Chapter VI Labour Law and Policy in Indonesia

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Chapter VI

LABOUR LAW AND POLICY IN INDONESIA

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I. INTRODUCTION

Legal dualism exists in the labour law in Indonesia. Two articles of the 1945 Constitution of Indonesia guarantee the right to work and the right to organize labour associations. Article 27(2) states that "Every citizen shall have the right to work and to a living befitting human beings", and Article 28 states that "Freedom of association and assembly, of expressing thoughts and issuing writings and the like shall be prescribed by statute". However, these Constitutional rights are not fully supported and guaranteed by specific labour acts and regulations. They are regulated in a twisted way and workers' rights are often abused. This phenomenon can roughly be described as legal dualism.

Outdated and undemocratic laws and regulations in the field of working conditions and industrial relations often create unnecessary social tensions and unrest. They are low minimum wages, child and female workers, unreasonable restrictions against organizing labour unions, limited rights to strike, and excessive intervention of the military and the police in the settlement of industrial disputes. Incidentally, the new Manpower Act codified in 1997 was expected to become effective in October 1998. However, its enforcement was suspended by strong criticism, and was postponed until 2000, leaving the possibility of amendment. This Act integrated the fragmented laws and regulations in the past and was supposed to become the most comprehensive umbrella act on the labour law in Indonesia, but it was regarded as undemocratic and antagonistic. Moreover, it was only last year that Mr. Muchtar Pakpahan, who once organized a welfare labour union and was jailed, was released. The number of ILO Conventions which Indonesia signed /ratified reaches 11 as of 1999, whose number is by no means sufficient if compared with other developing countries.

Why can such legal dualism prevail in Indonesia? Legal dualism means a situation in which the rule of law is not secured. In addition to this legal dualism, there is another category of legal pluralism that can be applied to the situation where different legal systems co-exist harmoniously in an orderly manner. *Adat* laws in Indonesia are one of the examples. *Adat* laws are one of the informal groups of customary laws

that are different from formal law or national law in Indonesia. Though we have to admit that Indonesia used to be under an authoritarian government of the former President Soeharto for 32 years, and many laws and regulations were politicized, the following question can be raised. What are the positive reasons to uphold a repressive labour law and policy in Indonesia and why can Indonesia not prioritize protection of workers' rights as the Government's manpower development policy? Considerable attention has to be paid to why Labour Act No. 1 of 1951 on the General Provision of Labour Protection has to be repealed when the new Manpower Act of 1997 comes into force.

At present, the labour situation in Indonesia is being challenged by the new waves of democratization movement that is sweeping entire Indonesia and by the emergence of awakened new middle-class people in the society. However, we need to understand the background reasons and constraints that have made the Indonesian labour law so difficult to adapt to modernized and democratized legal system immediately.

Discussions will be carried out in the following manner. In Part One, the historical development of labour law in Indonesia will be studied in order to understand its historical background. Part Two focuses on the Indonesian labour policy with special emphasis on manpower development. In Part Three, the present fragmented legal system of labour law, including the sources of labour law in Indonesia, is studied. Part Four will examine the proposed Manpower Act No. 25 of 1997 as well as its legal constraints to the development of Indonesian labour law. The final Part is concerned with lessons learned from the Indonesian experience and the future prospects.

II. HISTORICAL DEVELOPMENT OF THE LABOUR LAW IN INDONESIA

In order to understand the present labour law in Indonesia, we need to take a brief look at the historical development. The history of the Indonesian labour law can largely be divided into two periods: Colonial Period and After-Independence Period. The Colonial Period can further be divided into four periods; (1) Slavery Period (*Zaman Perbudakan*), (2) Forced Labour Period (*Zaman Rodi*), (3) *Zaman Poenale Sanctie*, and (4) Japanese Colonial Period.[1]

A. Slavery Period (*Zaman Perbudakan*)

Workers were regarded as slaves and also as assets of the kings in the old days. The employers could have the privilege of ordering

slaves anything that might lead to the risk of being injured or even losing their lives. Basic human rights of the slaves were not respected at all. However, the situation of slaves was not considered to have been so cruel as seen in other countries owing to the prevalence of the indigenous *adat* laws as living customary laws in Indonesia.

Stamford Raffles who served as Governor from 1811 to 1816 established "The Java Benevolent Institution" in 1816 in order to abolish the slavery system, but his effort was in vain as England had to retreat from Indonesia. The Netherlands Indies Government took over Indonesia and made efforts to sweep away the slavery system from Indonesia. For example, S.1817 No. 42 ordered the prohibition of bringing in slaves from outside to the Java Island. In 1818, *Regeling Reglement* regulated articles on the prohibition of buying and selling slaves as well as bringing slaves into the Java Island (Art. 114), and on conditions for treating the slaves' families (Art. 115).

Other regulations that prohibited the entire slavery system were made later. Articles 115–117 of R.R. of 1836, which the Netherlands Indies Government provided and included later in the R.R. of 1854, ordered to abolish the slavery system clearly and immediately by January 1, 1860 at the latest. The traditional slavery system in Indonesia thus ended in 1860 in an official record. However, a slavery system under a different name *"Peruluran"* or *"Perhambaan"*, both of which meant "the state of being slaves or servants", still continued to exist until December 31, 1921. *Peruluran* refers to workers tied to nutmeg plantations and who had to sell nutmeg to VOC (Dutch East India Company) at low prices. *"Perhambaan"* refers to workers who had to work in return for their debts without receiving any wages. There existed a number of laws and regulations that restricted or prohibited the use of *perhambaan*. However, slavery under the guise of *perhambaan* continued even after Indonesia's independence. This is why the Provisional Constitution of 1950 firmly prohibited any form of slavery or any deed aimed at practicing slavery in its Article 20.

B. Forced Labour Period (*Zaman Rodi*)

The forced labour period began almost in the same period as the slavery period and ended officially in the Java and Madura Islands on February 1, 1938. The original type of forced labour dates back to the kinds of forced labour by the Netherlands Indies as a form of *gotong-royong* (mutual help), however, for workers' benefits. According to Prof. Imam Soepomo as explained in the book *"Dasar-dasar Hukum Perburuhan"*, three kinds of forced labour systems existed[2], i.e. Government Forced Labour (*Gubernemen Rodi*), Individual Forced Labour

(*Perorangan Rodi*), and Village Forced Labour (*Desa Rodi*).

The government forced labour, for example, which was commanded by the then military or the colonial government, assisted to mobilize common people to enforce labour for constructing forts, water reservoirs, roads, and buildings. When Indonesia was under Raffles' colonial rule, this was not allowed because such forced labour was regarded as a scheme that disturbed and sacrificed the common people's life. There existed some regulations related to forced labour during the Netherlands colonial period. R.R. of 1830 Article 80 was concerned with the opportunities to use *rodi* for increasing plantation products and RR. of 1854 with the conditions to implement *rodi* in regions.

Later in 1864, Governor General D. Van Twist further categorized two types of *rodi* work, that is, a general *rodi* and a special *rodi*. The former did not compel daily work by everybody in the village, and the latter required daily work with a limited number of people to accomplish the work. Other regulations included are the restricting conditions on using *rodi*: working seasons in order not to disturb their own work; minimum working days of *rodi*, a day in a week or 52 days in a year; commuting distance between the working place and the workers' domicile.

However, there existed another type of *rodi* called *"pancen"*, which often caused problems because of the payment of insufficient wages to the *pancen* workers. *Pancen* workers were mobilized at the request of the Governor's own needs and requirements.

Efforts to mitigate *rodi* work were made. For example, *Stb.* (State Gazette) 1882 No. 137 regulated that the amount of *rodi* work could be decreased if the compensation money was paid in advance (1 *gulden* per day, which is equivalent to one *rupiah*). If the money was paid, the kinds of *rodi* work were reduced and the total working days were shortened from 52 days to 42 days. Finally, the Netherlands Government accepted recommendations from ILO as the government ratified the ILO Convention No. 29 as S. 1933 No. 261, which prohibited the use of *rodi* as well as the provision of *rodi* permission by the Government. Officially, *rodi* was abolished on February 1, 1938.

C. Penal Sanction Period (*Zaman Poenale Sanctie*)

In S. No. 10 of 1819, basic conditions on making labour contracts were provided. This is said to be the original type of written labour contracts not based on forced labour. Some of the additional conditions provided were obligatory registration of the written labour contract at the Presidential Office, working conditions properly made and

not conditioned as forced labour, the labour contract checked by *the Residen* and the taxation officer, and the maximum period of contract for five years. However, it was far from the actual implementation. Many plantation workers were deceived and they escaped from cruel working conditions. In order to secure workers and not to let them escape, the Colonial Government applied penal sanctions called *"Poenale Sanksi"* based on *Algemene Politie Strafreglement* of 1872 against the workers so that they could not leave the working places and ignore the orders by the employers. This criminal regulation was abolished in 1879, but old Articles of BW (Civil Code) from 1601 to 1603 replaced this system as a pattern of private law sanction based on a contractual form. This was finally abolished on January 1, 1942.

D. Japanese Colonial Period

The Colonial period of Japan was so short, i.e. 3 years and a half, that there is not much that attracts our eyes except *Romusha*. *Romusha* is a method to mobilize forced labour without giving much humane consideration for the workers' needs such as wages, enough food, and so on.

E. After-Independence Period

After independence, we could see some significant developments of the labour law in Indonesia. One of the most remarkable events is that Act No. 12 of 1948 was promulgated. It was brought into effect throughout Indonesia by Act No. 1 of 1951. This Act provided for basic working conditions and workers' rights in a fairly democratic manner. However, as the number of labour disputes increased, the government accelerated its intervention in labour affairs as we will discuss later. A number of specific laws and regulations were made and the basic framework of the labour law in Indonesia finally took the form of Manpower Act of 1969.

The other Acts issued after the independence period were Act 23 of 1953 on obligatory reporting, Act No. 21 of 1954 on company contract between employers and labour unions, No. 22 of 1957 on industrial disputes, Act No. 12 of 1954 on the *PHK* (*Pemutusan Hubungan Kerja*, Termination of Working Contracts), Act No. 14 of 1969 on Manpower, Act No. 1 of 1970 on workers' welfare. A number of regulations and orders related to working hours, minimum wages and obligatory reporting were also issued. We have to pay some attention to the Transitional Provisions in the Constitution which effectuate the old laws in colonial days under certain conditions and to the Ratification of ILO Conventions

especially after the year of 1949. (Please see the list of ratified ILO Conventions in Part Two.)

We could learn from its history that the traditional slavery system before the colonial period was abolished. However, it was gradually replaced by the renewed and formalized forced labour system under the colonial government despite their efforts to abolish and improve the system. Further, such forced labour with penal sanctions as mentioned above was replaced by forced labour with private law sanctions. It was not abolished even after independence. Some of the factors that might have accelerated the modernization process of labour law during this period are, aside from the efforts made by the Indonesian people themselves before and after independence, external factors such as the ratification of ILO Conventions and domestic factors such as the establishment of basic principles of labour law in the 1945 Constitution.

III. Labour Policy in Indonesia

Sources of labour policy in Indonesia can mainly be found in three materials, namely the 1945 Constitution, related laws and regulations, and *GBHN* (*REPELITA*). Principles of labour law and policy declared in the Constitution are regarded the supreme principles.

A. Constitution

Constitutional articles assure the right to work and live at a decent standard of living and the freedom of association and assembly. However, the right to live as stipulated in Article 27(2) is a programmatic article, and therefore, one cannot claim any concrete rights based on this Constitutional article, to a different (juristic) person or the government. This article does not create any concrete rights and obligations to the concerned parties as it can be regarded as only programmatic and can be interpreted as a policy guideline to request the legislature to take certain actions. Article 28 assures the freedom of association and assembly, which is further expected to be provided or complemented by statutes.

The former right (Art. 27(2)) can be characterized as one of the social human rights and the implementation of Article is dependent on the Government's policy. The latter (Art. 28) is a right to freedom. We can see two types of different human rights here. In the developed countries, the right to freedom developed much earlier historically and the social rights developed much later, say, at the beginning of the 20th century as the most modernized human rights. It goes without saying that it is preferable if both rights were respected and guaranteed together in a developing country. However, social rights in the developing countries

have more serious and critical phases than those in the developed countries. In the developing countries, basic human needs such as those related to hunger, poverty, nutrition, population, and education are the imminent and crucial issues to be solved, which are regarded as the most important human rights to be respected. However, because of insufficient economic resources, these are hard to be achieved.

Thus, we can realize certain reasons why a developing country such as Indonesia has to prioritize the social human rights. However, this does not mean that the worker's right to freedom can be ignored. These Articles can be realized only when the government implements the labour policy based on Article 27(2). The role of the government should be based on the Constitutional principles, which means that labour policy should not exceed this principle and should not be lowered than this principle. Constitutional articles are understood as the supreme legal basis for the government to implement the manpower policy.

B. Manpower Policy Reflected in the Present 1969 Basic Manpower Act

The Preamble of the Act states that: (a) manpower constitutes the main capital and executor of the development of the *Pancasila* society, (b) the most important objective for the development of the society is the welfare of the people including manpower, and (c) the rights of manpower as the executor of development shall be secured, his obligations prescribed and his efficiency improved. These are the substantial part of the government's labour policy. The first priority is given to the creation of manpower development so that the government can achieve the development of the society and the welfare of the people. This is again repeated in the Elucidation of Article 3 as "One of the main aims of the *Pancasila* society is to provide an opportunity for all manpower to procure work and an income ...". However, in this context, the rights of the workers are not prioritized for manpower development except the freedoms to choose and change jobs depending on their inherent abilities and skills.

Manpower is defined in Article 1 of the Act. "Manpower means every person who is able to perform work, whether under a contract of employment or not, to render services or goods to fulfill the needs of society". For this reason, manpower is regarded as important for the life of a nation and even constitutes a decisive factor for the survival of the nation. The understanding of manpower in such a manner derives from "the socio-economic needs of manpower in conformity with the ideas and aspirations of the Indonesian nation" as stated in the Elucidation of the Act.

As also explained in the Elucidation of Article 4, "a sense of economic security" lies in the basis of the principle. Article 5 of the Act provides for obligations of the government on the manpower policy as follows: (a) regulate an appropriate supply of manpower in quality and quantity; (b) regulate the distribution of manpower in such a way as to promote its efficiency and effectiveness; and (c) regulate for the full and productive utilization of manpower.

Reasons behind these regulations are explained in the Elucidation of Article 5, which explains the existing three serious problems in Indonesia that the government has to take into account: (a) available manpower consists for the greater part of unskilled manpower and is spread disproportionately throughout Indonesia, (b) distribution of manpower which is unbalanced and inefficient results in a surplus of manpower in one region and shortage in another, and (c) availability of employment opportunities has not kept pace with the growth of the labour force in Indonesia. These are the reasons why the Indonesian government had to adopt such a development-oriented manpower policy in the labour law instead of human rights oriented labour law that is widely recognized in developed countries.

Further, Articles 7 and 8 stress that the government, in order to develop potentialities, initiative, and creativeness of all the manpower, should provide for the development of skills and specialization of the workers as the development of skills and specialization must always be equated with economic development and industrial development. These are the reasons why the government strives to develop skills and specialization of the workers.

It is understandable that the emphasis of the government's labour policy has been placed on the increase and expansion of job opportunities, as well as the development of skills and specialization of the workers, in order to solve expected serious unemployment issues and to support the ongoing economic development plans of the country. Creation and expansion of job opportunities have been regarded as the most crucial and urgent task for the government.

Of course, in this Basic Act, there exist some articles that are related to workers' rights and obligations, but they are very few and nominal. Chapter 4 states "development of labour protection", which stipulates safety, health and morality. Chapter 5 stipulates "manpower relations" (industrial relations), which includes the right to establish a manpower union, the right to become a member of the manpower union (Art. 11), the right of a manpower union to conclude collective labour agreements (Art. 12), exercise of the right to strike, to demonstrate and to lockout (Art. 13), standards relating to the termination of employment and the settlement of labour disputes (Art. 14), and the social insurance

and social aid for workers and their dependents (Art. 15).

Articles related to workers' rights and obligations are not provided for at the beginning of this Act, which implies that main purpose of this Act is not to prioritize the rights and duties of the workers. Further, penalties up to three months' imprisonment or fines up to Rp100,000 are a blanket clause because it is applicable to any contravention provided for in this Act. Moreover, Article 15 establishes a system of manpower inspection to ensure the implementation of provisions in this Act, but the purpose of the inspection system is defined in an ambiguous way. Article 16 of the Act explains the reasons for submitting a report to the authority, i.e. for complementing deficiencies and abuses in the manpower field which are not clearly prescribed by regulations.

C. GBHN and REPELITA

GBHN (Garis Garis Besar Haluan Negara) declares the Government's broad policy guidelines every five years. Each National Five-Year Development Plan (*REPELITA*) follows this *GBHN* in order to be implemented. During the period of Soeharto's development-oriented government, emphasis of the labour policy was explicitly placed on a manpower supply to support the national development plan of the Government. The first *REPELITA* started in 1969/70 states that the basics of the manpower policy are to supply skilled labour and to improve job skills of the workers to facilitate economic development. For this reason, the Government's role of the manpower supply was authorized and the measures by the government were directed to the creation of job opportunities, the development of skills and the specialization of the workers, and the solution of unemployment problems. A long-term manpower policy as well as a short-term manpower policy was adopted during this National Five-Year Development Plan. The government's posture regarding the manpower policy at this stage is well reflected in the content of the 1969 Basic Manpower Act (The Basic Provisions on Manpower) which we examined above.

In the second *REPELITA* period started in 1974/75, more detailed and systematized manpower policy was launched. An employment target to be achieved was set. During this period, new 5.7 million workers were estimated to increase in the labour market, which was additional to the existing 42 million workers as of 1973 occupied 13.4 per cent of the total number of workers throughout Indonesia. New employment policy divided into three developmental stages to improve unemployment conditions was adopted: general employment policy, by-sector employment policy, and the special employment policy.

In the third *REPELITA* period which started in 1979/80, there was an optimistic prospect that job opportunities for the newly emerging 6.4 million workers would be secured if the probable economic growth of 6.5 per cent were achieved during the National Five-Year Development Plan period. Emphasis on manpower policy during this period was placed to solve the imbalance of the supply and demand of manpower.

In the fourth *REPELITA* period, it was hoped that job opportunities for the new increase of 9.32 million workers could be secured if the government could achieve 5.0 per cent economic growth.

In the fifth *REPLITA* period started in 1989/90, the number of newly emerging workers was estimated about 11.9 million and 5 per cent economic growth as a whole was expected to absorb 11.5 million workers out of the newly increasing manpower of 11.9 million workers. The main focus on manpower policy of the government during this period was directed to create new job opportunities for the newly emerging manpower and to improve imbalance of the manpower supply and demand. In this plan, it was pointed out that increasing informal workers should be guaranteed with their weak legal status as well as their financial support, and that the negative images against these informal jobs should be torn off. Both deregulation policies and de-bureaucratization policies were also made to create new job opportunities.

The sixth *REPELITA* period started in 1994/95 which was the beginning of the Second Long-Term Development Plan. The increase of 12.6 million new workers was estimated and 11.9 million job supplies were expected for the workers. However, because of the economic crisis which covered entire Indonesia from 1997 together with the rapid downfall of the exchange rate, all the preferable economic prospects were washed away. Thus, the emphasis of Indonesian labour policy during the Soeharto's development plan period was placed consistently on the manpower creation policy, to supply sufficient manpower to support development plans of the country and to create job opportunities for the increasing population of workers. This can be symbolized in the wording of manpower policy instead of labour policy in Indonesia.

By the way, one of the latest manpower policy declared by the Department of Manpower (*Depnaker*) can be seen in its seven policy priorities called *SAPTA KARYATAMA PELITA VI DEPNAKER* as part of the Second Long-Term Development Plan started in 1994/1995. They are as follows: (1) National Manpower planning, (2) Integrated Labour Market and Manpower Information System, (3) Young Professional Entrepreneurs, (4) Apprenticeship Training, (5) *Pancasila* Industrial Relations and Labour Protection, (6) Manpower Export Services, and (7) Organizational Development.

Especially with regard to (5) *Pancasila* Industrial Relations and

Labour Protection, it is explained that suitable mechanisms and institutions will be established to create a peaceful working atmosphere and good working conditions in order to ensure industrial harmony as well as national stability. This requires developments of cooperation between employers and the workers (*Bipartite*) in improving working conditions and workers' social welfare, and the wage system and workers' cooperatives.[3] It is considered that improvement of working conditions as well as the achievement of social welfare can be realized by harmonious industrial relations and not by the collective bargaining between labour unions and employers.

IV. PRESENT LABOUR LAW SYSTEMS IN INDONESIA

A. Definition and Sources of Labour Law

Labour law in Indonesia is defined as part of the laws related to workers and employers or companies on the working order concerned with jobs. Aims of the labour law are understood to protect workers from the powers of employers and, as a result, contribute to the realization of social justice[4] In this context, the function of the labour law is understood to assure workers' rights, settle industrial disputes between employers and employees, and to assure workers' decent standard of living. Further, labour law is understood to have both the characteristics of the public law and the private law. For example, certain articles related to employment contracts based on the Civil Code belong to the private law. On the other hand, compulsory articles such as *PHK* and criminal articles belong to the public law.

1. Acts and Regulations

There exist a number of fragmented laws related to labour law in Indonesia.[5] There exist subsidiary laws and regulations that come under these Acts. There are three types: Government Regulation (*Peraturan Pemerintah*), Presidential Decision (*Keputusan Presiden*), and other subsidiary regulations. Government Regulations in lieu of Acts (*Peraturan Pemerintah Pengganti Undang-undang, PERPU*), whose legal effects are equivalent to those of the Acts, are regarded as substitutes for the Acts, provided that *PERPU* is approved immediately by the House of Representatives (*DPR*).

However, the Acts which were made in the Netherlands Indies period are still in force and implemented in Indonesia in order to fill the vacancies of the present legal system. This is what the present

Constitution stipulates in its transitional provision of Article 2, which states that "All existing institutions and regulations of the State shall continue to function so long as new ones have not been established in conformity with this Constitution".

One of the major sources of labour law in this category, among others, the Civil Code (*BW, Burgerliijk Wetboek*). This was made in Netherlands Indies period and is still effective in Indonesia as this Code has not yet been replaced. Articles from 1601a to 1601c on the General Provisions of the labour law are provided. Articles from 1601d to 1601x relate to the labour contract. Articles from 1602 to 1602z relate to the obligations of employers. Articles from 1603 to 1603d relate to the obligations of the employees. Articles from 1603e to 1603z relate to the termination of employment contract. Articles from 1604 to 1617 relate to the contract work. Some Articles from 395 to 426d in the Civil Code relate to maritime affairs. Besides the above, there exist old but effective colonial days provisions such as working conditions of plantation workers (*Algemeen Maatregal van Bestuur*).

2. Customary Laws (*Kebiasaan*)

Certain customary deeds which have been repeated and accepted as customary acts by a certain society and finally acquired legal confidence can be regarded as a customary law. Generally speaking, customary laws can play a role to complement existing laws and regulations while official laws are not sufficiently produced and implemented. There exist quite a number of customary laws throughout Indonesia that are called *adat* laws in Indonesia. However, like the labour law, customary laws in the old feudalistic period are no longer applied.

3. Decisions by Industrial Disputes Settlement Board (*P4, Panitia Penyelesaian Perselisihan Perburuhan*)

Decisions made by P4 are regarded as sources of labour law. The first significance is as a judgement to solve a specific labour dispute and the second is as guidelines (*Pedoman*) to solve future labour issues.

4. Collective Labour Agreements

Collective Labour Agreements between labour unions and employers/a group of employers that are already registered at the Office of Department of Manpower can be included as sources of labour law.

5. ILO Conventions

Indonesia has already ratified eleven IL0 Conventions as of March 1999. One of the latest is ILO Convention No 87 on the freedom of Association and Protection of the right to organize on June 5, 1988 under the Habibi Government. The following is a list of ILO Conventions ratified by Indonesia.

(1) Act No. 3 of 1961 (ILO Convention No. 106 re. Weekly Rest (Commerce and Office)
(2) Act No. 3 of 1969 (ILO Convention No. 120 re. Hygiene (Commerce and Office)
(3) Presidential Decree No. 83 of 1998 (ILO Convention No. 87 re. Freedom of Association and Protection of the Right to Organize)
(4) Presidential Decree No. 4 of 1992 (ILO Convention No. 69 re. Medical Care Recommendation)
(5) Presidential Decree No. 26 of 1990 (ILO Convention No. 144 re. Tripartite Consultation)
(6) Act No. 18 of 1956 (ILO Convention No. 98 re. Right to Organize and Collective Bargaining)
(7) Act No. 80 of 1957 (ILO Convention No. 100 re. Equal Remuneration)
(8) State Gazette No. 53 of 1929 (ILO Convention No. 19 re. Equality of Treatment (Accident Compensation)
(9) State Gazette No. 117 of 1993 (ILO Convention No. 27 re. marking of Weight on the Heavy Packages Transported by Vessels)
(10) State Gazette No. 261 of 1993 (ILO Convention No. 29 re. Forced or Compulsory Labour)
(11) State Gazette No. 219 of 1937 (ILO Convention No. 45 re. Employment of Women in Underground Work in Mines of All Kinds)

6. Academic Theories

Academic theories are also regarded as one of the sources of labour law that could be utilized as reference purposes for the interpretation of solving problems directly or indirectly.

B. The Present Labour Law System in Indonesia

1. Basic Act on Labour Affairs

Article 19 of Act No. 14 of 1969 declares that this Act becomes the Basic Act on manpower affairs. As the proposed Act of 1997 was not enforced, this Act of 1969 is still in force and applied as the basic Act

throughout Indonesia. The structure of the Act is as follows. Chapter 1 relates to the definition of and the basic policy on manpower; Chapter 2 supply and allocation of manpower and employment; Chapter 3 vocational training; Chapter 4 development of manpower; Chapter 5 industrial relations; Chapter 6 supervision of the implementation; Chapter 7 final provisions.

As examined in Part Two, this basic Act emphasizes manpower development policy as a whole rather than the protection of workers' rights. What the government has especially taken up as labour protection policies is stated in Chapter 4 on safety standards, health standard, working standards, and compensation/medical services/rehabilitation in case of labour accidents. The Basic Act emphasizes the increase and development of manpower. The following are the Articles that relate to workers' rights: "the right to employment and income in conformity with human dignity" (Art. 3); "the freedom to choose and change jobs in accordance with their inherent abilities and skills" (Art. 4); "the right to training for the improvement of expertise and ability" (Art. 6); "the right to protection in respect of safety, health and morality" (Art. 9); "the right to establish and to become a member of a manpower union" (Art. 11); "the right to conclude a labour agreement with any employer" (Art. 12); "the right to strike, to demonstrate and to lock out" (Art. 13).

However, these workers'/employers' rights are of second priority, and subject to the manpower development policies. This is also clear from the construction of the Act that does not put human rights related articles at the beginning of the Act. The government takes a basic stance that manpower is regarded as an executor of development and, based on this definition, the rights of manpower are secured only if manpower can remain as the executor of development. This is stated in the Preamble, i.e. (a) and (c) of the Act. In order to implement the government's policy, this Act orders five tasks to the government. The first is the regulation of the appropriate supply, efficient and effective distribution, and full and productive utilization of manpower (Chap. 2). The second is the regulation of the development of skills and specialization (Chap. 3). The third is the regulation of promotion of labour protection, which includes safety standards, standards of health and industrial hygiene, labour standards, compensation, medical care and rehabilitation in case of injuries (Chap. 4). The fourth relates to industrial relations (Chap. 5). The fifth is manpower supervision to ensure manpower related Acts and Regulations (Chap. 6).

Besides this basic Act, there exist a number of laws and regulations related to labour affairs. In the following, we will examine some of the present major laws and regulations in each field of labour law.

2. Obligatory Report on Employment

Act No. 7 of 1981 on Obligatory Report on Industrial Relations at Undertakings requests a report concerning industrial relations in the privately owned and the state owned undertakings (Art. 1). These obligatory reports are considered as official information requested by the government to be used for determining the policy in the field of manpower (Art. 3). Every employer or manager is obliged to report in writing to the (Manpower) Minister or to an authorized official, regarding any establishment, discontinuance, resumption, removal or liquidation of the undertakings (Art. 3). Every employer or manager must report in writing to the Minister or to an authorized official within a period of 30 days after the establishment, reestablishment or removal of undertakings (Art. 6(1)). The report must include such information as undertakings, labour relations, manpower protection, and employment opportunities (Art. 6(2)). Within the period of 30 days before the removal, discontinuance or liquidation of the undertakings, an obligatory report which include such information as regulated in Article 8(2) must be submitted (Art. 8).

3. Labour Inspection

Act No. 23 of 1948 on Labour Inspection was enforced to the whole territory of Indonesia by Act No. 3 of 1951. The Minister in charge of labour affairs or an authorized official appoints officials for labour inspection (Art. 1). The officials are empowered to enter any working places or premises owned or occupied by employers or their representatives in order to perform their duties (Art. 2(2)) with the assistance of State Police. The employers or their representatives are obliged to provide, at the request of labour officials and within reasonable time set by them, the clearest possible information on labour conditions and so forth, orally or in writing (Art. 3). The officials are obliged to keep secret all the information obtained in the performance of their duties (Art. 5).

4. General Provisions of Labour Protection

Act No. 1 of 1951, which brought Act No. 12 of 1948 into force throughout Indonesia, is the basic Act on working conditions, employment of children and young persons, employment of women, work-time and rest-time, work-place and employees' accommodation, responsibilities of employers, and penalties.

However, when returning to the Unitary Republic of Indonesia

in 1950, a difficult situation emerged, that is, two different system of labour law became effective depending on the areas in Indonesia. One is the labour law systems applied to all the member States of the Republic of Indonesia. Another is the labour law system applied to the United States of the Republic of Indonesia, which was effective only in Jakarta, Eastern Indonesia, Eastern Sumatra and West Kalimantan.

As stated in the Elucidation of the Act, there arose an immediate need to unify the dualistic system of labour laws. The government chose the former system, that is, Labour Act of 1948 which was then applied to the member States of the Republic of Indonesia even though the Act was regarded "imperfect technically and politically." The latter system was regarded as "an extension of the colonial law". However, as Article 2 of the Elucidation states, all the articles of the Act did not come into force automatically as some of the provisions were regarded to be new to Indonesian workers and some articles such as the prohibition of child labour were "disadvantageous to Indonesian people". And finally, as the Elucidation states, the Act was regarded as "a declaration of the social policy as well as a guide for the public in general and for the workers and employers in particular". Indonesia did not accept the European style labour law totally and the enforcement of each Article of the Act was dependent, as the Elucidation says, on "the types of work in view of the experiences gained in the regions of the Republic of Indonesia".

For this reason, many of the articles in this Act were not brought into effect. They are Articles 2-4, Article 5, Article 6, Article 7, Article 9, Articles 10(4),(5), Articles 12(1),(2).[6] Despite this historical background, there is still much to see in this Act as it is a comprehensive Act, which covers most areas related to labour protection, even if it may be regarded as incomplete.

Children of 14 years or under this age are not permitted to work and young persons over the age of 14 but under the age of 18 are prohibited to work at night-time, that is, between 6 p.m. to 6 a.m. (Art. 1, Art. 2, Art. 4). Children of over 6 years of age are regarded as staying to work if found at an enclosed workplace unless the contrary is proved (Art. 3). Young persons are prohibited to engage in jobs such as mining which are dangerous to their health and safety (Art. 5, Art. 6). Women employees are not allowed to engage in night work in principle; nor are they allowed to work in mines or at other places which are dangerous to their health and safety (Art. 7-Art. 9). Working hours that exceed more than 7 hours a day or 40 hours a week are prohibited by employers (Art. 10(2)). At least one rest day every week has to be granted (Art. 10 (3)). Total working hours in a week must not exceed 54 hours. However, this provision cannot be applied to a dangerous job to protect the health and safety, which is expected to be provided otherwise by Government

Regulation (Art. 12).

Women employees cannot be forced to work on the first or second day of the menstruation period, and one month and a half rest have to be granted before and after the date of giving birth to a child, and the same applies in case of miscarriages (Art. 13). Employees are granted at least two weeks' rest each year, and the employees who have worked successively for six years are entitled to a rest of three months (Art. 14). Responsibilities of employers and penalties against workers are provided from Article 17 to Article 19 of the Act.

It can be understood that with the official Elucidation of the Act there already existed an interpretation by the government that the European style labour law, which was mostly based on workers' rights, was "disadvantageous to Indonesian people" and "imperfect" soon after the independence period. Indonesia could not but choose Labour Act of 1951 in order not to go back to the colonial period laws.

5. Hours of Work, Rest Period and Overtime Wages

Based on Article 1 of Government Regulation No. 21 of 1954 on Annual Leave for Workers, which was followed by Article 14 of Act No. 1 of 1951, employees are granted at least two weeks' rest each year. Those who have worked for six years successively are entitled to a rest of three months.

However, Government Regulation No. 21 of 1954 stipulates in Article 2 that the number of annual leave days granted to workers who work in a rather small-scale undertaking or those who are excepted in Article 1 of the Government Regulation is limited to a maximum of 12 working days in a year, and that the calculation of the rest will be done on the basis of one-day rest for every 23 working days (Art. 2(2)). The right to annual leave lapses if a worker does not execute the right within six months following the date granted. When a worker takes his leave for the following reasons, they will not be counted in his annual leave (Art. 3). Reasons included among the rests are provided by Article 10(1),(2), and (3) of the 1948 Act. They are accidents caused in connection with work, illness reported under a due process, cases owing to the responsibility of the employer, legal strikes, and other valid reasons as provided by Article 3 in the Government Regulation. Application of the annual leave for workers provided by Government Regulation No. 21 of 1954 was extended by the Decision of Manpower and Transmigration No. Keps. 69/MEN/1980 to all undertakings and employment contracts.

In order to prevent miscalculation and to solve confusion in determining overtime wages, Decision of the Minister of Manpower No. KEP-72/MEN/84 on the Basis for the Calculation of Overtime Wages

was provided after hearing recommendations from a tripartite meeting among the representatives of employers (PUSPI), employees (FBSI) and the Government.

The calculation method of overtime wage is as follows (Decision 4). If the overtime work is performed on regular days, the overtime wage will be 1 and 1/2 times an hourly wage for only the first hour of overtime. For the succeeding hours of overtime, per hour rate will be twice the hourly wage.

For every hour of work, within a limit of 7 hours or 5 hours should a holiday fall on the shortest workday on one of the days within 6 workdays in a week, the wage paid will be at least 2 times the hourly wage. For the first hour in excess of the above mentioned 7 or 5 hours should a holiday fall on the shortest workday on one of the days within 6 workdays in a week, the wage paid will be 3 times the hourly wage. For the second hour in excess of the above mentioned 7 or 5 hours should a holiday fall on the shortest workday on one of the days within 6 workdays in a week, the wage paid will be 4 times the hourly wage.

The regular hourly wage will be calculated as follows. Monthly paid employees: 1/173 of the monthly wage; daily paid employees: 3/20 of the daily wage; and piece-workers: 1/7 of the average daily wage (Decision 5).

6. Termination of Employment at Private Undertakings

As is stated in the Elucidation of Article 1 of Act No. 12 of 1964 on Termination of Employment at private undertakings, the basic policy of the government is that *PHK* must be prevented in every possible way and even prohibited. If despite such endeavors regarding the termination of employment cannot be avoided and discussion with the workers' organization concerned or with the worker himself fails to bring about an agreement, the employer can dismiss the worker (Art. 2). The employer has to obtain a permit from the Regional Committee for the Settlement of Labour Disputes (Regional Committee) if the number of termination of employment is for fewer than 10 employees within a period of one month (an individual dismissal). The number of termination of employment for 10 or more within a period of one month is regarded as a mass dismissal and, in this case, the employer has to obtain a permit from the National Committee for the Settlement of Labour Disputes (National Committee)(Art. 3). These permits are not necessary if the termination of employment takes place during the probationary period of not exceeding three months (Art. 4).

In granting such a permit, the Regional Committee and the National Committee, as the case may be, may also lay down the

obligations of the employer to the worker regarding severance pay, service pay and compensation of the kinds (Art. 7(2)). In this context, Ministerial Regulation No. 84 of 1986 fixes the amount of pay, service pay and compensation pay on the termination of employment. Articles 14, 15 and 16 regulate respectively on the minimum amount of dismissal pay, service pay and various compensations.

Regulations on the termination of employment for certain non-European workers and other regulations on the termination of employment are provided in the Civil Code. Article 1601 up to and including Article 1603 are repealed as these articles are in conflict with this Act.

7. Employment of Women, Children and Young Persons

Ordinance of December 17, 1925 on Measures of Limiting Child Labour and Night Work for Women provides in its Article 1 that "A child under 14 years of age may not perform work between 8 p.m. and 5 a.m. at or for an undertaking. This is an ordinance stipulated in the Netherlands Indies Period and most part of the Ordinance is still effective.[7] Article 2 provides the kind of jobs which are not permitted to a child under 14 years of age. Article 3 provides that a woman may not work between 10 p.m. to 5 a.m. unless this is permitted by the Decision of the Governor General. However, Decision No. 12 of the Governor General of the Netherlands Indies of 1941 on Determination of New Rules with Regard to the Employment of Women for Night Work, by repealing the former Decision No. 13 of the Governor General of 1925, admitted women's night-time work at certain factories, workplaces and plantations, between 10 p.m. to 5 a.m., under certain conditions to be laid down by the Head of the Labour Services of the Department of Social Affairs. Moreover, Regulation No. 1 of the Minister of Manpower on Forced Child Labour amended and allowed child labour at certain places where the work is not so heavy and dangerous (Art. 2), and under certain conditions (Art. 4). Child labour has to be reported to the Department of Manpower.

8. Protection of Wages

A National Wage Council and a Local Wage Council were established by Presidential Decision No. 58 of 1969 and Minister of Manpower Decision No. 131 of 1970 respectively. Organization of the Councils and their tasks are provided in each Decision. The latter Decision was amended by Minister of Manpower Decision No. 360 of 1974 to increase the number of Local Wage Councils from 7 to 15.

Government Regulation No. 8 of 1981 on Protection of Wages

provides the basic principles on the protection of wages, i.e. the type of wages, method of payment, fines and deductions from the wage, calculations of wage and so on. Especially on the protection of wages of workers in the craft industries and other small industries, there exists Labour Rule of Craft Industries Ordinance No. 467 of 1941, which was further amended by No. 291 of 1948, and the Decision of the Secretary of State, Head of the Department of Social Affairs No. J.6-83-6 of 1949.

9. Employment Contracts and Collective Labour Agreements

Basic provisions regarding contractual relations between employers and workers are stipulated in Articles 1601–1617 in the Civil Code of 1927. Act No. 21 of 1954 provides the basic principles collective labour agreements between trade unions and employers. The Government Regulation No. 49 of 1954 also provides on the Manner of Concluding and Drawing up Collective Labour Agreements. With regard to company regulations, which are a set of written documents that contain detailed conditions of employment, rules of conduct and discipline at an undertaking (Art. 1), there is Regulation of the Minister of Manpower, Transmigration and Cooperatives No. PER-02-/MEN/1978.

The collective labour agreements have to be drawn up in the form of a formal deed or a document signed by both parties (Art. 2(1)). Members of a trade union or an employer's association who have concluded a collective agreement are bound (Art. 7), and any provision in an individual employment contract which is contrary to the collective agreement becomes null and void (Art. 9). If an individual employment contract does not contain certain provisions laid down by the collective agreement, provisions in the collective agreement will be applied (Art. 10). The Minister of Labour can order employers to comply with the collective agreement (Art. 11) or to apply a part or the whole of the collective agreement to those who are in the same field of activity but not bound by this agreement. Any action against this collective labour agreement is liable to a claim for compensation for damages suffered (Art. 13), and such provisions containing compensation as well as fines can be included in a collective labour agreement.

Collective labour agreements can only be effective for a maximum of two years and can be extended to a period not exceeding one year (Art. 16). Any provision that obliges an employer to employ or not to employ, or that obliges an employee to work or not to work on the grounds that employees belong to a certain group, or on any other ground such as religion, nationality, race, political faith or membership of a particular group is null and void. Regulations that are against public order are null and void (Art. 1). The Elucidation of Act No. 21 of 1954

on Collective Labour Agreements states that a freedom to conclude collective labour agreements by both parties should be confined to matters that are considered appropriate by the Government, because the government adheres to the principle of protecting the weak in order to achieve a balance in the society.

Company regulations are provided both in Articles 1601J-M of the Civil Code and Regulations of the Minister of Manpower, Transmigration and Cooperatives No. PER-02/MEN/1978 on Company Regulations and Negotiations on the Drafting of Collective Bargaining of Labour Agreement. Undertakings employing more than 25 employees are required to make Company Regulations (Art. 2(1)). However, the first objective of this regulation is found in its Preamble to ensure achievement of the goals of development and the implementation of *Pancasila* Industrial Relations in order to create harmony and order in industry (Preamble (a)), and to create and maintain coordination between the needs of production and the workers' well-being (Preamble (b)). And, as for the employees, it is only stated "as well as making known the company regulations to the employees" (Preamble (f)). Before finalizing company regulations, the employers have to consult with the employees and may consult with officials of the Directorate General for the Protection and Maintenance of Manpower (Art. 2(2)). Company regulations as well as the alterations thereafter have to be approved by officials of the Minister of Manpower, Transmigration and Cooperatives. It is apparent that the role and the priority of company regulations are considered primarily as a tool to strengthen *Pancasila* industrial relations and not as a tool to let the workers understand the working regulations at the undertakings. Of course, a copy of company regulations has to be given to each employee free of charge as stated in Article 6(2).

10. Workers' and Employers' Organizations

Based on Constitutional Articles 27 and 28, and Article 11 of Act No. 14 of 1969, as examined before, establishment of labour unions and membership of the unions are assured. Article 11 of the Act also regulates that "A manpower union shall be established in a democratic manner". As for the registration of labour unions, there exists Ministerial Regulation No. PER-01/MEN/ 1975 on the Registration of Labour Unions, which provides, after repealing Ministerial Regulation No. 90 of 1955 on the Registration of Labour Unions, that labour unions have to be established voluntarily. However, each labour union is obligated to become a member of the Federation of the same industrial field (Art. 1(b)), and if a labour union has ceased to be a member of the Federation, the registration of the labour union as a member of the Federation has to

be invalidated. Labour unions can be registered only by becoming a member of the Federation of Trade Unions which is represented in at least 20 Provinces and has membership of not fewer than 15 trade unions. The registered Federation is put under strong control of the Minister of Manpower, Transmigration and Cooperatives, and is required to report any small change in order that the registration of the Federation is not revoked. Matters that must be reported are the changes related to the Constitution, rules, the location of the establishment, the composition of executive committees and revocation of membership (Art. 5(1),(2)). Further, such a labour Federation has to submit documents as part of their applications. The Federation is founded on *Pancasila* principles and their aims have to include devotion to *Pancasila* (Art. 3(2),(3)). In 1975, All Indonesian Labour Federation (FBSI, *Federasi Buruh Seluruh Indonesia*) was registered under Decision No. Kep-2236/DP/1975.

In 1986, Decision No. Kep-1109/MEN/1986 regulates on the establishment, maintenance and development of manpower unions at company level (*unit kerja*). We need to remember that in 1985 there came out a set of five political laws in Indonesia including Act No. 8 of 1985 on Social organizations which were intended to put social organizations under strict political control. In this Decision, it is provided that all labour unions are required to be guided by the government for their effective operations: All Indonesian Workers Union (*SPSI, Serikat Pekerja Seleruh Indonesia*), Association of Indonesian Employers (*APINDO, Asosiasi Pengusaha Indonesia*) and Indonesian Chamber of Commerce and Industry (*KADIN, Kamar Dagang Indonesia*). With regard to the establishment of each labour union at company level, detailed procedures about the application of establishment, setting an establishment committee and its duties, election of labour union leaders, accreditation of labour unions, mechanisms of *Pancasila* industrial relations are requested.

11. Check-off System of the Labour Union Dues

Only the registered trade unions under Regulation No. PER-01/MEN/ 1975 can request the employers in writing to deduct and collect union dues from the members of labour unions under Regulation No. PER-05/MEN/1984 on Implementation of the Collection of Trade Union Dues. Only "the Trade Union Base" (*Basis Serikat Pekerja*) which already registered at the Department of Manpower is entitled to make a request to employers to deduct and collect the union dues. The employers have to comply with the request of collection of union dues from labour unions (Art. 5(1)). Article 6 provides for detailed procedures for collecting the union dues and checking off the payment.

After the collection of the union dues, the employers send it to each account of the Trade Union Base and the Department of Manpower. The employers are also required to send the photocopy of each to three parties; Trade Union Base, the Office of Department of Manpower and the Federation of Trade Unions. The Office of the Department of Manpower sends the dues to the Organization of Trade Unions and Federation of Trade Unions (*Serikat Pekerja dan Gabungan Serikat Pekerja*) which are entitled to receive it and, one week thereafter, sends its photocopy to the Organization (Art. 6).

12. National Tripartite Cooperation Body (*Lembaga Kerjasama Tripartite Indonesia*)

The National Tripartite Cooperation Body is one of the most characteristic systems in Indonesian industrial relations. This tripartite body is established besides the ordinary two-party body and made up of representatives of employers, employees and the Government. Industrial relations, which follow the practice of *Pancasila* principles, were thought to be necessary. The representatives of the tripartite body are elected in accordance with Decision No. Kep-2224/MEN/1975. Three representatives are the Department of Manpower, Transmigration and Cooperatives, KADIN and FBSI.

In 1983, a Tripartite Cooperation Body was established under Decision No. Kep-35/MEN/1979. It was considered by the government that in Indonesia there was a strong need to change the tripartite body to a more effective one as the existing body was no longer in accordance with the development needs. Another Tripartite Cooperation Body was established under Decision No. Kep-258/MEN/1983 as a forum for deliberation (*permusyawaratan*) and consultation through which advice, suggestions and opinions on employment policies and solutions to labour issues are recommended to the Minister of Manpower (Art. 3). A Regional Tripartite Body was also set up under Joint Instruction No. INS-04/MEN/1984 (No. 7 of 1984) of the Minister of Manpower and the Minister of Internal Affairs.

Each Tripartite Body at national level and regional level is composed of Executive Council and Secretariat. The Executive Council of the National Tripartite Body is presided by the Minister of Manpower, and the majority of the seats in the Executive Council are occupied by the government's representatives (15 out of the total 25 seats); employers have 7 seats, and the remaining 7 seats are left for the representatives of employees. The Executive Council of the Provincial Tripartite Body in each Province is presided by the Mayor of each Province and two thirds of the seats in the Executive Council are occupied by 8 representatives

from the Government, and the remaining 4 seats are left for the representatives of employees. (Decision of the Minister of Manpower No. KEP-258/MEN/1983, and the Joint Instruction No. INS-04/MEN/1984 (No. 7 of 1984) of the Minister of Manpower and the Minister of Internal Affairs).

13. Settlement of Labour Disputes

Large-scale labour disputes did not occur soon after the independence disputes followed by strikes after the Dutch recognition of Indonesia's sovereignty because the workers and the people in general who used to devote themselves in the political struggles started to direct their awakening consciousness toward domestic socio-economic issues. Until the beginning of 1951, there were no specific regulations to solve labour disputes. Labour disputes could be solved only by the parties concerned. Interventions by the central and local officials of the Department of Labour were made when necessary in accordance with the instructions of the Minister of Labour. As the government's interventions proved to be successful, the government was convinced of the need to enact specific regulations for the settlement of labour disputes.

To deal with the increasing labour disputes, the government issued Military Authority Regulation No. 1 of 1951 to overcome the social unrest. However, as the Elucidation of Act No. 22 of 1957 illustrates, "It eventuated in practice that Regulation was able to overcome only a part of the difficulty arising in the labour field".

As the second step, the government issued Emergency Act No. 16 of 1951, which turned out to be more effective in minimizing the number of strikes during the five years of its enforcement and more successful than the former Regulation. It was thought that the Emergency Act was more successful in stabilizing the labour situation and reducing the amount of economic loss caused by labour disputes. However, much dissatisfaction with the Emergency Act was mounted by the employees and the workers. Finally, the present Act No. 22 of 1957 on Settlement of Labour Disputes replaced Emergency Act No. 16 of 1951.

Objections from the workers' side against the former Emergency Act were that, as stated in the Elucidation of the present Act, the Act was undemocratic and unfavorable for workers, and it did not guarantee the fundamental rights of workers. Employees could not make any proposal if they had some objections to the Emergency Act. It is stated in the Elucidation that the government's stance in its new Act is to make efforts to "settle disputes expeditiously and effectively without abandoning the principles which recognize the fundamental interests of the labour movement while not ignoring the interests of employers"[8]. It is

stated in the Elucidation that "The government's intervention in the settlement of labour disputes is considered to be still necessary, although such intervention would not be so far-reaching as presently practiced by the P4"[9].

14. Safety and Health of Labour

Act No. 1 of 1970 on Safety is the presently enforced basic Act on the safety at work. The Preamble of the Act guarantees workers' rights to be protected and their safety in performing work for their well-being and for the increase of national production and productivity. This Act regulates the safety at all workplaces such as on land, underground, on the water surface, underwater within the jurisdiction of Indonesia (Art. 2). The definition of workplaces is understood very widely. Safety conditions, supervision, guidance, safety and health committees, accidents, rights and obligations of workers, obligations of managers and so on are regulated in this Act.

Besides the laws and regulations we examined above, there exist numerous laws and regulations related to labour law: occupational safety and health, work permit for foreigners, social security, recruitment, supply and placement of manpower, skills and vocational training, ILO related Acts and so on.

C. Basic Features of the Present Labour Law System

We will study briefly some basic features of the present labour law system in Indonesia. However, we will examine the Manpower Act of 1997 in the next Part separately. The features can be roughly divided into four as follows.

1. Fragmented Labour Laws and Regulations

As we have to see each Act to discuss each field of the labour law, the present labour law situation in Indonesia is still fragmented and not much systematized. The labour law is still in the unification process and has yet to be systematized. Unification of the fragmented labour laws into an integrated labour code is necessary in order to establish labour law principles that are more transparent and hierarchic. This means the need to establish the principle of the rule of law. Despite the historical constraints such as the slavery period during the long colonial period or the chaotic socio-economic conditions after the independence period, Indonesia has been trying to develop its own labour laws and regulations that are suited to their labour situations, no matter to what extent they are

unified or democratic. At present, there arises a strong demand from the society to unify the present fragmented labour laws and regulations.

2. Multilateral roles of Indonesian Labour Law

Difficulties with the labour situation in Indonesia are related not only to the legal problems but also to the socio-economic and political situations. Indonesia is a developing country that has not attained its complete socio-economic independence since its political independence. In concrete terms, if seen from the somewhat macro aspects, the labour law problems in Indonesia are closely concerned with grave issues of the country such as mass poverty, unemployment, and the problem of increasing working population. It can be said that the role and function of the labour law in Indonesia at present is multi-dimensional and closely affected by the formulation of the government's development policy. As a result, it is difficult for us to discuss the role of labour law in Indonesia on the same grounds and common legal concern as those in the developed countries.

3. Lower concern for the workers' human rights

It could be said that the government was successful in formulating manpower development policy in each National Five-Year Development Plan in order to deal with mass unemployment issues. However, workers were regarded as "a tool" to push the development policy. The government's excessive intervention and political pressure in labour affairs have increased social dissatisfaction and cases of human rights abuse.

It cannot be denied that the positive role of the government is important in the labour law area, and without the strong intervention of the government, it would be very difficult to resolve the mass unemployment issue or effect a significant improvement in working conditions. However, the government's excessive political intervention brought about violation of human rights and spoiled the development of sound relations between employers and employees. One of the government's intentions of taking a strong stand on controlling and supervising industrial relations is to prevent labour disputes from becoming political under Soeharto's authoritarian regime. To most workers, an excessive political intervention in the labour affairs is an infringement of their human rights.

4. Politicized Labour Law

The present labour law in Indonesia is extremely politicized in spite of the government's emphasis on the need of economic development policy in the name of manpower policy or the need for political stability through harmonious industrial relations. With such non-legal needs and political influences, Indonesian labour law cannot establish a modernized legal system based on legal principles as found in Western countries. One reason is that the Indonesian labour law is tasked with various needs as discussed above. Another reason is that the Indonesian legal system as a whole has not matured yet. It would be expecting too much, for instance, that any part of the labour law could be implemented smoothly at any place in Indonesia if the laws were provided. If one just takes a look at the legal situation in Indonesia, he will soon find lack of legal awareness among the general public and government officials, and lack of experiences in labour practices firmly based on the free will of the parties concerned. We cannot but become hesitant to agree on introducing totally and instantly the westernized labour law models to Indonesia without considering the Indonesian situation.

However, it is time to establish new labour law principles amidst the growing intensity of the democratization movement in Indonesia. Certain constraints surrounding the labour situation in Indonesia still exist, of course, but it is the time to de-politicize the labour law as much as possible and establish new labour law principles that are suited to the Indonesian situation.

V. PROPOSED MANPOWER ACT OF 1997 AND THE ASSESSMENT

A. Basic Structure of the Proposed 1997 Manpower Act

The Manpower Act is composed of 199 articles and 18 chapters: General Provisions (Chap. 1), Basis /Principles / and Purposes (Chap. 2), Equal Opportunity and Treatment (Chap. 3), Manpower Planning and Labour Information (Chap. 4), Industrial Relations (Chap. 5), *Pancasila* Industrial Relations (Chap. 6), Protection/Remuneration and Welfare (Chap. 7), Occupational Training (Chap. 8), Manpower Employment Service (Chap. 9), Expatriates (Chap. 10), Workers Within and Outside the Informal Sector and Outside Industrial Relation (Chap. 11), Development of Manpower (Chap. 12), Supervision (Chap. 13), Delegation (Chap. 14), Investigation (Chap. 15), Administrative Sanctions and Criminal Procedures (Chap. 16), Transitional Provisions (Chap. 17) and

Closing Provisions (Chap. 18).

Eleven Acts related to labour law are to be repealed when this Act becomes effective. Some of those included are Ordinance of December 17, 1925 on Measures Limiting Child Labour and Night Work for Women, Act No. 1 of 1951 on General Provisions of Labour Protection, Act No. 21 of 1954 on Collective Labour Agreements between Trade Unions and Employers, and Act No. 14 of 1969 on Manpower (Art. 198). Generally speaking, many of the subsidiary regulations that used to be under these Acts are expected to be repealed or amended, although there is no mention of this in the Act.

B. Assessment of the Proposed Manpower Act

1. Excessive emphasis on the manpower development policy

The conceptual framework of the Act is clear in its title and the Preamble. It emphasizes the realization of manpower development. If Act of 1997 were enforced, this would probably become the most unified and fundamental Act on labour affairs in Indonesia. Labour Act No. 1 of 1951, whose legal framework is largely based on the human rights concept, would be repealed and the manpower development policy performed by the government would be further formalized and consolidated. As a result, "human rights oriented labour law" would be integrated into "development oriented labour law". The legal framework of the Manpower Act of 1969 would be replaced by this new Manpower Act and the manpower development policy would become the first priority and supersede the individual workers' human rights.

As the first priority of the government is to achieve rapid development of the nation, people are seen as the "manpower" or "the executor of development" (Preamble (b)). For this purpose, "improvement of manpower quality" and "protection of workers' rights" are regarded as important. In other words, protection for manpower is expected to come into realization through industrial relations in an orderly manner (Preamble (d)).

Further, different definitions between "labour", "manpower", and "worker" are too superficial and ridiculous. "Labour is anything related to workers" (Art. 1(1)) and "Manpower shall be men or women that will handle the work inside or outside employment relations for producing goods and services in order to achieve social needs" (Art. 1(2)). "Workers shall be manpower who work within employment relations under the employers with wages" (Art. 3). Any wording that might stimulate labour conflicts is cautiously avoided in the Act. They are, for example, collective bargaining, labour disputes and so on.

However, this might be partly because there exist traditional ways of dispute settlement in Indonesia called *musyawarah* (deliberation) and *mufakat* (consensus), which are well respected and preferred in dealing with disputes.

2. Objectives of the Act

Development of manpower is the most prioritized objective in this Act (Art. 2). Article 4 states the aims of the Act. The first is "Managing workers effectively and efficiently to an optimum"; the second "the Creation of equal opportunity to work and manpower supply to the national development requirements"; the third "Protecting workers in order to achieve their welfare"; the fourth "the prosperity of workers and family". It is clear that the first priority is given to the optimal use of manpower for national development and the second priority to the protection of workers' welfare. This Act does not guarantee an equal position of the workers and the employers. The concept of "welfare" does not mean the right of workers with which they can demand and negotiate with the employers on equal terms but, rather, it is closer to the concept of offerings from "the haves" to "the have-nots". Behind these ideas and concepts, there exists a pressed need of the Indonesian Government to change the entire country as an economically developed country and a strong desire and aspiration to improve the workers' quality to more skilled and specialized ones. In the Act, much consideration and attention is given to the workers' welfare (Art. 24), job training (Art. 26), and the informal sector (Art. 31-Art. 33).

The role of labour law is directed towards guaranteeing an equal position of the workers in negotiating with employers. However, in Indonesia most workers are restrained from establishing and organizing labour unions of their own free will. Generally speaking, most workers cannot enjoy modernized working conditions and the assurance of human rights. Those who can enjoy such favorable conditions are limited to a small number, and the workers at large have to put up with inferior working conditions as they are not allowed to demand improvements in working conditions. For instance, these conditions are well reflected in Chapter 11 of the Act on the informal sector workers and the minimum wage system in Articles 109 and 111 of the Act.

However, we should be aware of the fact the numbers of middle class awakened people who depend much for their living on their wages and those who work in some large or rather modernized companies are increasing. These middle class people will take it for granted that the Act is anachronistic and does not protect workers' rights at all. The minimum wage system, for example, which was intended to assure the minimum

standard of wage, would only contribute to a reduction of the average income level of the entire workers.

3. The Government's responsibility for manpower planning and labour information

Chapter 4 states the responsibility of the government to "arrange and determine manpower planning" (Art. (1)). The positive role of the government is understood as necessary for formulating a macro-based labour policy on manpower planning and labour information. However, one problem is that there is no clear power limit to the authority as Article 8(3) clearly provides that "labour information ... is collected from all related parties inclusive of a private or public agency", "the procedures of which are expected to be regulated by Government Regulations" (Art. 9). Such ambiguous Articles only make loopholes for the possibility of abuse of power and infringement of workers' rights. What is included in the labour information in Article 8(2) is almost limitless. It includes population and manpower, work opportunity, job training, manpower productivity, industrial relations, working conditions, manpower remuneration and welfare.

4. Politicized *Pancasila* in industrial relations

Pancasila Industrial Relations are defined in the Preamble of the Act as relations that "are established among those who are involved in goods or services production inclusive of employers, workers, and the Government", and it is explained that "*Pancasila* industrial relations are based on the values as manifested in the principles of *Pancasila* and the 1945 Constitution that will nourish the national philosophy and Indonesian culture" (Art.8, Art.9). Definitions and objectives are again repeated in the other Articles of the Act from 24 to 26.

The notion of *Pancasila* Industrial Relations is understood as a politicized concept to settle industrial relations in order to achieve the goals of national development. Similar abuse of the *Pancasila* philosophy can be found in the "P4" forced education system and the five political suppressive laws which were launched in 1985, most of which have been repealed or amended. "*Pancasila*" is a philosophy as well as a gem of wisdom formulated by one of the founding fathers of this country for the integration of diverse values among people, for the coordination of different interests of the people, and as a tool for the solution of difficult problems of the country. Government intervention in the individual industrial relations signifies the government's role as a guardian or a controller in "*Pancasila* industrial relations" (Art. 24(2)).

Articles 89 to 94 of the Act provide for the counseling and socialization process of *Pancasila* through industrial relations, where the government must perform the education of *Pancasila* industrial relations (Art. 89, Art. 92). The political education is extended to all kinds of groups or associations (Art. 93).

5. Extensive control by the Government over labour unions

Labour unions can be established by business sectors (Art. 29(1)) and must be registered (Art. 33). Labour unions of the same business sector can establish and/or serve as members of the association of sector unions (Art. 29(2)). The association of sector unions can establish and/or serve as a member of the association of labour unions (Art. 29(3)). Employers are permitted to establish and serve as members of an employers' organization (Art. 36). Establishment of Bipartite Cooperative Organizations for undertakings of more than 50 workers is compulsory (Art. 37) for communication, consultation and amicable discussion purposes to solve labour disputes. Details of this bipartite organization are to be regulated by the Minister in charge. Establishment of Tripartite Cooperative Organizations at a national level as well as a local level is also compulsory in order to invite advice, suggestions and opinions of the government on the solution of labour issues (Art. 38). Details of the roles, functions, and systems of the Tripartite Cooperative Organizations are to be regulated by future government regulations. Company regulations on the rights and duties of workers and employers, working conditions, company discipline, and the effective period of the regulations have to be authorized by the Minister or an authorized official appointed by the Minister. This obligation is exempted for undertakings where collective labour agreements (*KKB*) are already existent. Amendments and modifications to company regulations must be authorized by the Minister or an authorized official appointed by the Minister (Art. 4(2)). There exists strict procedural control over collective labour agreements (Arts. 51–54). Workers' strikes have to be notified to the employers and the government in writing 7 days prior to a strike. Strikes that might disturb public safety and order, and/or threaten the life and property belonging to a company or the public are forbidden (Art. 79).

6. Others

There are many other points of attention such as method of discharging workers (PHK) under strict conditions, child labour permitted under certain conditions (Art. 95, Art. 96), a minimum wage system (Art. 109) and so on.

VI. LESSONS LEARNED FROM INDONESIA AND THE FUTURE PROSPECTS

Let me take up some points which we can learn from the Indonesian experience and some future prospects.

Indonesia is undergoing rapid changes especially after the democratization movements since May 1998. The enforcement of the present Manpower Act of 1997 has been suspended. We can discuss a lot of lessons we can learn from the Indonesian experience. During the colonial period in Indonesia, the focus of attention in the labour law was the abolition of slavery. The slavery period, whatever the name is, continued for hundreds of years. And, even after achieving her independence, Indonesia was in chaotic economic and political conditions, which lasted for decades. Towards the end of the sixties, President Soeharto took over the political power and initiated the National Five-Year Development Plan.

It was in the year of 1951 that the Labour Protection Act of 1948, which was largely based on the Western human rights conceptual framework, was brought into effect throughout Indonesia. However, it was said to be ineffective and could not cope with the increasing number of industrial disputes in Indonesia. This was one of the reasons why a strong government was expected to emerge in this field to put down labour disputes with new legislation. This coincided with the beginning of the development program of the regime under former President Soeharto. The workers under this Act are regarded as physical manpower rather than a party to enjoy human rights as human beings.

A. Difficult Labour Situations and the Role of Law in Indonesia

We need to understand that the labour issues in Indonesia are interrelated with other grave issues, and therefore discussions should not be limited to the problem of inferior working conditions of the workers. The labour issues are intermingled with other serious issues in Indonesia: population, poverty, unemployment, education. and economic development. As we have examined in the national policy on manpower, labour issues in Indonesia are understood as one of the macro-based development issues related to the national development of the country. As a result, labour policy in Indonesia can be understood as one of the national development policies with an emphasis on manpower development.

In order to resolve difficult labour issues, the positive role of the government is very much expected. The government's positive role means strongly supported labour policies and measures by the

government. The labour law under current circumstances will be expected to become a major tool to enforce such policies and measures. However, the conceptual framework of law which has existed in the developed countries is not immediately adaptable under different conditions in the developing countries. This is because the legal system in the developed countries is mostly dependent on a democratic legal framework and based on the notion of less government intervention in socio-economic affairs. Expectations toward the role of law required by a developing country like Indonesia are, as it were, reversed and the emphasis is placed rather on the mobilization of the government's power to implement government policies forcibly. It could be said that the expected role of law in developing countries is quite different from that of the developed countries.

Moreover, we need to pay some attention to the constraints that have prevented the establishment of a democratic legal system in Indonesia. There exist critical conditions in Indonesia: lack of establishment of a basic national legal system and lack of legal awareness among the common people. This can be partly attributed to the country's historical background. Rulers in the past made use of the law as one of their controlling measures over their subjects. The law has not yet become a social tool to protect the people. Establishment of a national legal system means not only making laws and regulations but also building administrative and judicial infrastructures. Inadequate legal awareness in the developing countries generally includes the following aspects: first, lack of knowledge about law in general; second, lack of confidence in law; and third, lack of a modern social environment, which can support the rule of law principle in society.

Indonesia is, as it were, in a state of legal vacuum at this moment because the former Soeharto's authoritarian rule has not been taken over yet by a civil society. In a civil society, the rule of law must prevail. The law will be recognized as an important tool for the society and as the last resort to rule the society in an orderly manner. The government will also be placed under the rule of law. For this reason, we cannot limit our labour law discussions on Indonesia only to the protection of human rights aspect as commonly discussed in developed countries.

B. The Labour Policy and the Labour Law Policy

We need to consider two aspects related to the role of labour law in developing countries with special reference to labour policy and law. One is that the labour law will most probably become the major tool to implement the government's labour policies. For this reason, it is

understandable that under Soeharto's strong political rule, the labour law became extremely politicized and the strong manpower policy controlled by the government pushed aside even the existing human rights principles, resulting in the formation of a dualistic system in the field of labour law. Another aspect is that even if we admit such unavoidable political impacts on the labour law field for supporting the national development policy, some essential principles, for example, as declared in ILO Conventions should not be either forgotten or ignored by any political power. This relates to the identity and the necessity of the labour law itself and the inalienable nature of workers' human rights.

Generally speaking, such a labour situation can be witnessed everywhere in Indonesia. Most people do not resort to the law even if their rights are being infringed, much less, solution or negotiation of individual labour disputes. Improvement in specific working conditions has not been easy and common. In Indonesia, *"Sembako"* means the 9 basic foodstuffs/staple commodities which include rice, cooking oil, sugar, and salt. Under the recent economic crisis, the common people cannot afford even these basic human needs, and many are in hunger and short of daily necessities. Under such a situation, only the government can be tasked to focus their macro policies on rescuing the majority of the poor people by means of law. In this context, manpower development policy as part of the national labour policy is indispensable and should be recommended. Of course, this does not necessarily mean supporting the present extremely development-oriented manpower policy as a whole by the government. In developing countries such as Indonesia, the major priority of the Government's labour policy has to be targeted at increasing and maximizing the limited resources of the country for the imminent needs of the people.

We cannot take the present Indonesian politicized labour law situation for granted or the establishment of the Western labour law as a model law for the immediate future of Indonesia. We need to concentrate our study on what kind of legal principles are most workable and adaptable under certain politically or socio-economically or legally restricted conditions in developing countries. We cannot introduce all the advanced labour law principles into developing countries immediately only because they are widely applied in developed countries, as the proverb says "Someone's meat is another man's poison". However, there are certain legal principles that should never be forgotten or conceded in the process of legal reform in developing countries. The laws and regulations in one country cannot be exported or transplanted automatically without certain coordination or harmonization process with the local conditions. These strategic considerations should be academically accumulated in the discussion of any area of law. I called it "the labour law policy" in the

above just for discussion purposes. The aims of such considerations are to study the legal constraints when establishing a modernized legal system in the developing countries and, in the long run, to assure basic legal principles adaptable to the different conditions of the developing countries.

People in the developed countries are inclined to have a strong belief that to uphold the human rights of the individual is the first priority. However, this is workable only under circumstances where the rule of law has been established and the majority of people are saved from scarcity of food and other basic human needs. These are not stipulated in our present labour code in the developed countries. However, if we just look back to our history and compare the ultimate goals of the labour laws both in developing and developed countries, we will soon find that almost similar goals are being set. The ultimate goals of the labour law both in developing and developed countries are to assure a decent standard of living of the workers. However, the measures and approaches to achieve the goals are quite different.

Further, we can see that the role and function of the labour law in the developing countries will change as the role of the government changes. At present, Indonesia is in the midst of a rapid process of change. The government will adopt a more democratized and decentralized posture, and the role of law will become more democratic. Suppressive policies will soon lose their legal basis and can no longer be accepted. Instead, more democratic rules based on human rights will be gaining ground and ensure the maintenance of a new legal order.

C. Human Rights Abuse and Corruption Related to Labour Law

Manpower Act of 1997 could be explained as a masterpiece produced towards the end of Soeharto's authoritarian regime. There were many cases of human rights abuse and this Act might have opened up such possibilities. It is commonly said that in Indonesia whenever the government allows interference in private affairs or wherever permission or license system exists, possibilities of corruption will prevail and smartly sneak in. We need to stop to think of the reasons why such abuse of human rights and corruption prevail in Indonesia.

Of course, one of the reasons commonly given is their economic poverty, i.e. the salaries of the public officials are not sufficient. However, this situation can be attributed to lack of a modernized legal system in Indonesia and lack of confidence in the law. It is not an exaggeration to say that the major role of the law in Indonesia has long been that of a controlling tool before and even after the Independence period. People did not believe in feudalistic or authoritarian governments

because the human rights of the people were not protected, and, as a result, people did not respect the law. After all, the law has never developed as a formal tool to consolidate the society. This is a kind of vicious circle. However, we have to limit our discussion only to the formal legal system of Indonesia, that is, except *adat* laws in Indonesia.

This is a very simple phenomenon. The rule of law has not been established and permeated in the society. The first problem is the immaturity of the formal legal system in Indonesia, and the second problem is lack of general confidence in the law in Indonesia. The first problem can be repaired to a large extent by undertaking legal reform as is happening now. However, the second problem cannot be solved easily, as the problem mostly relates to the common people's confidence in the government and confidence in the law. Indonesian people and the media often repeat of late *"Kepastian Hukum"* which means "the certainty of law". Establishment of the rule of law in Indonesia much depends on the accomplishment of these two factors.

Frequent human rights abuse and the commonly practiced corruption are caused by lack of the rule of law in Indonesia, which is deeply rooted in the legal and non-legal aspects. This second, non-legal aspect is a socio-cultural factor and cannot be changed immediately without the general support of a democratized society.

D. The Future of the Original Labour Law in Indonesia

Finally, even though we are aware that the present Indonesian labour law situation is in a transitional period, we need to discuss whether the original labour law in Indonesia will prevail or not.

Indonesia has realized an indigenous framework of *Pancasila* industrial relations, which allows excessive government political intervention. No one can accept this as a democratic and modern framework as the government can politically interfere anytime in private industrial affairs. Generally speaking, government intervention should preferably be avoided and minimized. However, we have to realize that unjust and unfair labour practices are still widely prevalent in the Indonesian society. In order to protect the weak workers, the government's interventions cannot be dispensed with immediately only because they are unreasonable. We have to remember the history of the developed countries when the governments tried to interfere in private labour affairs in order to secure equal positions between workers and employers at the beginning of the 20th century when the welfare state concept was introduced in European countries.

Labour law is not the only area of law that requires such government intervention. Other areas of law are, for example, environmental

law, consumer protection laws, anti-monopoly laws, and production liability law. They are what we can call the areas of socio-economic laws. The major aims of these areas of laws can be understood as to redistribute and reallocate the excessively unbalanced resources and to restore new rules and order. In other words, to modify and correct contradictions and distortions brought about by too rapid economic development. In order to repair such contradictions and distortions, the positive role of the government to intervene was indispensable. Without the support of positive government intervention, it would be difficult to keep just and fair conditions between "the haves" and "the have-nots".

We will go back to the topic of this section, i.e. whether the original labour law of Indonesia will be developed or not. The Western labour law model that emphasizes the importance of human rights can be adjusted to the local Indonesian conditions. However, when we think about the Indonesian labour law from the viewpoint of labour law policy, we cannot ignore the imminent needs of the poor as examined above and the long-term goals of the labour law itself in order to assist to the betterment of the workers' working and living conditions.

In this context, the proposed Indonesian Manpower Act is understood as being excessively politicized and it ignores the basic human rights principle. It is important from the perspective of "Law and Development" discussion to examine what kind of laws and regulations are best suited to a country under certain socio-economic constraints. Many developing countries are experiencing democratization movements. However, their headaches are how they can create a new legal order while minimizing social frictions in the process of carrying out their development policies.

NOTES

1. The author owes his knowledge of and information on the history of labour law and the sources of labour law to the book "*Dasar-dasar Hukum Perburuhan*" edited by Sainal Asikin and others, P.T. Raja Grafindo Persada, 1997.
2. Ibid. p. 12.
3. Indonesia-ILO Workplan 1994–1999, Towards Sustained Economic Growth with Social Justice, ILO, Jakarta.
4. Ibid. "*Dasar-dasar Hukum*", p. 5.
5. Himpunan Peraturan Perundang-undangan Republik Indonesia di bidang Ketenagakerjaan, jilid 1–4, 1988.
6. Ibid. Vol. 1, 1988, pp.29–38.
7. Ordinance No.9 of 1949 amended the definition of a child and replaced the years of age from 12 to 14 in order to adjust to the international standards.
8. Elucidation 4(d), Act No. 22 of 1957 on Settlement of Labour Disputes.
9. Ibid. Elucidation (3).

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