

Committee on the Application of Standards

Date: 20 May 2024

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 20 May 2024.

► Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

Indonesia (ratification: 1957)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

The Government has provided the following written information.

Job Creation Law

Throughout the drafting process of the Job Creation Law, the Government of Indonesia has engaged in extensive public consultations adhering to the principle of meaningful participation. This involved collaboration with all labour stakeholders, including employers, employer organizations, workers, labour unions, the largest labour union confederations in Indonesia, academics and local governments.

The Constitutional Court has rejected all five requests for a formal review of the Job Creation Law, ruling that the formal drafting process did not violate the 1945 Constitution. Consequently, the law remains legally binding. The principle of meaningful participation, as highlighted by the Constitutional Court in Decision No. 91/PUU-XVIII/2020 and incorporated into Article 96 of Law No. 13/2022, ensures genuine public involvement at every stage of the legislative process.

In this regard, lawmakers have a responsibility to listen to, consider and explain their policy choices to all stakeholders, especially those affected or interested. Ensuring meaningful participation is essential at all stages of the legislative process, including during the drafting and implementation of the Job Creation Law.

In 2023, the Government issued Government Regulation No. 51 of 2023 concerning wages, an implementing regulation of the Job Creation Law. This initiative began with public discussions in 18 cities across Indonesia, engaging stakeholders from 33 provinces. These stakeholders included employers and their organizations, workers, and unions, as well as academics. The ILO Office in Jakarta participated as an Observer. Approximately 5,000 individuals attended these discussions, both in person and virtually.

The formal public consultation process in October 2023 spanned ten provinces, with each session attended by around 200 tripartite representatives, both physically and virtually. Additionally, discussions were held three times with the National Wages Council and the National Tripartite Council.

The structure of the National Tripartite Council is outlined by Government Regulation No. 8 of 2005 and Government Regulation No. 46 of 2008, detailing its formation and composition, including participation from the government, employers and workers. Minister of Manpower Regulation No. 6 of 2005 further elaborates on membership verification guidelines within the Council.

Ensuring the effective functioning of the National Tripartite Council is vital for fostering dialogue and cooperation among stakeholders in labour relations. The Government recognizes that simplifying regulations and enhancing transparency in the membership verification process will bolster the Council's ability to address labour issues effectively, promoting a harmonious work environment that supports both productivity and workers' rights.

It is important to clarify that the three trade unions claiming they were not involved in the National Tripartite Council process did have representation on the Council for the periods 2020–23 and 2023–26. Consequently, assertions that the Government failed to consult or involve trade unions in this process are unfounded.

Regarding the offer of technical assistance from the ILO, if this is necessary, the Government welcomes it to strengthen capacity in tripartite consultation. The Government will discuss the technicalities of the assistance with ILO Office in Jakarta to determine the appropriate type of assistance according to Indonesia's conditions and needs.

Article 1 of the Convention. Adequate Protection Against Acts of Anti-Union Discrimination

The Government has established robust legal mechanisms to ensure that workers are protected from discriminatory or repressive actions due to their involvement in workers' unions or federations. These measures include provisions that prohibit employers or other parties from taking adverse actions such as dismissal, demotion, harassment or any other forms of discrimination based on union affiliation or participation in union-related activities.

Article 28 of Law No. 21/2000 stipulates that there should be no intervention from any party, including employers and the government, in the formation of labour unions or organizations. It also prohibits actions that obstruct the formation of labour unions or prevent workers from joining them. Violations of Article 28 constitute a criminal offence punishable by up to five years' imprisonment and/or fines ranging from 100 million to 500 million Indonesian rupiah, as stipulated in Article 43 of the same law.

Article 43 provides the legal basis for criminal sanctions against perpetrators of union busting, referring to actions that obstruct or damage the existence of labour unions. The imposition of criminal sanctions underscores the Government's commitment to seriously addressing union-busting activities.

From 2020 to 2023, there were four cases of alleged union busting. Three cases were resolved through mediation, while one case was referred to criminal court. The perpetrators, who were employers, were sentenced to imprisonment and fined. The entire process took seven months.

With these regulations in place, it is expected that employers and other parties will respect workers' rights to unionize and refrain from discriminatory or repressive actions against those

involved in labour union activities. These measures aim to deter anti-union discrimination and contribute to fostering a climate of respect, equality and cooperation in the workplace.

Article 2. Adequate Protection Against Interference

Article 122 of the Manpower Act has a limited scope, applying only in cases where union membership is less than 50 per cent of total workers in the company and where the union requests support from non-union workers.

The presence of a government official, though sanctioned by the Act, is based on the invitation of the union. The official acts solely as a witness to ensure the voting process proceeds transparently and fairly, and to prevent discrimination against any party. It must be noted that workers vote independently.

The Government reaffirms its commitment to respecting the independence of unions and avoiding interference from government officials. This is crucial in maintaining the integrity of industrial relations and ensuring that workers' rights to participate in the voting process are fully respected. This reflects the government's endeavour to build a democratic work environment and uphold the basic rights of workers under labour law principles.

Article 4. Promotion of Collective Bargaining

The Government has established mechanisms to resolve industrial relations disputes in a speedy, accurate, fair and competitive manner, under Law No. 2 of 2004 on the Settlement of Industrial Relations Dispute Settlement Act (IRDS Act). The Government is committed to maintaining Articles 5, 14 and 24, as they have proven effective in promoting fair and transparent collective bargaining.

Training programmes on collective bargaining, including negotiation skills, have been conducted at both the sectoral and regional levels in several provinces. These initiatives have enhanced the awareness and negotiation capabilities of industrial relations stakeholders across various sectors. The Government remains dedicated to promoting collective bargaining at all levels, in alignment with international standards.

The swift and accurate resolution of industrial relations disputes is crucial in minimizing the negative impact on the post-conflict industrial relations climate when joint negotiations fail. This approach applies not only to essential services and specific sectors but also ensures that national policies for resolving industrial relations disputes are uniformly applied across all services and sectors.

Article 98 of the Act accommodates the urgent interests of parties involved in disputes by allowing them to request the Court to expedite the examination process.

Furthermore, Articles 5 and 14 align with the Committee of Experts' conviction that unilateral recourse to a court is acceptable when it becomes evident that a deadlock cannot be resolved without intervention from authorities. In 2023, there were 10,297 industrial relations disputes, with mediation successfully resolving 8,236 (or 79.9 per cent) of them. As of March 2024, out of 1,009 disputes, 598 were settled through mediation (59.2 per cent).

Recognition of Organizations for the Purpose of Collective Bargaining

As of March 2024, there are 15,940 Collective Bargaining Agreements (CBAs) nationwide, covering 3,901,644 workers. The sectors with the highest number of CBAs are:

- (a) manufacturing industries (4,077)

- (b) wholesale, retail, car, and motorcycle repair (3,985)
- (c) professional, scientific, and technical activities; rental and leasing activities without option, labour, and travel agents (2,269)

Collective Bargaining at the Sectoral Level

The Government believes that employment conditions should be tailored to the specific circumstances of each company, emphasizing the importance of CBAs at the company level, considering the differences in capacities and business scales.

As a large nation with millions of companies ranging from large enterprises to small and medium-sized enterprises, formulating sectoral CBAs presents a challenge due to the varying capacities of these companies and their workforce sizes.

In light of our national commitment to ensuring fairness and prioritizing workers' rights, the Government welcomes the collaborative offer from the ILO to explore initiatives that promote the development of CBAs tailored to Indonesia's specific conditions.

Export Processing Zones (EPZs)

According to Government's statistics, there are 435 Collective Labour Agreements (in 2023) and 188 labour unions (in 2022) within Indonesia's EPZs. The Government remains fully committed to protecting the rights of workers across the nation, including those employed in EPZs, ensuring their right to unionize and engage in tripartite consultations.

Tripartite consultations in EPZs are regulated by existing legislation, specifically Government Regulation No. 12/2020 and Government Regulation No. 40/2021.

Government Regulation No. 12/2020 governs the formation of Wage Councils in EPZs, comprising representatives from the government, employers, labour unions, experts/professionals and academic institutions. These councils are tasked with providing wage policy recommendations in EPZs.

Government Regulation No. 40/2021 establishes Tripartite Cooperation Institutions in EPZs, serving as forums for communication, consultation, and deliberation on labour issues in EPZs, involving representatives from the government, employers and workers/unions.

These regulations aim to ensure that tripartite consultations continue effectively in EPZs, involving all relevant stakeholders in decision-making processes related to labour and wages. This demonstrates the Government's commitment to maintaining social dialogue and fostering collaboration among the government, employers and workers in EPZs.