

Newsletter

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Indonesia: Supreme Court Clarifies Severance Calculation for Reclassified Employees



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Introduction

In Indonesia, termination entitlements, including severance pay (*uang pesangon*), are governed by Law No. 13 of 2003 (as amended, the “**Labor Law**”) and Government Regulation No. 35 of 2021 (“**GR 35/2021**”).

Employees under a Fixed-Term Employment Agreement (*Perjanjian Kerja Waktu Tertentu*, “**PKWT**”) are not entitled to the severance benefits applicable to employees under an Indefinite Employment Agreement (*Perjanjian Kerja Waktu Tidak Tertentu*, “**PKWTT**”). Instead, PKWT employees receive mandatory compensation upon expiry of the PKWT term (“**PKWT Compensation**”).

Both the Labor Law and GR 35/2021 provide formulas that use “length of service” as the basis for calculating severance pay, but neither addresses a key practical question: where a PKWT arrangement is converted to a PKWTT, from which date should length of service be counted for severance purposes?

The Supreme Court Circular Letter No. 1 of 2025 (“**SEMA 1/2025**”) addresses this gap.

What Was Unclear?

In PKWT-to-PKWTT conversion scenarios, the regulations did not specify whether length of service for severance calculation should be counted from the initial PKWT start date or only from the date on which the employee is determined to be PKWTT employee.

This gap complicates termination negotiations and increases the risk of Industrial Relations disputes.

What Does SEMA 1/2025 Clarify?

1. Length of Service for Severance Purposes

When an employee is converted to, or determined to be, a PKWTT employee, length of service for severance purposes is calculated from the date of the PKWTT determination.

2. PKWT Compensation as an Offset

Termination benefits remain subject to the applicable statutory formulas and multipliers depending on the reason for termination. However, any PKWT Compensation previously paid is deducted from the total severance entitlement.

What Remains Unclear?

The Labor Law and GR 35/2021 set out consequences for non-compliant PKWTs, including the possibility of the arrangement being deemed to be a PKWTT by operation of law. Separately, where applicable, employers may also appoint an employee under a PKWTT after a PKWT concludes, for example in the event where the nature of the work, although initially temporary, subsequently becomes permanent.

SEMA 1/2025, however, addresses only how to calculate severance once PKWTT status is established. It does not clarify how or when PKWTT status is legally "determined" in cases where a PKWT is non-compliant (e.g., whether the effective date of the PKWTT determination takes effect only upon a court decision or relates back to the original PKWT start date). As a result, the correct PKWTT start date for severance calculation in non-compliant PKWTs remains unclear.

Key Takeaways

1. Length of service runs from PKWTT determination date

In PKWT-to-PKWTT conversions, length of service for severance is calculated from the date on which PKWTT status commences.

2. PKWT Compensation matters and reduces net exposure

Any PKWT Compensation previously paid must be offset against the severance entitlement, reflecting its statutory nature as compensation due upon expiry of the PKWT.

Conclusion

SEMA 1/2025 helps close a practical gap by clarifying how severance is calculated once PKWTT status is established in PKWT-to-PKWTT scenarios. However, further clarification on when PKWTT status is considered legally established, particularly in non-compliance cases and in cases involving enforcement-driven findings, would be valuable. Without such guidance, disputes between employers and employees may become more difficult to resolve.

For further information or assistance, please contact the authors.