during such time (Article 76 (3) of the Manpower Law).

**Restriction:**

- Termination of employment relationships of women on the grounds of getting married, pregnancy, in labour, miscarriage or breastfeeding is not permitted (Article 153 of the Manpower Law).

**Labour Dispute:**

Employees (including women) and employers who have certain disputes over their rights, interest, termination of employment relationship may submit their dispute to the local Labour Court in accordance with Law No. 2 [14 January 2004], which became effective as of 14 January 2005, concerning Industrial Relation Dispute Settlement. However, the Labour Court requires the parties in dispute to go through dispute settlement through bipartite negotiation and tripartite mediation with a manpower official at the local manpower service office beforehand. If amicable settlement is reached during bipartite negotiation or mediation, the settlement agreement shall be filed with the Labour Court and will be binding on the parties in dispute. If mediation fails to yield a mutual agreement, the mediator will issue a non-binding recommendation. If either party does not agree with the recommendation, they can file a claim at the local Labour Court. The decision of the Labour Court is binding and enforceable against the employer and the employees. However, if either party disagrees with the decision, they can claim for cassation in the Supreme Court.

**Criminal Sanction**

Although our legislation does not have any particular law pertaining to sexual harassment in the work place, in a broader sense those conducts are considered as Crimes Against Decency regu-

lated under Articles 281-295 of the Indonesia Penal Code. Acts of sexual harassment between an employer and an employee or a supervisor and his/her subordinate may be subject to imprisonment of up to seven years.

An employer who denies women's right to take their maternity leave can be convicted and may be imprisoned for one to four years and/or subject to penalty of 100 to 400 million Rp.

Employing women under the age of 18 years old to work between 11pm-7am is a violation and can be subject to confinement for one to 12 month and/or penalty for 10 to 100 million Rp.

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